



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

February 19, 2019

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: Large Diameter Welded Pipe from Korea: Issues and Decision  
Memorandum for the Final Affirmative Determination of the  
Countervailing Duty Investigation

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## I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers of large diameter welded pipe (welded pipe) from the Republic of Korea (Korea), as provided in section 705 of the Tariff Act of 1930, as amended (the Act). Below is the complete list of issues in this investigation for which we received comments from interested parties.

### Issues

- Comment 1: Application of Adverse Facts Available (AFA) to SeAH Steel for Unreported Affiliates
- Comment 2: Application of AFA to SeAH Steel for SPP Pipe
- Comment 3: Whether the Demand Response Resources (DRR) Program is Countervailable
- Comment 4: Whether Tax Credits under Restriction of Special Taxation Act (RSTA) Articles 25(2), 25(3), and 26 Are Countervailable
- Comment 5: Whether a Benefit Exists in the Modal Shift Program

## II. BACKGROUND

### A. Case History

The mandatory respondents in this investigation are Husteel Co., Ltd. (Husteel), Hyundai Steel Company (Hyundai Steel), and SeAH Steel Corporation (SeAH Steel). On June 29, 2018, Commerce published the *Preliminary Determination* in this investigation and aligned this final countervailing duty (CVD) determination with the final antidumping duty (AD) determination, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i).<sup>1</sup>

From September 10 through 21, 2018, we conducted verification at the offices of the Government of Korea (GOK), Husteel, Hyundai Steel, Hyundai Corporation (Hyundai Corp), and SeAH Steel, in accordance with section 782(i) of the Act.<sup>2</sup>

We invited parties to comment on the *Preliminary Determination*. In November 2018, we received case briefs from the petitioners,<sup>3</sup> SeAH Steel, and the GOK,<sup>4</sup> and rebuttal briefs from the petitioners and SeAH Steel.<sup>5</sup> Commerce held a public hearing limited to issues raised in the case and rebuttal briefs on December 18, 2018.<sup>6</sup>

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.<sup>7</sup> If

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<sup>1</sup> See *Large Diameter Welded Pipe from the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 30693 (June 29, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

<sup>2</sup> See Memoranda, “Verification of the Questionnaire Responses of the Government of Korea” (GOK Verification Report), “Verification of the Questionnaire Responses of Husteel Co., Ltd.” (Husteel Verification Report), “Verification of the Questionnaire Responses of Hyundai Corporation” (Hyundai Corp Verification Report), “Verification of the Questionnaire Responses of Hyundai Steel Company” (Hyundai Steel Verification Report), and “Verification of the Questionnaire Responses of SeAH Steel Corporation and ESAB SeAH Corporation” (SeAH Steel Verification Report), all dated October 26, 2018.

<sup>3</sup> The petitioners are the 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>4</sup> Commerce rejected several case and rebuttal briefs from the petitioners, SeAH Steel, and the GOK. The final case and rebuttal briefs can be found on ACCESS under the barcodes listed after each citation. See the petitioners’ letter, “Large Diameter Welded Line Pipe from the Republic of Korea: Case Brief,” dated November 7, 2018 (Petitioners Case Brief) (barcode 3770981-01); see also GOK’s letter, “Large Diameter Welded Pipe from the Republic of Korea, Resubmission of Case Brief,” dated November 9, 2018 (GOK Case Brief) (barcode 3771385-01); see also SeAH Steel’s letter, “Countervailing Duty Investigation of Large Diameter Welded Pipe from Korea – 2<sup>nd</sup> Redacted Case Brief,” dated November 16, 2018 (SeAH Steel Case Brief) (barcode 3775533-01).

<sup>5</sup> See the petitioners’ letter, “Large Diameter Welded Pipe from the Republic of Korea: Resubmission of Rebuttal Brief,” dated November 19, 2018 (Petitioners Rebuttal Brief) (barcode 3776035-01); see also SeAH Steel’s letter, “Countervailing Duty Investigation of Large Diameter Welded Pipe from Korea – Redacted Rebuttal Brief,” dated November 16, 2018 (SeAH Steel Rebuttal Brief) (barcode 3775527-01).

<sup>6</sup> See the petitioners’ letter, “Large Diameter Welded Pipe from the Republic of Korea: Petitioners’ Request for a Hearing,” dated July 30, 2018. See also SeAH Steel’s letter, “Large Diameter Welded Pipe from the Republic of Korea Countervailing Duty Investigation – Hearing Request,” dated July 27, 2018.

<sup>7</sup> See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for

the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final determination of this investigation is now February 19, 2019.

**B. Period of Investigation**

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

**C. Scope of the Investigation**

The product covered by this investigation is large diameter welded pipe from Korea. For a full description of the scope of this investigation, *see* the accompanying *Federal Register* notice at Appendix I.

**III. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES**

**A. Legal Standard**

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 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. Further, section 776(b)(2) of the Act states that an adverse inference in selecting from the facts otherwise available 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>8</sup> When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to

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Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

<sup>8</sup> *See also* 19 CFR 351.308(c).

provide Commerce with complete and accurate information in a timely manner.”<sup>9</sup> Commerce’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>10</sup> At the same time, 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>11</sup>

Section 776(c) of the Act provides that, 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>12</sup> Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>13</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>14</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>15</sup>

As discussed below and in Comment 1, for the final determination, we find it appropriate to use the facts otherwise available with an adverse inference to determine the estimated net countervailable subsidy rate for SeAH Steel because of the discovery of three previously unreported affiliates at verification.

## B. Application of AFA: SeAH Steel

As described further in Comment 1, below, SeAH Steel failed to provide information requested for Commerce to make a determination with regard to the cross-ownership of three unreported affiliates.<sup>16</sup> Specifically, in the initial affiliation questionnaire response, Commerce questioned

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<sup>9</sup> See, e.g., *Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

<sup>10</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

<sup>11</sup> See section 776(b)(1)(B) of the Act.

<sup>12</sup> See also 19 CFR 351.308(d).

<sup>13</sup> See SAA at 870.

<sup>14</sup> See section 776(d)(1) of the Act.

<sup>15</sup> See section 776(d)(3) of the Act.

<sup>16</sup> The three affiliates are TS Tech, TRENC Co., Ltd., and Steel Coat Nano.

SeAH Steel about “the identity of all companies with which your company is affiliated within the meaning of section 771(33) of the Act, including the full name and mailing address of each company” and asked SeAH Steel to “describe in detail the nature of the relationship between your company and those companies listed in response to the prior question.”<sup>17</sup> In its affiliation response, SeAH Steel omitted five affiliates<sup>18</sup> from its list of member companies and affiliates in which it had an ownership stake, and its affiliation chart, of which three were first discovered at verification.<sup>19</sup> In the narrative of the affiliation response, SeAH Steel identified KB Wisestar, one of the five companies that was not included in the list of member companies and affiliation chart, as an affiliate that provided SeAH Steel’s office rental and maintenance services.<sup>20</sup> In its supplemental questionnaire, Commerce questioned SeAH Steel regarding why KB Wisestar was not included in the list of member companies and affiliation chart.<sup>21</sup> In response, SeAH Steel stated that, “KB Wisestar is not listed as a member company of the SeAH Steel Group because it is an investment trust and thus not a type of legal entity that is considered a member ‘company’ of the SeAH Steel Group.”<sup>22</sup> Thus, up to the point of the submission of SeAH Steel’s Affiliation Supplemental Response, SeAH Steel failed to disclose the four other affiliates that were excluded from the list of member companies and the affiliation chart provided in SeAH Steel’s affiliation response. However, in its Section III questionnaire response, SeAH Steel provided its 2017 audited financial statements, which included information on SeAH Steel’s 100 percent ownership of SSIK Loan.<sup>23</sup> The 2017 audited financial statements also indicate that SSIK Loan was an investment company that was established on November 23, 2017.<sup>24</sup> Therefore, prior to verification, Commerce had record evidence relating to two of the five companies that were originally omitted from SeAH Steel’s list of member companies and affiliation chart.

However, it was not until verification when SeAH Steel informed Commerce that it had omitted three additional, previously unreported affiliates from its questionnaire responses relating to affiliation.<sup>25</sup> Commerce did not verify any further information regarding these three unreported affiliates, as these companies and their affiliation with SeAH Steel constituted new factual information (NFI). It is Commerce’s longstanding practice not to accept NFI at verification.<sup>26</sup> Therefore, as discussed in more detail below under Comment 1, Commerce finds that necessary

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<sup>17</sup> See Commerce’s letter, “Large Diameter Welded Pipe from the Republic of Korea: Countervailing Duty Questionnaire,” dated March 7, 2018, at Section III.C.

<sup>18</sup> These five affiliates are the three referenced above as well as KB Wisestar Private Real Estate Trust (KB Wisestar) and SSIK Loan Co., Ltd. (SSIK Loan).

<sup>19</sup> See SeAH Steel’s letter, “Countervailing Duty Investigation of Large Diameter Welded Pipe from Korea – Identification of Other Companies Subject to Investigation,” dated April 5, 2018, at Attachments 2 and 4 (SeAH Steel Affiliation Response).

<sup>20</sup> *Id.* at 7.

<sup>21</sup> See Commerce’s letter, “Countervailing Duty Investigation of Large Diameter Welded Pipe from the Republic of Korea: Affiliation Supplemental Questionnaire,” dated April 17, 2018.

<sup>22</sup> See SeAH Steel’s letter, “Countervailing Duty Investigation of Large Diameter Welded Pipe from Korea – Response to Affiliation Supplemental Questionnaire,” dated April 23, 2018 at 8 (SeAH Steel Affiliation Supplemental Response).

<sup>23</sup> See SeAH Steel’s letter, “Large Diameter Welded Pipe from Korea – Response to Section III of Department’s Countervailing Duty Questionnaire,” dated April 23, 2018 at Appendix 3-B (SeAH Steel Questionnaire Response).

<sup>24</sup> *Id.*

<sup>25</sup> See SeAH Steel Verification Report at 2 and 4.

<sup>26</sup> See, e.g., *Truck and Bus Tires from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 8606 (January 27, 2017), and accompanying Issues and Decision Memorandum (IDM) at Comment 30.

information is missing from the record, and also that SeAH Steel withheld the requested information, failed to provide it by the deadline for submission, and significantly impeded the proceeding, pursuant to sections 776(a)(1) and (2)(A), (B) and (C) of the Act, respectively.

In selecting from among the facts otherwise available, Commerce also determines that an adverse inference is warranted, pursuant to section 776(b) of the Act. As explained in further detail below in Comment 1, we find that SeAH Steel failed to cooperate by not acting to the best of its ability to comply with Commerce's request for information in this investigation pursuant to section 776(b) of the Act. As we are missing key information about the full universe of SeAH Steel's affiliates for determining cross-ownership, because SeAH Steel failed to submit a complete response to Commerce's initial CVD questionnaire on all of its affiliations, which we find is exacerbated by SeAH Steel's failure to cooperate to the best of its ability, we are using an adverse inference when selecting from facts otherwise available in determining the estimated net countervailable subsidy rate for SeAH Steel for this final determination.

### C. Calculation of AFA Rates for SeAH Steel

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>27</sup> 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.<sup>28</sup> Accordingly, when selecting AFA rates, if we have cooperating respondents, we first determine if there is an identical program in the investigation and use the highest calculated rate for the identical program. If there is no identical program that resulted in a subsidy rate above zero for a cooperating respondent in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding *de minimis* rates).<sup>29</sup> If no such rate exists, we then determine if

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<sup>27</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 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>28</sup> See, e.g., *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*), and accompanying IDM at 13-14; see also *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

<sup>29</sup> For purposes of selecting AFA program rates, we normally treat rates less than 0.5 percent to be *de minimis*. See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying IDM at "1. Grant Under the

there is a similar/comparable program (based on treatment of the benefit) in another CVD proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-*de minimis* rate from any non-company-specific program in a CVD case involving the same country that the company's industry could conceivably use.<sup>30</sup>

Commerce's methodology is consistent with section 776(d)(1)(A) of the Act. Section 776(d)(1)(A) of the Act states that when applying an adverse inference in selecting from the facts otherwise available, Commerce may (i) use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or (ii) if there is no same or similar program use a countervailable subsidy rate from a proceeding that Commerce considers reasonable to use. Thus, section 776(d)(1)(A) of the Act expressly allows for Commerce's existing practice of using an AFA hierarchy in selecting a rate "among the facts otherwise available" in CVD cases, should the facts warrant such a selection.

Section 776(d)(2) of the Act authorizes Commerce to rely on the highest prior rate under certain circumstances. In deriving an AFA rate under section 776(d)(1)(A) of the Act described above, the provision states that Commerce "may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available."<sup>31</sup> No legislative history accompanied this provision of the Act. Accordingly, Commerce is left to interpret this "evaluation by the administering authority of the situation" language in light of existing agency practice, and the structure and provisions of section 776(d) of the Act itself.<sup>32</sup>

We find that the Act anticipates a two-step process for determining an appropriate AFA rate in CVD cases: 1) Commerce may apply its hierarchy methodology and 2) Commerce may apply the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place, unless, after an evaluation of the situation that resulted in the use of AFA, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.<sup>33</sup> In applying the AFA rate provision, it is well established that when selecting the rate from among possible sources, Commerce seeks to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had

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Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."

<sup>30</sup> See *Shrimp from China* and accompanying IDM at 13-14.

<sup>31</sup> See section 776(d)(2) of the Act.

<sup>32</sup> See, e.g., *Large Diameter Welded Pipe from India: Final Affirmative Countervailing Duty Determination*, 83 FR 56819 (November 14, 2018), and accompanying IDM at 7.

<sup>33</sup> This differs from antidumping proceedings, for which no hierarchy applies, under section 776(d)(1)(B) of the Act. Under that provision, "any dumping margin from any segment of the proceeding under the applicable antidumping order" may be applied, which suggests an adverse rate could be derived from different available margins, given the facts on the record.

cooperated fully.”<sup>34</sup> Further, “in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin.”<sup>35</sup> It is pursuant to this knowledge and experience that Commerce has implemented its AFA hierarchy in CVD cases to select an appropriate AFA rate.<sup>36</sup>

In applying its AFA hierarchy in CVD investigations, Commerce’s goal is as follows: in the absence of necessary information from cooperative respondents, Commerce is seeking to find a rate that is a relevant indicator of how much the government of the country under investigation is likely to subsidize the industry at issue, through the program at issue, while inducing cooperation. Accordingly, in sum, the three factors that Commerce takes into account in selecting a rate are: 1) the need to induce cooperation, 2) the relevance of a rate to the industry in the country under investigation (*i.e.*, can the industry use the program from which the rate is derived), and 3) the relevance of a rate to a particular program, though not necessarily in that order of importance.

Furthermore, the hierarchy (as well as section 776(d)(1) of the Act) recognizes that there may be a “pool” of available rates that Commerce can rely upon for purposes of identifying an AFA rate for a particular program. In investigations for example, this “pool” of rates could include the rates for the same or similar programs used in either that same investigation, or prior CVD proceedings for that same country. Of those rates, the hierarchy provides a general order of preference to achieve the goal identified above. The hierarchy therefore does not focus on identifying the highest possible rate that could be applied from among that “pool” of rates; rather, it adopts the factors identified above of cooperation inducement, relevancy to the industry and to the particular program.

Under the first step of Commerce’s investigation hierarchy, Commerce applies the highest non-zero rate calculated for a cooperating company for the identical program in the investigation. Under this step, we will even use a *de minimis* rate as AFA if that is the highest rate calculated for another cooperating respondent in the same industry for the same program.

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<sup>34</sup> See SAA at 870; see also *Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1276 (Fed. Cir. 2012) (citing *F. Lii De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (*De Cecco*) (finding that “{t}he purpose of the adverse facts statute is ‘to provide respondents with an incentive to cooperate’ with Commerce’s investigation, not to impose punitive damages.”).

<sup>35</sup> See *De Cecco*, 216 F.3d at 1032.

<sup>36</sup> Commerce has adopted a practice of applying its hierarchy in CVD cases. See, e.g., *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017) (*Carbon Steel Flanges from India*), and accompanying IDM at 28-31 (applying the AFA hierarchical methodology within the context of CVD investigation); see also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015), and accompanying IDM at 11-15 (applying the AFA hierarchical methodology within the context of CVD administrative review). However, depending on the type of program, Commerce may not always apply its AFA hierarchy. See, e.g., *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying IDM at 7-8 (applying, outside of the AFA hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).



However, if there is no identical program match within the investigation, or if the rate is zero, then Commerce will shift to the second step of its investigation hierarchy, and either apply the highest non-*de minimis* rate calculated for a cooperating company in another countervailing duty proceeding involving the same country for the identical program, or if the identical program is not available, for a similar program. This step focuses on the amount of subsidies that the government has provided in the past under the investigated program. The assumption under this step is that the non-cooperating respondent under investigation uses the identical program at the highest above *de minimis* rate of any other company using the identical program.

Finally, if no such rate exists, under the third step of Commerce's investigation hierarchy, Commerce applies the highest rate calculated for a cooperating company from any non-company-specific program that the industry subject to the investigation could have used for the production or exportation of subject merchandise.<sup>37</sup>

In all three steps of Commerce's AFA investigation hierarchy, if Commerce were to choose low AFA rates consistently, the result could be a negative determination with no order (or a company-specific exclusion from an order) and a lost opportunity to correct future subsidized behavior. In other words, the "reward" for a lack of cooperation would be no order discipline in the future for all or some producers and exporters. Thus, in selecting the highest rate available in each step of Commerce's investigation AFA hierarchy (which is different from selecting the highest possible rate in the "pool" of all available rates), Commerce strikes a balance between the three necessary variables: cooperation inducement, industry relevancy, and program relevancy.<sup>38</sup>

Furthermore, we find that section 776(d)(2) of the Act applies as an exception to the selection of an AFA rate under 776(d)(1) of the Act; that is, after "an evaluation of the situation that resulted in the application of an adverse inference," Commerce may decide that given the unique and unusual facts on the record, the use of the highest rate within that step is not appropriate.

In determining the program-specific AFA rates we will apply to SeAH Steel, we are guided by Commerce's methodology detailed above. We find that there are no facts on this record to suggest that a rate other than the highest rate envisioned under the appropriate step of the

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<sup>37</sup> In an investigation, unlike an administrative review, Commerce is just beginning to achieve an understanding of how the industry under investigation uses subsidies. Commerce may have no prior understanding of the industry and no final calculated and verified rates for the industry.

<sup>38</sup> It is significant that all interested parties, since at least 2007, that choose not to provide requested information have been put on notice that Commerce, in the application of facts available with an adverse inference, may apply its hierarchy methodology and select the highest rate in accordance with that hierarchy. See, e.g., *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and accompanying IDM at 2 ("As AFA in the instant case, the Department is relying on the highest calculated final subsidy rates for income tax, VAT and policy lending programs of the other producer/exporter in this investigation, Gold East Paper (Jiangsu) Co., Ltd. (GE). GE did not receive any countervailable grants, so for all grant programs, we are applying the highest subsidy rate for any program otherwise listed..."). Therefore, when an interested party is making a decision as to whether or not to cooperate and respond to a request for information by Commerce, it does not make this decision in a vacuum; instead, the interested party makes this decision in an environment in which Commerce may apply the highest rate as AFA under its hierarchy.

hierarchy applied in accordance with section 776(d)(1) of the Act should be applied as adverse facts available for SeAH Steel. Accordingly, we select, as AFA, the highest calculated program-specific above-zero rates calculated for a cooperating respondent in the instant investigation, as applicable. On this basis we are applying the highest applicable subsidy rates for SeAH Steel for the following programs:

- **DRR Program**
- **Korean Export-Import (KEXIM) Bank Subsidy Programs**
- **RSTA Article 25(2)**
- **RSTA Article 25(3)**
- **RSTA Article 26**
- **Acquisition and Property Tax Benefits to Companies in Industrial Complexes (Restriction of Special Local Taxation Act (RSLTA) Article 78)**
- **Modal Shift Program**

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 above *de minimis* subsidy rate calculated for the same program in a CVD investigation or administrative review involving Korea. We are able to match based on program name, descriptions, and treatment of the benefit, the following program to the same program from other Korean CVD proceedings:

- **RSTA Article 10**

For the final determination, we are able to match based on program type and treatment of the benefit, the following programs to the highest rates for similar programs from other Korean CVD proceedings:

- **RSTA Article 11**
- **RSTA Article 22**
- **RSTA Article 24**
- **RSTA Article 25**
- **RSTA Article 120**
- **Tax Reductions and Exemptions for Companies Located in Free Economic Zones (FEZs)**
- **Exemptions and Reductions of Lease Fees for Companies Located in FEZs**
- **RSLTA Article 19**
- **RSLTA Article 31**
- **RSLTA Article 46**
- **RSLTA Article 84**
- **Local Tax Article 109**
- **Local Tax Article 112**

Given the absence of an above *de minimis* subsidy rate calculated for the same or a similar program, we applied the highest calculated subsidy rate for any program otherwise identified in a Korean CVD proceeding for the following programs:

- **Management of Electricity Factor Load Program**
- **Short-Term Discounted Loans for Export Receivables from the Korea Development Bank (KDB) and the Industrial Base Fund (IBF)**
- **Korea Trade Insurance Corporation (K-SURE) Export Credit Guarantees**
- **Loans from the Korean Resources Corporation (KORES) and the Korea National Oil Corporation (KNOC)**
- **Grants to Companies Located in FEZs**
- **Industrial Grants under the Industrial Technology Innovation Promotion Act (ITIPA)**
- **Sharing of Work Opportunities/Employment Creating Incentives**
- **High Efficiency Energy Market Project**
- **Incentives for Usage of Yeongil Harbor in Pohang City**
- **Incentives for Usage of Gwangyang Port**
- **Incentives for Natural Gas Facilities**
- **Subsidies for Construction and Operation of Workplace Nursery**

Accordingly, we determine the AFA countervailable subsidy rate for SeAH Steel to be 27.42 percent *ad valorem*. The appendix to this memorandum contains a chart summarizing our calculation of this rate.

#### D. Corroboration of AFA Rate

Section 776(c) of the Act provides that, 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>39</sup> The SAA provides that to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.<sup>40</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>41</sup> Furthermore, 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>42</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

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<sup>39</sup> See SAA, at 870.

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

<sup>41</sup> *Id.* at 869-870.

<sup>42</sup> See section 776(d)(3) of the Act.

interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of 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>43</sup>

In the absence of record evidence from SeAH Steel concerning the program subsidies conferred upon its three unreported affiliates, Commerce reviewed the information concerning Korean subsidy programs in this and other cases. For programs for which we are applying subsidy rates which were calculated in this investigation, the statutory corroboration requirement does not apply. For programs for which we are applying subsidy rates that were not calculated in this investigation, where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this case. Additionally, the relevance of the rates applied is that they are actual calculated CVD rates for Korean programs, from which SeAH Steel could actually receive a benefit. Due to the lack of record information for the three unreported affiliates concerning these programs, Commerce has corroborated the rates it selected to use as AFA to the extent practicable for this final determination.

#### **IV. SUBSIDIES VALUATION**

##### **A. Allocation Period**

Commerce made no changes to, and interested parties raised no issues in their case briefs regarding, the allocation period or the allocation methodology used in the *Preliminary Determination*. For a description of the allocation period and the methodology used for this final determination, see the *Preliminary Determination*.<sup>44</sup>

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

Commerce made no changes to, and interested parties raised no issues in their case briefs regarding, the attribution of subsidies used in the *Preliminary Determination*. For a description of the methodologies used for this final determination, see the *Preliminary Determination*.<sup>45</sup> However, we note that in the *Preliminary Determination* we inadvertently identified Hyundai Corp as an affiliate of Hyundai Steel.<sup>46</sup> Hyundai Corp is an export trading company which exported subject merchandise produced by Hyundai Steel, but Hyundai Corp is not cross-owned or affiliated with Hyundai Steel.<sup>47</sup>

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<sup>43</sup> See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

<sup>44</sup> See *Preliminary Determination* PDM at 11.

<sup>45</sup> *Id.* at 11-12.

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

<sup>47</sup> See Hyundai Corp's letter, "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, at 5 and Exhibit 2; see also Hyundai Corp Verification Report at 3 and VEH-3.

C. Denominators

Commerce made no changes to, and interested parties raised no issues in their case briefs regarding, the denominators used in the *Preliminary Determination* for Husteel and Hyundai Steel. For a description of the methodologies used for this final determination, see the *Preliminary Determination*.<sup>48</sup>

D. Loan Interest Rate Benchmarks and Discount Rates

Commerce made no changes to, and interested parties raised no issues in their case briefs regarding, the loan interest rate benchmarks and discount rates used in the *Preliminary Determination*. For a description of the methodologies used for this final determination, see the *Preliminary Determination*.<sup>49</sup>

V. **ANALYSIS OF PROGRAMS**

A. Programs Determined to Be Countervailable

We made no changes to our *Preliminary Determination* with respect to the methodology used to calculate the subsidy rates for the following programs, except for the programs used by SeAH Steel that are included in the AFA rate as described above and in Comment 1 below. For the descriptions, analyses, and calculation methodologies of the unchanged programs, see the *Preliminary Determination*. Except where noted below, no issues were raised by interested parties in case briefs regarding these programs. The final program rates are as follows:

1. *DRR Program*

As discussed in Comment 3, Commerce made no changes to its *Preliminary Determination* with regard to the countervailability of this program. The rate for Hyundai Steel continues to be 0.06 percent *ad valorem*.<sup>50</sup> In the *Preliminary Determination*, we found that SeAH Steel received a measurable benefit from this program.<sup>51</sup> As explained in the “Adverse Facts Available” section above and in Comment 1 and the appendix below, we are applying, as AFA, a rate of 0.06 percent *ad valorem* to SeAH Steel for this final determination, which is Hyundai Steel’s rate for this program.

2. *KEXIM Bank Subsidy Programs*

Commerce made no changes to its *Preliminary Determination* with regard to the countervailability of this program. The rate for Husteel continues to be 0.01 percent *ad valorem*.<sup>52</sup> In the *Preliminary Determination*, we found that SeAH Steel did not receive a

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<sup>48</sup> See *Preliminary Determination* PDM at 14.

<sup>49</sup> *Id.* at 14-15.

<sup>50</sup> *Id.* at 15-17.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 17-18.

measurable benefit from this program.<sup>53</sup> As explained in the “Adverse Facts Available” section above and in Comment 1 and the appendix below, we are applying, as AFA, a rate of 0.01 percent *ad valorem* to SeAH Steel for this final determination, which is Husteel’s rate for this program.

3. *RSTA Article 25(2)*

As discussed in Comment 4, Commerce made no changes to its *Preliminary Determination* with regard to the countervailability of this program. The final subsidy rate for Hyundai Steel continues to be 0.02 percent *ad valorem*.<sup>54</sup> In the *Preliminary Determination*, we found that SeAH Steel did not use this program.<sup>55</sup> As explained in the “Adverse Facts Available” section above and in Comment 1 and the appendix below, we are applying, as AFA, a rate of 0.02 percent *ad valorem* to SeAH Steel for this final determination, which is Hyundai Steel’s rate for this program.

4. *RSTA Article 25(3)*

As discussed in Comment 4, Commerce made no changes to its *Preliminary Determination* with regard to the countervailability of this program. The final subsidy rate for Hyundai Steel continues to be 0.05 percent *ad valorem*.<sup>56</sup> In the *Preliminary Determination*, we found that SeAH Steel did not use this program.<sup>57</sup> As explained in the “Adverse Facts Available” section above and in Comment 1 and the appendix below, we are applying, as AFA, a rate of 0.05 percent *ad valorem* to SeAH Steel for this final determination, which is Hyundai Steel’s rate for this program.

5. *RSTA Article 26*

As discussed in Comment 4, Commerce made no changes to its *Preliminary Determination* with regard to the countervailability of this program. The final subsidy rate for Hyundai Steel continues to be 0.28 percent *ad valorem*.<sup>58</sup> In the *Preliminary Determination*, we found that SeAH Steel did not use this program.<sup>59</sup> As explained in the “Adverse Facts Available” section above and in Comment 1 and the appendix below, we are applying, as AFA, a rate of 0.28 percent *ad valorem* to SeAH Steel for this final determination, which is Hyundai Steel’s rate for this program.

6. *RSLTA Article 78*

Commerce made no changes to its *Preliminary Determination* with regard to the countervailability of this program. The final subsidy rate for Hyundai Steel continues to be 0.02

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 18-19.

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

<sup>56</sup> *Id.* at 19-20.

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

<sup>58</sup> *Id.* at 20-21.

<sup>59</sup> *Id.*

percent *ad valorem*.<sup>60</sup> In the *Preliminary Determination*, we found that SeAH Steel received a measurable benefit from this program.<sup>61</sup> As explained in the “Adverse Facts Available” section above and in Comment 1, we are applying, as AFA, a rate of 0.02 percent *ad valorem* to SeAH Steel for this final determination, which is Hyundai Steel’s rate for this program.

## 7. *Modal Shift Program*

As discussed in Comment 5, Commerce made no changes to its *Preliminary Determination* with regard to the countervailability of this program. The final subsidy rate for Hyundai Steel continues to be 0.01 percent *ad valorem*.<sup>62</sup> In the *Preliminary Determination*, we found that SeAH Steel did not use this program.<sup>63</sup> As explained in the “Adverse Facts Available” section above and in Comment 1 and the appendix below, we are applying, as AFA, a rate of 0.01 percent *ad valorem* to SeAH Steel for this final determination, which is Hyundai Steel’s rate for this program.

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

We made no changes to our *Preliminary Determination* with respect to the methodology used to calculate the subsidy rates for the following programs, except for the programs reported by SeAH Steel. For descriptions, analyses, and calculation methodologies for the unchanged programs, see the *Preliminary Determination*.<sup>64</sup> As explained in the “Adverse Facts Available” section above and in Comment 1 and the appendix below, we are finding that SeAH Steel could have used and received a measurable benefit from these programs and are assigning rates, as AFA, to SeAH Steel for this final determination. Therefore, we are now analyzing whether these programs are countervailable. Accordingly, below we analyze the available record information in determining whether these programs are specific and provide a financial contribution.

## 1. *Management of Electricity Factor Load Program*

The Emergent Reduction subprogram, which falls under the Management of Electricity Factor Load Program, reduces the amount of electricity consumption when the electricity load is heavy and restrains the consumption of electricity during the high-peak load period.<sup>65</sup> The Korea Electric Power Corporation (KEPCO) operates and administers the program under its Selective Terms and Conditions for the Supply.<sup>66</sup> In order to use the program, companies must meet certain criteria and enter into a contract with KEPCO to receive assistance.<sup>67</sup> In the *Preliminary Determination*, we found KEPCO to be an “authority” within the meaning of section 771(5)(B)

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<sup>60</sup> *Id.* at 21-22.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 22-23.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 23-28.

<sup>65</sup> See GOK’s letter, “Large Diameter Welded Pipe from the Republic of Korea: Countervailing Duty Response to Section II of the Questionnaire,” dated April 23, 2018 (GOK Questionnaire Response), at 17.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 21.

of the Act.<sup>68</sup> A financial contribution under section 771(5)(D)(i) from the GOK exists in the form of cash payments to companies participating in this program.<sup>69</sup> We also 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.<sup>70</sup>

## 2. *RSTA Article 10*

RSTA Article 10 is a technology and workforce development tax incentive program that enhances competitiveness of the Korean economy by heightening productivity.<sup>71</sup> The Ministry of Strategy and Finance (MOSF) maintains the program, while the National Tax Service (NTS) enforces it.<sup>72</sup> Participating companies receive a tax reduction on research and development expenses incurred for new growth engines or source technologies.<sup>73</sup> The reduction amount received by companies is determined based on company size.<sup>74</sup> Tax reductions are a financial contribution from the GOK to recipients in the form of revenue foregone under section 771(5)(D)(ii) of the Act. We also 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.<sup>75</sup>

## 3. *RSTA Article 11*

RSTA Article 11 provides a tax deduction for large companies that invest in research and development facilities in order to improve competitiveness and expand research and manpower development infrastructure.<sup>76</sup> The deduction amount received by companies is determined based on company size.<sup>77</sup> The MOSF maintains the program, while the NTS enforces it.<sup>78</sup> Tax deductions are a financial contribution from the GOK to recipients in the form of revenue foregone under section 771(5)(D)(ii) of the Act. We also determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual number of recipients is limited.<sup>79</sup>

## 4. *RSTA Article 24*

RSTA Article 24 provides incentives to Korean enterprises to make investments in facilities that enhance productivity.<sup>80</sup> The deduction amount received by companies is determined based on

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<sup>68</sup> See *Preliminary Determination* and accompanying PDM at 16.

<sup>69</sup> See GOK Questionnaire Response at 16.

<sup>70</sup> *Id.* at 24.

<sup>71</sup> *Id.* at 96.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 98.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 106.

<sup>76</sup> See GOK's letter, "Large Diameter Welded Pipe from the Republic of Korea, Response to 2<sup>nd</sup> Supplemental Questionnaire," dated June 4, 2018, at 4.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 16.

<sup>80</sup> See GOK Questionnaire Response at 119.



company size.<sup>81</sup> The MOSF maintains the program, while the NTS enforces it.<sup>82</sup> Tax deductions are a financial contribution from the GOK to recipients in the form of revenue foregone under section 771(5)(D)(ii) of the Act. We also determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual number of recipients is limited.<sup>83</sup>

#### 5. *RSTA Article 25*

RSTA Article 25 grants up to a three percent tax deduction from income or corporate tax for investments in facilities constructed for industrial and safety policies.<sup>84</sup> The MOSF maintains the program, while the NTS enforces it.<sup>85</sup> Tax deductions are a financial contribution from the GOK to recipients in the form of revenue foregone under section 771(5)(D)(ii) of the Act. We also determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual number of recipients is limited.<sup>86</sup>

#### 6. *Industrial Grants under ITIPA*

This program, which is regulated and operated by the Ministry of Trade, Industry, and Energy (MOTIE), is designed to enhance the Korean economy through the development of industrial technologies.<sup>87</sup> The program is operated pursuant to Article 11 of the ITIPA.<sup>88</sup> Any party wishing to participate in the program prepares a business plan that meets the requirements set in public announcements and then submits the application to the MOTIE Review Committee, which then evaluates the application.<sup>89</sup> If the application is approved, the GOK provides the fund according to the agreement.<sup>90</sup> We determine that a financial contribution was provided within the meaning of section 771(5)(D)(i) of the Act because the GOK's payments constitute a direct transfer of funds. We also determine this program to be *de jure* specific under section 771(5A)(D)(i) of the Act because it is limited to projects that conform to the Common Administration Guideline for the Industrial Technologies Promotion Projects.<sup>91</sup>

#### 7. *High Efficiency Energy Market Project*

The purpose of this program is to provide assistance to entities to exchange old electrical devices with devices which are more energy efficient.<sup>92</sup> While the MOTIE is responsible for the program, the Korea Energy Agency (KEA) executes the program.<sup>93</sup> Entities wishing to

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<sup>81</sup> *Id.* at 121.

<sup>82</sup> *Id.* at 119.

<sup>83</sup> *Id.* at 128.

<sup>84</sup> *Id.* at 132.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 140.

<sup>87</sup> *Id.* at 198.

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

<sup>89</sup> *Id.* at 203.

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

<sup>91</sup> *Id.* at 199.

<sup>92</sup> See GOK's letter, "Large Diameter Welded Pipe from the Republic of Korea, Response," dated May 25, 2018, at 4.

<sup>93</sup> *Id.*

participate in the program must submit an application to the KEA. Selected entities receive cash assistance based on meeting the efficiency goals indicated in their application.<sup>94</sup> We determine that a financial contribution was provided within the meaning of section 771(5)(D)(i) of the Act because the GOK's payments constitute a direct transfer of funds. We also 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.<sup>95</sup>

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

As stated in the *Preliminary Determination*, Husteel self-reported use of this program.<sup>96</sup> As the current record lacks sufficient information about this program to determine specificity, we did not include this program in the AFA rate calculation for SeAH Steel. If a CVD order is issued as a result of this investigation, we intend to look into this program in the context of a future administrative review.

9. *RSLTA Article 19*

RSLTA Article 19 provides acquisition or property tax exemptions on real estate acquired for the purpose of establishing and operating childcare facilities.<sup>97</sup> The Ministry of Interior and Safety (MOIS) administers the program.<sup>98</sup> Tax deductions are a financial contribution from the GOK to recipients in the form of revenue foregone under section 771(5)(D)(ii) of the Act. We also determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual number of recipients is limited.<sup>99</sup>

10. *RSLTA Article 31*

This program provides tax incentives to those individuals with multi-family housing or office rental businesses. The GOK adopted this program in order to stabilize the supply of housing at affordable rents.<sup>100</sup> The MOIS oversees the program while local governments administer the program.<sup>101</sup> Tax deductions are a financial contribution from the GOK to recipients in the form of revenue foregone under section 771(5)(D)(ii) of the Act. We also determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual number of recipients is limited.<sup>102</sup>

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<sup>94</sup> *Id.* at 11.

<sup>95</sup> *Id.* at 15.

<sup>96</sup> See *Preliminary Determination* and accompanying PDM at 25.

<sup>97</sup> See GOK's letter, "Large Diameter Welded Pipe from the Republic of Korea, Response to 2<sup>nd</sup> Supplemental Questionnaire," dated June 7, 2018, at 3.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 13.

<sup>100</sup> *Id.* at 18.

<sup>101</sup> *Id.* at 21.

<sup>102</sup> *Id.* at 27.

11. *RSLTA Article 46*

RSLTA Article 46 provides reductions in acquisition and property tax to companies establishing and operating affiliated research and development facilities.<sup>103</sup> The MOIS oversees the program while local governments administer the program.<sup>104</sup> Tax deductions are a financial contribution from the GOK to recipients in the form of revenue foregone under section 771(5)(D)(ii) of the Act. We also determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual number of recipients is limited.<sup>105</sup>

12. *RSLTA Article 84*

RSLTA Article 84 provides reductions on property tax to real estate owners whose rights to use land were infringed or restricted for long periods of time.<sup>106</sup> The MOIS oversees the program while local governments administer the program.<sup>107</sup> Tax deductions are a financial contribution from the GOK to recipients in the form of revenue foregone under section 771(5)(D)(ii) of the Act. We also determine that this program is *de jure* specific under section 771(5A)(D)(i) of the Act, as the actual number of recipients is limited.<sup>108</sup>

13. *Local Tax Act Article 109*

Local Tax Act Article 109 is designed to prevent imposition of property tax on properties related to the government and for public goods.<sup>109</sup> The MOIS oversees the program while local governments administer the program.<sup>110</sup> Tax exemptions are a financial contribution from the GOK to recipients in the form of revenue foregone under section 771(5)(D)(ii) of the Act. We also determine that this program is *de jure* specific under section 771(5A)(D)(i) of the Act, as the actual number of recipients is limited by law.<sup>111</sup>

14. *Local Tax Act Article 112*

Local Tax Act Article 112 is designed to exempt property tax on real estate with public facilities or certain lands designated as development restrict zone.<sup>112</sup> The MOIS oversees the program while local governments administer the program.<sup>113</sup> Tax exemptions are a financial contribution from the GOK to recipients in the form of revenue foregone under section

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<sup>103</sup> See GOK's letter, "Large Diameter Welded Pipe from the Republic of Korea, Response to 2<sup>nd</sup> Supplemental Questionnaire," dated June 4, 2018, at 55-58.

<sup>104</sup> *Id.* at 55.

<sup>105</sup> *Id.* at 65.

<sup>106</sup> *Id.* at 71 and 73-74.

<sup>107</sup> *Id.* at 74.

<sup>108</sup> *Id.* at 81.

<sup>109</sup> See GOK's letter, "Large Diameter Welded Pipe from the Republic of Korea, Response to 2<sup>nd</sup> Supplemental Questionnaire," dated June 7, 2018, at 32.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at 35-36.

<sup>112</sup> *Id.* at 46.

<sup>113</sup> *Id.*

771(5)(D)(ii) of the Act. We also determine that this program is *de jure* specific under section 771(5A)(D)(i) of the Act, as the actual number of recipients is limited by law.<sup>114</sup>

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

Pohang City established this program to develop and transform the Yeongilman port in Pohang City into a marine trade hub for the East Sea region, and thereby assist the revitalization and strengthening of the local economy. This program provides assistance to attract companies to utilize the Yeongilman port.<sup>115</sup> A financial contribution under section 771(5)(D)(i) of the Act from an authority in the form of the Pohang City government exists in the form of cash payments to companies participating in this program.<sup>116</sup> We also 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.<sup>117</sup>

16. *Incentives for Usage of Gwangyang Port*

This program is operated to promote the local economy surrounding Gwangyang Port by providing incentives in order to attract companies to utilize the Gwangyang Port.<sup>118</sup> The agency in charge of this program is the Ministry of Ocean and Fishery and the program is executed by Yeosu Gwangyang Port Authority.<sup>119</sup> A financial contribution under section 771(5)(D)(i) of the Act from the GOK exists in the form of cash payments to companies participating in this program.<sup>120</sup> We also 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.<sup>121</sup>

17. *Incentives for Natural Gas Facilities*

The Korea Gas Corporation (KOGAS) adopted this program to assist with the operational cost for entities which install equipment or facilities for gas consumption. The program promotes standardization of natural gas loads for industrial usages and improves the efficiency of related facilities.<sup>122</sup> KOGAS, a public entity established by the Korean National Assembly under the Korea Gas Corporation Act, operates this program.<sup>123</sup> As reported by the Government of Korea, KOGAS was established by, and is operated under the Korea Gas Corporation Act, *i.e.*, by government statute. Further, KOGAS is majority owned by the central and local governments and other government owned and controlled entities, such as KEPCO, and engages in a range of activities vested by government authority, including “activities entrusted by the State or a local

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<sup>114</sup> *Id.* at 50.

<sup>115</sup> See GOK’s letter, “Large Diameter Welded Pipe from the Republic of Korea, Response to 2<sup>nd</sup> Supplemental Questionnaire,” dated June 11, 2018, at 3.

<sup>116</sup> *Id.* at 10.

<sup>117</sup> *Id.* at 11.

<sup>118</sup> *Id.* at 15.

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

<sup>120</sup> *Id.* at 17.

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

<sup>122</sup> *Id.* at 25.

<sup>123</sup> *Id.* at 27.

government”.<sup>124</sup> This program is operated by KOGAS pursuant to government regulations, the Natural Gas Supply Regulations and the Guidelines for the Payment of Demand Management Incentives.<sup>125</sup> Therefore, we find KOGAS to be an “authority” within the meaning of 771(5)(B) of the Act, because it is an entity that is vested with governmental authority to carry out governmental functions.<sup>126</sup> A financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act from the GOK exists in the form of cash payments to companies participating in this program.<sup>127</sup> We also 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.<sup>128</sup>

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

The GOK reports the purpose of this program is to support mothers find and secure jobs by providing assistance to companies which construct and operate childcare facilities.<sup>129</sup> MOEL oversees the program while the Korea Workers’ Compensation & Welfare Service administers the program.<sup>130</sup> A financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act from the GOK exists in the form of cash payments to companies participating in this program.<sup>131</sup> We also 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.<sup>132</sup>

19. *Suncheon Harbor*<sup>133</sup>

20. *Hyundai Land Purchases*<sup>134</sup>

C. Programs Determined Not to Be Used

Commerce made no changes to its *Preliminary Determination* with regard to programs determined not to be used by Husteel or Hyundai Steel during the POI.<sup>135</sup> As explained in the “Adverse Facts Available” section above and in Comment 1 and the appendix below, we are finding that SeAH Steel could have used and received a measurable benefit from these programs and are assigning rates, as AFA, to SeAH Steel for this final determination. Therefore, we are now analyzing whether these programs are countervailable. Accordingly, below we analyze the available record information in determining whether these programs are specific and provide a financial contribution.

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<sup>124</sup> *Id.* at 28 and 29.

<sup>125</sup> *Id.* at 26 and 28.

<sup>126</sup> *Id.*

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

<sup>128</sup> *Id.* at 33.

<sup>129</sup> *Id.* at 37.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 47.

<sup>133</sup> As this program is specific to Hyundai Steel, we find that SeAH Steel could not have benefitted from this program and accordingly did not include it in our AFA calculation.

<sup>134</sup> As this program is specific to Hyundai Steel, we find that SeAH Steel could not have benefitted from this program and accordingly did not include it in our AFA calculation.

<sup>135</sup> See *Preliminary Determination* and accompanying PDM at 29.

1. *K-SURE Export Credit Insurance*

As stated in the *Preliminary Determination*, none of the mandatory respondents reported use of this program.<sup>136</sup> As the current record lacks sufficient information to determine the countervailability of this program,<sup>137</sup> we did not include this program in the AFA rate calculation for SeAH Steel. If a CVD order is issued as a result of this investigation, we intend to look into this program in the context of a future administrative review.

2. *K-SURE Export Credit Guarantees*

K-SURE provides both pre-shipment and post-shipment export credit guarantee programs.<sup>138</sup> Commerce has previously determined that K-SURE is an “authority” within the meaning of 771(5)(B) of the Act, and we continue to find K-SURE is an authority based on the record of this investigation.<sup>139</sup> Therefore, this program provides a financial contribution as defined under section 771(5)(D)(i) of the Act. In addition, this program is contingent upon export performance and is therefore specific under section 771(5A)(A) and (B) of the Act.<sup>140</sup>

3. *Loans from KORES and KNOC*

The purpose of this program is to provide assistance in the exploitation of overseas natural resources by a Korean national in order to enhance the stability of energy resources for the Korean economy.<sup>141</sup> The MOTIE is responsible for the program, while the KEA executes the loans under the MOTIE’s approval, taking over for KORES and KNOC in July 2017.<sup>142</sup> We determine that this program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because this program is limited to companies that are investing in foreign resource extraction pursuant to Article 12 and 14 of the Submarine Mineral Resources Development Act, Article 5 of the Overseas Resources Development Business Act, and Article 13-8 Clause 1 of the Overseas Resources Development Business Fund.<sup>143</sup> The amount of the loan provided is determined in accordance with Article 7 of the Criteria for Loans.<sup>144</sup> Therefore, we preliminarily determine that loans provided under this program are from an authority under section 771(5)(B) of the Act that 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.

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<sup>136</sup> See *Preliminary Determination* and accompanying PDM at 29.

<sup>137</sup> See 19 CFR 351.520(a)(1) which stipulates that “{i}n the case of export insurance, a benefit exists if the premium rates charged are inadequate to cover the long-term operating costs and losses of the program.” There is insufficient information on the record to make this determination.

<sup>138</sup> See GOK Questionnaire Response at 76.

<sup>139</sup> See, e.g., *Hot-Rolled Steel from Korea* IDM at 30; see also GOK Questionnaire Response at Exhibit K-SURE-1 and K-SURE-6.

<sup>140</sup> See GOK Questionnaire Response at 76.

<sup>141</sup> *Id.* at 83.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at 90.

<sup>144</sup> *Id.*

4. *Short-Term Discounted Loans for Export Receivables from the KDB and the IBF*

The KDB provides short-term loans to exporters by negotiating the export bills.<sup>145</sup> The KDB purchases documents, such as the bill of lading, from an exporter that entitles the exporter to ask for the payment against its customer (or a bank that issued a letter of credit on behalf of the exporter's customer) at a discount from the face value of the transaction.<sup>146</sup> Commerce has previously determined the KDB to be an "authority" within the meaning of section 771(5)(B) of the Act, and we continue to find that the KDB is an authority based on the record of this investigation.<sup>147</sup> The loans offered by the KDB constitute a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. We also determine that the receipt of short-term discounted loans under this program is contingent upon export performance.<sup>148</sup> As such, we find that short-term loans from the KDB are specific within the meaning of sections 771(5A)(A) and (B) of the Act.

5. *RSTA Article 22*

RSTA Article 22 provides a corporate tax exemption to domestic corporations whose income includes any dividend income from investments in overseas resource development projects that was subject to exemption with the tax authority of the host country.<sup>149</sup> The MOSF maintains the program, while the NTS enforces it.<sup>150</sup> Tax deductions are a financial contribution from the GOK to recipients in the form of revenue foregone under section 771(5)(D)(ii) of the Act. We also determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual number of recipients is limited.<sup>151</sup>

6. *RSTA Article 120*

RSTA Article 120 provides exemptions from acquisition taxes for mergers between corporations that have continued running for at least one year.<sup>152</sup> Commerce has previously found this program to be countervailable.<sup>153</sup> Tax deductions are a financial contribution from the GOK to recipients in the form of revenue foregone under section 771(5)(D)(ii) of the Act. We also determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual number of recipients is limited.<sup>154</sup>

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<sup>145</sup> *Id.* at 50.

<sup>146</sup> *Id.*

<sup>147</sup> *See, e.g., Hot-Rolled Steel from Korea* IDM at 25; *see also* GOK Questionnaire Response at Exhibit KDB-11.

<sup>148</sup> *See* GOK Questionnaire Response at 59.

<sup>149</sup> *Id.* at 109.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* at 115.

<sup>152</sup> *See* the 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), at Volume VII page 32.

<sup>153</sup> *See, e.g., Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 15, 2015) (*Welded Line Pipe from Korea*), and accompanying IDM at 12-13.

<sup>154</sup> *See* Petition at 33.

7. *Tax Reductions and Exemptions for Companies Located in FEZs*

The GOK and local governments may provide tax reductions or exemptions to foreign-invested enterprises located in FEZs in accordance with Article 16(1) of the FEZ Act.<sup>155</sup> We determine that this program is specific under section 771(5A)(D)(iv) of the Act because the program is limited to companies located within a designated geographical region (*i.e.*, FEZs) within the jurisdiction of the authority providing the subsidy. We also determine that tax exemptions and reductions provide a financial contribution within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue foregone.

8. *Exemptions and Reductions of Lease Fees for Companies Located in FEZs*

The GOK and local governments may grant a reduction or exemption of rent payment on national or public property to foreign-invested enterprises located in FEZs in accordance with Article 16(4) of the FEZ Act.<sup>156</sup> We determine that this program is specific under section 771(5A)(D)(iv) of the Act because the program is limited to companies located within a designated geographical region (*i.e.*, FEZs) within the jurisdiction of the authority providing the subsidy. We also determine that tax exemptions and reductions and exemptions and reductions of lease fees provide a financial contribution within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue foregone.

9. *Grants to Companies Located in FEZs*

Any local government in Korea may provide funds needed to install medical, educational and other convenient facilities and to build housing for foreigners with the aim of attracting foreign-invested enterprises into FEZs in accordance with Article 16(2) of the FEZ Act.<sup>157</sup> We determine that this program is specific under section 771(5A)(D)(iv) of the Act because the program is limited to companies located within a designated geographical region (*i.e.*, FEZs) within the jurisdiction of the authority providing the subsidy. We also determine that grants provided under this program constitute a direct transfer of funds and therefore provide a financial contribution as defined under section 771(5)(D)(i) of the Act.

10. *Sharing of Working Opportunities/Employment Creating Incentives*

The purpose of this program is to increase job opportunities through innovations and improvements on the employees' working patterns and environment by lessening their workload.<sup>158</sup> The MOEL is the GOK agency in charge of this program.<sup>159</sup> Commerce has previously found this program to be countervailable.<sup>160</sup> Grants provided under this program provide a financial contribution in the form of a direct transfer of funds as defined under section

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<sup>155</sup> See GOK Questionnaire Response at 163.

<sup>156</sup> *Id.* at 169.

<sup>157</sup> *Id.* at 174.

<sup>158</sup> *Id.* at 218.

<sup>159</sup> *Id.*

<sup>160</sup> See *Welded Line Pipe from Korea* IDM at 9.



771(5)(D)(i) of the Act.<sup>161</sup> We also determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual number of recipients is limited.<sup>162</sup>

## 11. *Fast Track Restructuring Program*

As stated in the *Preliminary Determination*, none of the mandatory respondents reported use of this program.<sup>163</sup> As the current record lacks sufficient information about this program to determine financial contribution and specificity, we did not include this program in the AFA rate calculation for SeAH Steel. If a CVD order is issued as a result of this investigation, we intend to look into this program in the context of a future administrative review.

## VI. ANALYSIS OF COMMENTS

### Comment 1: Application of AFA to SeAH Steel for Unreported Affiliates

#### *Affirmative Case Brief Comments:*

SeAH Steel argues the following:

- SeAH Steel found that five companies, KB Wisestar, TS Tech, TRENC Co., Ltd., Steel Coat Nano, and SSIK Loan, which are not considered part of the SeAH Group, were not disclosed in the SeAH Group affiliation diagram submitted in SeAH Steel's affiliation response. Only KB Wisestar had been fully disclosed in the affiliation response.<sup>164</sup>
- SeAH Steel disclosed the existence of these five affiliates as a minor correction at the start of verification, which was rejected by Commerce as untimely NFI. However, Commerce included the revised affiliation chart in the "Corporate Structure" verification exhibit and accepted the same minor correction in the antidumping sales and cost verifications.<sup>165</sup>
- It is inconsistent for Commerce to reject the minor correction on the grounds it was NFI while including the revised affiliation chart in a verification exhibit. Commerce must either accept the information about the nature of these affiliates or reject the revised affiliation diagram included in the "Corporate Structure" package at verification. Commerce accepted a similar correction in *Hot-Rolled Steel from Korea* with respect to respondent Hyundai Steel, as the undisclosed affiliate was not cross-owned.<sup>166</sup>
- Only SSIK Loan, a wholly-owned subsidiary acquired in 2017, could be considered cross-owned with SeAH Steel under Commerce's standard, as SeAH Steel does not own a majority direct or indirect interest in the other four companies. SeAH Steel owns 31.25 percent of KB Wisestar, 10 percent of TS Tech, 10 percent of TRENC Co., Ltd., and 29.16 percent of Steel Coat Nano. SSIK Loan is identified in SeAH Steel's 2017 financial statements as an investment company, which also demonstrates that the only

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<sup>161</sup> See Petition at Volume VII page 47.

<sup>162</sup> *Id.*

<sup>163</sup> See *Preliminary Determination* and accompanying PDM at 29.

<sup>164</sup> See SeAH Steel Case Brief at 8.

<sup>165</sup> *Id.* at 9.

<sup>166</sup> *Id.* at 10 (citing *Hot-Rolled Steel from Korea* IDM at Comment 12).

transaction was a loan that SeAH Steel made to SSIK Loan at the end of 2017.<sup>167</sup>

The petitioners argue the following:

- SeAH Steel provided incomplete information regarding its affiliates in its affiliation questionnaire response. SeAH Steel notified Commerce at verification about five previously unreported affiliates, of which SeAH Steel wholly owns one and maintains a substantial direct ownership stake in the other four. SeAH Steel failed to identify these affiliates, describe their activities, and potentially provide complete responses for relevant cross-owned companies or input suppliers as required by the affiliation questionnaire for the attribution of subsidies.<sup>168</sup>
- Commerce has a well-established practice of applying AFA when respondents fail to timely report affiliates. In *Cold-Rolled Steel from Korea* and *Hot-Rolled Steel from Korea*, Commerce applied AFA to a respondent after discovering several unreported affiliates at verification. In *Hardwood Plywood from China*, Commerce also applied AFA to a respondent's failure to report affiliates in the initial questionnaire response.<sup>169</sup>
- Commerce properly refused to accept SeAH Steel's unreported affiliates as a minor correction, as Commerce did not have the opportunity to fully determine whether these affiliates are cross-owned and whether subsidies received should be attributed to SeAH Steel based on the record prior to verification. Therefore, Commerce should apply its AFA CVD hierarchy to SeAH Steel for this final determination.<sup>170</sup>

#### *Rebuttal Brief Comments:*

SeAH Steel argues the following:

- SeAH Steel timely responded to Commerce's questionnaires, exerted maximum effort to gather additional information requested and fully participated in verification.<sup>171</sup>
- The application of AFA to respondents in *Cold-Rolled Steel from Korea*, *Hot-Rolled Steel from Korea* and *Hardwood Plywood from China* involved unreported affiliates that were both cross-owned with and input suppliers to the respective respondents. In *Cold-Rolled Steel from Korea*, Commerce concluded that AFA was not warranted for one of POSCO's unreported affiliates as it was not an input supplier. In *Hot-Rolled Steel from Korea*, Commerce accepted as a minor correction Hyundai Steel's unreported affiliate Hyundai Green, as there was no evidence suggesting the affiliate was cross-owned and the application of AFA was therefore unwarranted.<sup>172</sup>

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<sup>167</sup> See SeAH Steel Case Brief at 11-13.

<sup>168</sup> See Petitioners Case Brief at 3-4 (citing SeAH Steel Verification Report at 2 and 4).

<sup>169</sup> *Id.* at 4-6 (citing *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49943 (July 29, 2016) (*Cold-Rolled Steel from Korea*), and accompanying IDM at 64; *Hot-Rolled Steel from Korea* IDM at 60-66; *Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 53473 (November 16, 2017) (*Hardwood Plywood from China*), and accompanying IDM at Comment 1).

<sup>170</sup> See Petitioners Case Brief at 6-8.

<sup>171</sup> See SeAH Steel Rebuttal Brief at 2.

<sup>172</sup> *Id.* at 3-5 (citing *Cold-Rolled Steel from Korea* IDM at Comment 5 and Comment 12; *Hot-Rolled Steel from Korea* IDM at Comment 5; *Hardwood Plywood from China* IDM at XI.B.).

- SeAH Steel unintentionally omitted the five unreported affiliates as they were not listed in the Korean Financial Supervisory Services (KFSS) report. SeAH Steel did provide complete information regarding KB Wisestar in its affiliation response.<sup>173</sup>
- SSIK Loan, an investment company which could be considered cross-owned with SeAH Steel, was disclosed in SeAH Steel's 2017 financial statements submitted in its questionnaire response, which demonstrate the only transaction was a loan from SeAH Steel to SSIK Loan. Therefore, none of the five unreported affiliates are cross-owned companies that supply inputs to SeAH Steel.<sup>174</sup>
- Commerce has a statutory obligation to calculate margins as accurately as possible and does not need to rely on AFA in this case, as the necessary information to make an affiliation and attribution analysis is on the record. SeAH disclosed the information at the earliest opportunity set by the verification agenda and Commerce verified it.<sup>175</sup>
- The application of AFA would punish a party for cooperating. The courts have held that the application of AFA is "to provide respondents with an incentive to cooperate, not to impose punitive, aberrational, or uncorroborated margins."<sup>176</sup>

The petitioners argue the following:

- Commerce rejected the characterization of the revised affiliation chart presented at verification as a minor correction but noted SeAH Steel's ownership stakes for each unreported affiliate. The case record does not establish that supporting information about the unreported affiliates was rejected at verification. Commerce was not obligated to also accept this information because it accepted the revised affiliation chart, which documents the existence of SeAH Steel's unreported affiliates. The Court of International Trade (CIT) stated that "there is a difference...between relying on the existence of evidence to conclude that adverse facts available is merited ... and the specific content thereof."<sup>177</sup>
- Commerce has applied AFA in cases even when the affiliates either did not satisfy the attribution criteria, were irrelevant because of their size, or the respondent did not disclose its affiliations as required by the initial questionnaire response.<sup>178</sup>
- There is no information on the record confirming the ownership percentages of the unreported affiliates or indication that Commerce verified the ownership percentages. Even if Commerce considers the claimed ownership percentages, the record shows that for KB Wisestar, there is an indirect ownership through other SeAH Group companies in addition to the 31.25 percent direct ownership by SeAH Steel.<sup>179</sup>
- Commerce stated in SeAH Steel's verification report that it "noted no other information with regard to these five affiliates." As majority ownership is not the only means for establishing cross-ownership, Commerce does not have the information to determine

<sup>173</sup> See SeAH Steel Rebuttal Brief at 5-6.

<sup>174</sup> *Id.* at 6-7.

<sup>175</sup> *Id.* at 8.

<sup>176</sup> *Id.* at 8-9 (citing *e.g., F.lli De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (CAFC 2000)).

<sup>177</sup> See Petitioners Rebuttal Brief at 5-6 (citing *POSCO v. United States*, 296 F. Supp. 3d 1320, 1344 n.36 (CIT 2018)).

<sup>178</sup> See Petitioners Rebuttal Brief at 6-7 (citing *Cold-Rolled Steel from Korea* IDM at 58-60, 64; *Hot-Rolled Steel from Korea* IDM at 56-57, 60-66; *Hardwood Plywood from China* IDM at Comment 1).

<sup>179</sup> See Petitioners Rebuttal Brief at 8-9.

whether these five affiliates are cross-owned or whether they provided inputs or transferred subsidies to SeAH Steel.<sup>180</sup>

- Commerce should apply AFA to SeAH Steel for its unreported affiliate SSIK Loan because SeAH Steel did not disclose SSIK Loan in its initial CVD questionnaire as required by Commerce. The information in the 2017 audited financial statements does not indicate whether SSIK Loan did or did not receive any subsidies that were transferred to SeAH Steel.<sup>181</sup>

### **Commerce's Position:**

As explained in the “Use of Facts Available and Adverse Inferences” section, above, the application of facts available pursuant to section 776(a)(1) of the Act is appropriate for SeAH Steel because necessary information is missing from the record. Specifically, SeAH Steel did not submit a complete affiliation questionnaire response, as SeAH Steel omitted three affiliated companies, which Commerce first learned about at verification. Furthermore, because SeAH Steel withheld information requested by Commerce in the affiliation questionnaire response about the full universe of its affiliated companies, failed to provide this information by the established deadlines, and significantly impeded Commerce’s investigation, namely, its ability to determine whether the unreported affiliates were cross-owned or input suppliers in order to properly attribute subsidies received to SeAH Steel, the use of facts available for the final determination is warranted pursuant to sections 776(a)(2)(A), (B) and (C) of the Act, respectively.

We also find that SeAH Steel failed to act to the best of its ability in reporting its affiliates in its questionnaire responses. As such, we find it appropriate to resort to adverse inferences in selecting from among the facts available, pursuant to section 776(b) of the Act. After receiving Commerce’s clear request for all of SeAH Steel’s affiliates,<sup>182</sup> SeAH Steel failed to report certain of those affiliates, and only reported them for the first time at verification. 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 Court of Appeals for the Federal Circuit (CAFC) in *Nippon Steel* also stated that the standard “does not condone inattentiveness, carelessness, or inadequate record keeping.”<sup>183</sup>

As explained in the “Application of AFA: SeAH Steel” section above, in its initial affiliation questionnaire response, SeAH Steel omitted five affiliates in which it had an ownership stake from its list of member companies and affiliation chart.<sup>184</sup> Two of these five companies, KB Wisestar and SSIK Loan, were mentioned in the affiliation and initial questionnaire responses, respectively. It was not until the start of verification that we were made aware of three additional affiliates that SeAH Steel omitted reporting in its initial questionnaire response.

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<sup>180</sup> *Id.* at 9 (citing SeAH Steel Verification Report at 4).

<sup>181</sup> See Petitioners Rebuttal Brief at 11-12.

<sup>182</sup> See Commerce’s letter, “Large Diameter Welded Pipe from the Republic of Korea: Countervailing Duty Questionnaire,” dated March 7, 2018 at Section III page 1.

<sup>183</sup> See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

<sup>184</sup> See SeAH Steel Affiliation Response at 7 and Attachments 2 and 4.

With respect to SeAH Steel's claim that it unintentionally omitted reporting the three affiliated companies, we note that in an affiliation supplemental questionnaire we asked SeAH Steel why KB Wisestar was not included in the list of member companies and affiliation chart.<sup>185</sup> In response, SeAH Steel stated that, "KB Wisestar is not listed as a member company of the SeAH Steel Group because it is an investment trust and thus not a type of legal entity that is considered a member 'company' of the SeAH Steel Group."<sup>186</sup> Commerce's supplemental questionnaire regarding KB Wisestar provided a clear indication that SeAH Steel's corporate structure organization chart was deficient. Nonetheless, SeAH Steel also did not, at that stage, revise the chart to include SSIK Loan, identified in the 2017 audited financial statements submitted in the initial questionnaire response. In addition, SeAH Steel failed to include TS Tech, TRENC Co., Ltd., and Steel Coat Nano, the three affiliates Commerce first learned about at verification. We find that SeAH Steel should have been able to provide information regarding its affiliates in question in its initial affiliation response, had it made the appropriate effort when receiving Commerce's initial questionnaire.<sup>187</sup> Therefore, we find that SeAH Steel has failed to cooperate to the best of its ability, in accordance with section 776(b) of the Act. Consequently, Commerce has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted.

SeAH Steel contends that it inadvertently omitted listing the five affiliates in the affiliation chart because these companies were not considered part of the SeAH Group and therefore not included in the KFSS report submitted to the GOK. As an initial matter, regarding SeAH Steel's characterization of its actions as inadvertent, the CAFC has held that section 776(b) of the Act does not contain an intent element.<sup>188</sup> We find that SeAH Steel made "inadequate inquiries" in reporting its affiliates to Commerce.<sup>189</sup> Furthermore, we note that regardless of the ultimate status of any affiliated companies, it is incumbent upon respondents to report fully any companies that meet the definition for affiliation at the time this information is requested, or to notify Commerce of any corrections early in the proceeding.<sup>190</sup>

SeAH Steel further contends that the disclosure of the five unreported affiliates at verification constituted a "minor correction" and that it was inconsistent for Commerce to reject them as NFI while accepting the revised affiliation chart as part of the "Corporate Structure" exhibit package, considering that Commerce accepted these "minor corrections" in the antidumping sales and cost verifications. SeAH Steel also contends that Commerce verified that the three unreported affiliates do not meet the cross-ownership threshold as SeAH Steel only owns between 10 and 30 percent. The petitioners argue that Commerce properly refused to accept SeAH Steel's five unreported affiliates as a minor correction at verification because they constitute NFI. The

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<sup>185</sup> See Commerce's letter, "Countervailing Duty Investigation of Large Diameter Welded Pipe from the Republic of Korea: Affiliation Supplemental Questionnaire," dated April 17, 2018.

<sup>186</sup> See SeAH Steel Affiliation Supplemental Response at 8.

<sup>187</sup> See *Nippon Steel*, 337 F.3d at 1382 ("the statutory mandate that a respondent act to 'the best of its ability' requires the respondent to do the maximum it is able to do").

<sup>188</sup> *Id.* at 1383.

<sup>189</sup> *Id.*

<sup>190</sup> See Commerce's letter, "Large Diameter Welded Pipe from the Republic of Korea: Countervailing Duty Questionnaire," dated March 7, 2018 at Section III page 1.

petitioners assert that Commerce cannot determine and properly did not verify SeAH Steel's ownership stakes or the affiliates' activities.

We agree with the petitioners that Commerce properly refused to accept this additional information regarding the previously undisclosed affiliates at verification because it was only once we began verification that SeAH Steel reported the three previously undisclosed affiliates plus KB Wisestar and SSIK Loan in the affiliation chart and attempted to submit them as a "minor correction." As stated in the verification outline that SeAH Steel received, "...verification is not intended to be an opportunity for the submission of NFI. Information will be accepted at verification only when the information makes minor corrections to information already on the record or when information is requested by the verifiers, in accordance with the agenda below, to corroborate, support, and clarify factual information already on the record."<sup>191</sup> Furthermore, in countervailing duty proceedings, the universe of corporate affiliates is required in the very first questionnaire response because it is essential to determine whether any affiliate meets the requirements for cross-ownership outlined in 19 CFR 351.525 in order to ensure that the subsequent questionnaire responses are complete and to allow us to calculate accurate subsidy rates. By not disclosing additional affiliates until verification as a minor correction, SeAH Steel withheld essential information and precluded Commerce from analyzing whether its affiliates met the criteria for cross-ownership in any capacity. Therefore, any information presented by SeAH Steel at verification about undisclosed affiliates was appropriately rejected as untimely NFI, as our practice is to reject untimely NFI at verification.<sup>192</sup> Additionally, although SeAH Steel contends that the ownership percentages of the three previously undisclosed companies, which range from 10 to 30 percent, demonstrate that these companies would not be considered cross-owned, we have no information on the record regarding the remaining ownership percentages of these companies, and therefore cannot conclude that there is not additional indirect ownership by any other member of the SeAH Group, such that the regulatory standard under 19 CFR 351.525(b)(6)(vi) is met.<sup>193</sup> Finally, as stated above, we did not verify the accuracy of the SeAH Steel's ownership percentages in these three companies as we do not have any other information on the record to support this NFI. Therefore, this information does not meet the definition of a minor correction, and it would have been inappropriate for Commerce to accept it as such at this stage in the investigation and conduct any further verification of such information absent any other record information.

As noted by the petitioners, at verification we instead only noted the ownership percentages as presented by SeAH Steel in the revised affiliation chart in order to document the existence of

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<sup>191</sup> See Commerce's letter, "Countervailing Duty Investigation of Large Diameter Welded Pipe from the Republic of Korea; Verification of SeAH Steel Corporation and ESAB SeAH Corporation's Questionnaire Responses," dated September 6, 2018 at 2.

<sup>192</sup> See, e.g., *Truck and Bus Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 8606 (January 27, 2017), and accompanying IDM at Comment 27; see, also *Marsan Gida Sanayi Ve Ticaret A.S. v. United States*, 931 F. Supp. 2d 1258, 1280 (CIT 2013) (agreeing that "[t]he purpose of verification is not to collect new information").

<sup>193</sup> Under 19 CFR 351.525(b)(6)(vi), cross-ownership is defined as "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 or direct its own assets."

SeAH Steel's previously-unreported affiliates.<sup>194</sup> As any other information regarding the three unreported affiliates not found in the initial questionnaire response constituted untimely NFI at the time of verification, we did not further verify either the accuracy of the ownership percentages or whether SeAH Steel had an indirect ownership in any of these three affiliates through any other member of the SeAH Group of companies. The CIT has sustained this practice, stating that "there is a difference ... between relying on the *existence of the evidence* to conclude that adverse facts available is merited ... and the *specific content thereof*."<sup>195</sup> Unlike the antidumping sales and cost verifications, we did not review or accept any other NFI regarding these three affiliates nor did we verify the accuracy of the ownership percentages as presented by SeAH Steel, and it would have been inappropriate to do so in this context. Specifically, we disagree with SeAH Steel's contention that the countervailing duty verification team should have followed the antidumping verification team in accepting the revised corporate affiliation chart as a minor correction. Under Commerce's practice, each case proceeding is based on the merits of its own record.<sup>196</sup> Additionally, as noted above, in Commerce's initial CVD questionnaire, we request mandatory respondents to report the identity of all companies with which the mandatory respondent is affiliated within the meaning of section 771(33) of the Act in order to determine cross-ownership and the potential attribution of subsidies provided to affiliates to the mandatory respondent.<sup>197</sup>

With regard to SeAH Steel's assertion that Commerce accepted a similar minor correction in *Hot-Rolled Steel from Korea* with respondent Hyundai Steel, we note again that Commerce bases each case proceeding on the merits of its own record. In this case, SeAH Steel did not report three companies from the initial questionnaire response, an egregious omission that was reported only just prior to the start of verification. We also note that SeAH Steel's statement that Commerce concluded in *Cold-Rolled Steel from Korea* that AFA was not warranted for one of POSCO's unreported affiliates as it was not an input supplier is misleading. The facts of that case indicate that Commerce concluded an AFA rate was warranted for POSCO as it failed to identify four cross-owned affiliated companies listed in its initial questionnaire response as input suppliers.<sup>198</sup> It was only at verification that we discovered that these four cross-owned affiliates did, in fact, provide inputs to POSCO.<sup>199</sup> In the case of POSCO Plantec, we note that this POSCO cross-owned affiliate was reported in the initial questionnaire response and Commerce verified that it was not an input supplier nor "did its operational activities meet any of the attribution criteria set forth under 19 CFR 351.525(b)(6)."<sup>200</sup> Therefore, POSCO Plantec was not included as part of POSCO's list of unreported affiliated input suppliers discovered at verification for which we applied AFA to POSCO.

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<sup>194</sup> See SeAH Steel Verification Report at 4.

<sup>195</sup> See *POSCO*, 296 F. Supp. 3d at 1344 n.36 (emphasis in original).

<sup>196</sup> See, e.g., *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, and Revocation of the Order in Part*, 76 FR 66036 (October 25, 2011), and accompanying IDM at Comment 2A.

<sup>197</sup> See Commerce's letter, "Large Diameter Welded Pipe from the Republic of Korea: Countervailing Duty Questionnaire," dated March 7, 2018 at Section III page 1-3.

<sup>198</sup> See *Cold-Rolled Steel from Korea* IDM at 64-69.

<sup>199</sup> *Id.* at 65.

<sup>200</sup> *Id.*

With respect to SeAH Steel's contentions that KB Wisestar was fully disclosed in the initial questionnaire response, and that the 2017 audited financial statements demonstrate that SSIK Loan, the only previously undisclosed affiliate wholly owned by SeAH Steel, is an investment company which was founded at the end of the POI and that its only transaction was a loan from SeAH Steel, we agree. However, we disagree with SeAH Steel's claim that KB Wisestar is not cross-owned with SeAH Steel. Record information demonstrates that both KB Wisestar and SSIK Loan are cross-owned with SeAH Steel,<sup>201</sup> but that they do not otherwise meet the requirements that would necessitate a full Section III questionnaire response. First, the record indicates that KB Wisestar did not produce the subject merchandise, did not supply an input for the production of subject merchandise, did not transfer subsidies to SeAH Steel, and is not a holding or parent company.<sup>202</sup> Therefore, as we previously determined as a result of our analysis of SeAH Steel's affiliation response, and as evidenced by our acceptance of SeAH Steel's explanation of KB Wisestar in its affiliation supplemental response, we do not agree with the petitioners that KB Wisestar should have submitted a Section III questionnaire response. With regard to SSIK Loan, we note that although SeAH Steel did not report this affiliate as part of its affiliation questionnaire response, SSIK Loan was identified as an affiliate in SeAH Steel's 2017 audited financial statements, which were submitted in SeAH Steel's initial Section III questionnaire response.<sup>203</sup> The 2017 audited financial statements demonstrate that SSIK Loan is an investment company that was established on November 23, 2017, to which SeAH Steel granted a loan.<sup>204</sup> This demonstrates that SSIK Loan did not produce the subject merchandise. Further, the financial statements indicate SSIK Loan did not sell any inputs to SeAH Steel or grant any loan to SeAH Steel.<sup>205</sup> The record also indicates that SSIK Loan is not a holding or parent company, nor did it transfer subsidies to SeAH Steel.<sup>206</sup> Therefore, we find that there is enough information on the record of this investigation to determine that SSIK Loan is cross-owned with SeAH Steel but did not provide any inputs for the production of subject merchandise. However, we add that these facts do not discount SeAH Steel's failure to disclose the three other affiliates in its questionnaire response, namely, TS Tech, TRENC Co., Ltd., and Steel Coat Nano, until verification. For these reasons, we find the application of AFA to SeAH Steel is appropriate.

## **Comment 2: Application of AFA to SeAH Steel for SPP Pipe**

### *Affirmative Case Brief Comments:*

SeAH Steel argues the following:

- In the *Preliminary Determination*, Commerce erroneously applied an AFA rate to SeAH Steel for the acquisition of SPP Pipe, asserting that SeAH Steel did not provide a response to question 2 of Commerce's supplemental questionnaire, dated May 1, 2018.<sup>207</sup>
- SeAH Steel reported an identical response to question 2 about SPP Pipe in the *Welded*

<sup>201</sup> See SeAH Steel Affiliation Response at 7-8.

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

<sup>203</sup> See SeAH Steel Verification Report at 4; see also SeAH Steel Questionnaire Response at Appendix 3-B.

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

<sup>205</sup> *Id.*

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

<sup>207</sup> See SeAH Steel Case Brief at 1-2 (citing *Preliminary Determination* PDM at 6, 9-10).



*Line Pipe from Korea* investigation, where an identical question was posed. SeAH Steel responded in both occasions stating the circumstances of the acquisition of SPP Pipe and the available information regarding potential subsidies, which Commerce considered a sufficient explanation in the *Welded Line Pipe from Korea* investigation. Commerce did not issue any supplemental questionnaires or apply AFA to SeAH Steel, but rather accepted and verified the information submitted in the *Welded Line Pipe from Korea* investigation.<sup>208</sup>

- The CIT has held that parties may legitimately rely on Commerce’s prior interpretation when participating in agency proceedings.<sup>209</sup>
- After the *Preliminary Determination*, Commerce issued SeAH Steel two supplemental questionnaires, one a Change in Ownership (CIO) Appendix and the second asking SeAH Steel to provide a Section III response for SPP Pipe. SeAH Steel timely and fully responded to both questionnaires.<sup>210</sup>
- SeAH Steel’s CIO response provided all documents pertaining to the acquisition process, which demonstrated that SeAH Steel and SPP Pipe were unrelated parties prior to the sale and that SeAH Steel renegotiated the sales price after the issuance of the due diligence report.<sup>211</sup>
- The SPP Pipe Section III response provided the available information requested and documents detailing SeAH Steel’s efforts in obtaining information about SPP Pipe prior to its acquisition, which was verified by Commerce.<sup>212</sup>
- The only issue regarding SPP Pipe is whether it received non-recurring subsidies prior to its merger with SeAH Steel in 2013. Record evidence demonstrates that SPP Pipe did not receive benefits under the Grants to Companies in FEZs and the Industrial Grants under the ITIPA, the two non-recurring programs at issue in this investigation.<sup>213</sup>
- Even if SPP Pipe received the “government funding” subsidies listed in SPP Resources’ 2011 financial statements and SPP Pipe’s 2011 financial statements, which were prior to its acquisition by SeAH Steel, the reported amounts for both entries are less than 0.5 percent of SPP Resources’ and SPP Pipe’s sales during the relevant years.<sup>214</sup>
- SeAH Steel has demonstrated that the purchase of SPP Pipe was an arm’s-length transaction for fair market value (FMV), which extinguished the benefit of any subsidies received prior to the acquisition. Therefore, Commerce should reverse its AFA finding with regard to SPP Pipe.<sup>215</sup>

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<sup>208</sup> *Id.* at 2-3 (citing *Welded Line Pipe from Korea* IDM, and SeAH Steel’s letter, “Countervailing Duty Investigation of Welded Line Pipe from Korea – Response to SeAH Steel Corporation to February 4 Supplemental Questionnaire,” dated February 25, 2015, at 5-8).

<sup>209</sup> *Id.* at 3 (citing *e.g., Amanda Foods (Vietnam) Ltd. v. United States*, 807 F. Supp. 2d 1332, 1343 (CIT 2011)).

<sup>210</sup> *Id.* at 4.

<sup>211</sup> *Id.*

<sup>212</sup> *Id.* at 5 (citing SeAH Steel Verification Report at 5).

<sup>213</sup> *Id.* at 6 (citing SeAH Steel Verification Report at 6-7 and VE-10).

<sup>214</sup> *Id.* at 7.

<sup>215</sup> *Id.*

*Rebuttal Brief Comments:*

The petitioners argue the following:

- In *Wire Rod from Turkey*, Commerce found that respondents must provide information on all programs regardless of what may have transpired in previous cases, as each record is individually examined by Commerce for analyzing the potential subsidies received. Even if Commerce chose not to fully investigate the acquisition of SPP Pipe in *Welded Line Pipe from Korea*, Commerce has done so in this case.<sup>216</sup>
- SeAH Steel failed to rebut the presumption that subsidies were extinguished in the acquisition of SPP Pipe, per Commerce practice. SeAH Steel's CIO Appendix and supplemental questionnaire response for SPP Pipe had deficiencies or incomplete responses such that SeAH Steel did not demonstrate that the purchase of SPP Pipe was at FMV and thus extinguished past subsidies.<sup>217</sup>
- SeAH Steel could not definitively state whether SPP Pipe received the non-recurring subsidies under investigation or other subsidies. Commerce does not have the information to calculate an accurate subsidy rate as there were no complete verifiable responses provided for SPP Pipe. Commerce should continue to apply AFA to SeAH Steel for providing an incomplete response about the acquisition of SPP Pipe and the potential transfer of subsidies.<sup>218</sup>

**Commerce's Position:**

In the *Preliminary Determination*, Commerce found that the use of facts available was 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 average useful life (AUL) period.<sup>219</sup> As addressed in Comment 1, because we are applying AFA to SeAH Steel for its failure to report certain affiliated companies, we find that any determination regarding whether and to what extent SeAH's Steel's acquisition of SPP Pipe extinguished prior subsidies received by SPP Pipe would have no impact on the countervailing duty rate for SeAH Steel. Therefore, we determine that it is not necessary to make a determination regarding this change-in-ownership transaction.

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<sup>216</sup> See Petitioners Rebuttal Brief at 13-14 (citing *Carbon and Alloy Steel Wire Rod from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, in Part*, 83 FR 13239 (March 28, 2018) (*Wire Rod from Turkey*), and accompanying IDM at 5).

<sup>217</sup> *Id.* at 14-15 (citing *e.g., Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 20, 2015), and accompanying IDM at 18-19).

<sup>218</sup> *Id.* at 16-18.

<sup>219</sup> See *Preliminary Determination* and accompanying PDM at 6-9.

### Comment 3: Whether the DRR Program is Countervailable

#### *Affirmative Case Brief Comments:*

The GOK argues the following:

- The DRR program is a market-driven program and the payments that the participants in the program receive are reflected in the electricity tariff that the KEPCO applies when billing the electricity consumers for their electricity consumption. The resources for operating the DRR program comes from the purchasers of electricity in the market (end-users of electricity).<sup>220</sup>
- Unlike *Korea CTL Plate* where there was a lack of information on the financial source of payments which led Commerce to its determination that the DRR program was countervailable, in this case, Commerce learned that the source of the payments provided to aggregators under the DRR program comes from the market.<sup>221</sup>
- Because there is no separate budget allocated by the GOK in order to run the DRR program and the source of this program comes from the market, Commerce should find the DRR program to be not countervailable.<sup>222</sup>

#### *Rebuttal Brief Comments:*

The petitioners rebut the following:

- Commerce should continue to find this program countervailable. The GOK has not changed its arguments regarding these programs from past cases, arguments which Commerce has previously rejected.<sup>223</sup>

#### **Commerce's Position:**

We disagree with the GOK that the DRR program is not countervailable and continue to find that this program is countervailable for the final determination. While the GOK claims that there is no separate budget allocated by the GOK to operate this program and that the source of payments to the aggregators comes from Korea Power Exchange (KPX), in the *Preliminary Determination*, we found that KEPCO pays KPX to administer this program through funds KEPCO collects from electricity consumers.<sup>224</sup> The GOK further reiterated during verification that funding for this program comes through KEPCO.<sup>225</sup> Commerce has previously found KEPCO and KPX to each be an “authority” within the meaning of section 771(5)(B) of the Act, and continued to do

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<sup>220</sup> See GOK Case Brief at 5.

<sup>221</sup> *Id.* at 6 (citing *Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 82 FR 16341 (April 4, 2017) (*Korea CTL Plate*), and accompanying IDM at 16).

<sup>222</sup> *Id.* at 7.

<sup>223</sup> See Petitioners Rebuttal Brief at 18 (citing *Korea Cold-Rolled* IDM at 20-23 and *Korea Hot-Rolled* IDM at 13-14).

<sup>224</sup> See *Preliminary Determination* and accompanying PDM at 16; see also GOK's letter, “Large Diameter Welded Pipe from the Republic of Korea, Response,” dated May 23, 2018, at 3 (GOK Supplemental Questionnaire Response).

<sup>225</sup> See GOK Verification Report at 3.

so in the *Preliminary Determination*.<sup>226</sup> Further, section 771(5)(D)(i) of the Act defines the term “financial contribution” as “the direct transfer of funds, such as grants, ...” and 19 CFR 351.504(a) states that, in the case of a grant “a benefit exists in the amount of the grant.” Accordingly, because there is no information on the record regarding the source of the funds used by KPX to make payments to the aggregators other than information demonstrating that the funds are passed to KPX from KEPCO, and record evidence supports a continued finding that KEPCO and KPX are “authorities,”<sup>227</sup> we continue to find 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 that a benefit exists in the amount of the grant provided to Hyundai Steel and SeAH Steel in accordance with 19 CFR 351.504(a).<sup>228</sup>

#### **Comment 4: Whether Tax Credits under RSTA Articles 25(2) and 25(3) and 26 Are Countervailable**

##### *Affirmative Case Brief Comments:*

The GOK argues the following:

- RSTA Article 26 is not regionally specific because benefits are open to all enterprises in Korea except for a very small portion of the Korean territory, the Seoul Metropolitan Area, solely for the overcrowding control purpose of the region.<sup>229</sup>
- With respect to RSTA Articles 25(2) and 25(3), Commerce has ruled against disproportionate use in this context and Commerce’s interpretation of the phrase “actual recipients are limited in number” in section 771(5A)(D)(iii)(I) of the Act is not in accordance with the interpretation made by the CIT or the SAA.<sup>230</sup>
- Commerce should not compare the number of enterprises that have used a program and the total number of tax returns filed; rather, Commerce should consider whether the number of enterprises or group of enterprises are small enough to be considered as specific as contemplated by the SAA.<sup>231</sup>

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<sup>226</sup> See, e.g., *Welded Line Pipe from Korea* 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>227</sup> See *Preliminary Determination* and accompanying PDM at 16.

<sup>228</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>229</sup> See GOK Case Brief at 7.

<sup>230</sup> *Id.* at 12 (citing *Bethlehem Steel v. United States*, 140 F. Supp. 2d 1354 (CIT 2001)).

<sup>231</sup> *Id.* (citing SAA accompanying H.R. 5110, H.R. Doc. No. 316, 103d Cong., 2d Sess. 911, 929 (1994)).

### *Rebuttal Brief Comments:*

The petitioners rebut the following:

- Commerce should continue to find this program countervailable. The GOK has not changed its arguments regarding these programs from past cases, arguments which Commerce has previously rejected.<sup>232</sup>

### **Commerce's Position:**

Regarding the GOK's argument concerning the *de facto* specificity determination made with respect to RSTA tax programs, namely, under RSTA Articles 25(2) and 25(3), generally, section 771(5A)(D)(iii)(I) of the Act states that a subsidy is specific as a matter of fact if the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number. Further, section 771(5A) of the Act states that "any reference to an enterprise or industry is a reference to a foreign enterprise or industry and includes a group of such enterprises or industries." The SAA states that "{t}he Administration intends to apply the specificity test in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy."<sup>233</sup>

Under section 771(5A)(D)(iii)(I) of the Act, we may find a subsidy program *de facto* specific if the actual recipients of a subsidy, whether on an enterprise or industry basis, are limited in number. The RSTA tax incentives at issue in this investigation, RSTA Articles 25(2) and 25(3), are tax incentives that are available to all types of businesses and corporations in Korea. Thus, it is appropriate to include all corporate tax returns in our analysis of *de facto* specificity.<sup>234</sup> In order to determine whether these RSTA tax credits are broadly available and widely used throughout an economy, we examined the nominal number of recipients of each of these RSTA tax incentives, other than those determined to be either regionally specific or *de jure* specific, and compared the actual number of the users of these RSTA tax incentives to the actual number of corporate tax returns.<sup>235</sup> On this basis, we find that these programs benefitted only a limited number of users, and therefore are *de facto* specific.

We disagree with the GOK's contention that RSTA Article 26 is not regionally specific. Consistent with *Refrigerators from Korea*<sup>236</sup> and *Washers from Korea*,<sup>237</sup> we continue to find

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<sup>232</sup> See Petitioners Rebuttal Brief at 18 (citing *Korea Cold-Rolled IDM* at 20-23 and *Korea Hot-Rolled IDM* at 13-14).

<sup>233</sup> See SAA at 929. The SAA "shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act..."

<sup>234</sup> See, e.g., *Cold-Rolled Steel from Korea* IDM at 88.

<sup>235</sup> See GOK's letter, "Large Diameter Welded Pipe from the Republic of Korea: Countervailing Duty Response to Section II of the Questionnaire," dated April 23, 2018, at Exhibit TAX-1 Table 8-1-1 and Table 8-3-2 (GOK Questionnaire Response); see also *Preliminary Determination PDM* at 18-20.

<sup>236</sup> See *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410 (March 26, 2012) (*Refrigerators from Korea*), and accompanying IDM at Comment 3.

<sup>237</sup> See *Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) (*Washers from Korea*), and accompanying IDM at Comment 9.

that this program is regionally specific under section 771(5A)(D)(iv) of the Act. The CIT sustained our findings on this issue in the *Washers from Korea* investigation.<sup>238</sup> It is clear from the text of Article 23 of the Enforcement Decree and the amendment of the Seoul Metropolitan Area Readjustment Planning Act that benefits provided under RSTA Article 26 are limited to a designated geographical region.<sup>239</sup> That designated region is all parts of the Korean territory outside of the Seoul Metropolitan Area (SMA). It is not relevant to our determination the geographic size of the landmass outside of the SMA in Korea that is eligible to receive benefits under the program, so long as the GOK designates a geographical region (*i.e.*, the SMA) that it intends to exclude from these benefits. The percentage or respective size of land mass bears no relationship to regional specificity, or to the percentage of economic activities excluded under this specific program. Thus, consistent with long-standing practice,<sup>240</sup> we continue to find that the GOK established a designated geographical region to which this program is available, and that subsidies under this program are specific within the meaning of section 771(5A)(D)(iv) of the Act.

### **Comment 5: Whether a Benefit Exists in the Modal Shift Program**

#### *Affirmative Case Brief Comments:*

The GOK argues the following:

- Commerce should find this program not countervailable because participants in this program suffer from losses by adhering to this program. With the intent to cooperate with Korea's environmental policies, companies utilize rail and marine transportation which incurs losses compared to road transportation. Companies only get partial compensation for the loss incurred adhering to this environment policy and companies are not "better off" and do not benefit from participating in this program.<sup>241</sup>

#### *Rebuttal Brief Comments:*

The petitioners rebut the following:

- Commerce should continue to find this program countervailable. The GOK has not changed its arguments regarding these programs from past cases, arguments which Commerce has previously rejected.<sup>242</sup>

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<sup>238</sup> See *Samsung Electronics Co. v. United States*, 973 F. Supp. 2d 1321, 1329 (CIT 2014) ("Because access to Art. 26 tax credits was conditioned upon investment in a 'designated geographical region,' Commerce's regional specificity determination was reasonable.") (internal citations omitted).

<sup>239</sup> See GOK Questionnaire Response at 149 and Exhibit TAX-5.

<sup>240</sup> See, e.g., *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Portland Hydraulic Cement and Cement Clinker from Mexico*, 48 FR 43063, 43065 (September 21, 1983).

<sup>241</sup> See GOK Case Brief at 12-13.

<sup>242</sup> See Petitioners Rebuttal Brief at 18 (citing *Korea Cold-Rolled IDM* at 20-23 and *Korea Hot-Rolled IDM* at 13-14).

## Commerce's Position:

As an initial matter, we note that the GOK has not disagreed that this program is intended to assist companies in recouping losses, which are incurred as a result of adhering to the GOK's transportation environmental policies. Rather, the GOK argues that this program is not countervailable because it does not cover all the losses companies incur by switching from truck to marine transport. When determining whether an alleged program is countervailable, the statute directs Commerce to determine whether there is a subsidy, *i.e.*, a financial contribution is conferred by an authority, which confers a benefit to the recipient, and that the subsidy is specific to an enterprise or industry.<sup>243</sup> Further, the statute does not contemplate whether a benefit was conferred to a program recipient by making a determination of whether the company was "better off" with or without the program's assistance, or to take into account any secondary effects, such as losses incurred.<sup>244</sup> As described in the *Preliminary Determination*, Commerce determined first whether the Modal Shift program met the criteria for a countervailable subsidy by analyzing whether it provided a financial contribution, was specific, and whether it conferred a benefit to Hyundai Steel.<sup>245</sup> The evidence on the record supports all three criteria, evidence Commerce verified.<sup>246</sup> Therefore, because the GOK did not identify any evidence on the record which refutes our finding in the *Preliminary Determination*, we continue to determine that this program is countervailable.

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<sup>243</sup> See generally section 771(5) of the Act.

<sup>244</sup> See *Countervailing Duties*, 63 FR 65348, 65361 (November 25, 1998) (stating that "Section 771(5B)(D) of the Act treats the imposition of new environmental requirements and the subsidization of compliance with those requirements as two separate actions. A subsidy that reduces a firm's cost of compliance remains a subsidy (subject, of course, to the statute's remaining tests for countervailability), even though the overall effect of the two government actions, taken together, may leave the firm with higher costs."); see also section 771(5)(C) of the Act (stating that Commerce is "not required to consider the effect of the subsidy in determining whether a subsidy exists.").

<sup>245</sup> See *Preliminary Determination* and accompanying PDM at 23.

<sup>246</sup> *Id.*, and GOK Verification Report at 8-9.

## VII. RECOMMENDATION

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

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\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

2/19/2019

X   
\_\_\_\_\_

Signed by: GARY TAVERMAN

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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



## Appendix

### AFA Rate Calculation

Program	AFA Rate	Export Subsidy
DRR Program	0.06 percent	No
Management of the Electricity Factor Load Program <sup>247</sup>	1.05 percent	No
KEXIM Bank Subsidy Programs <sup>248</sup>	0.01 percent	Yes
Short-Term Discounted Loans for Export Receivables from the KDB and IBF <sup>249</sup>	1.05 percent	Yes
K-SURE Export Credit Guarantees <sup>250</sup>	1.05 percent	Yes
Loans from KORES and KNOC <sup>251</sup>	1.05 percent	No
RSTA Article 10 <sup>252</sup>	0.72 percent	No
RSTA Article 11 <sup>253</sup>	1.05 percent	No
RSTA Article 22 <sup>254</sup>	1.05 percent	No
RSTA Article 24 <sup>255</sup>	1.05 percent	No
RSTA Article 25 <sup>256</sup>	1.05 percent	No
RSTA Article 25(2)	0.02 percent	No
RSTA Article 25(3)	0.05 percent	No
RSTA Article 26	0.28 percent	No
RSTA Article 120 <sup>257</sup>	1.05 percent	No
Tax Reductions and Exemptions for Companies Located in FEZs <sup>258</sup>	1.05 percent	No
Exemptions and Reductions of Lease Fees for Companies in FEZs <sup>259</sup>	1.05 percent	No
Grants to Companies Located in FEZs <sup>260</sup>	1.05 percent	No
RSLTA Article 78	0.02 percent	No

<sup>247</sup> See *Washers from Korea* IDM at 14, where we determined the countervailable subsidy for the RSTA Article 26 program to be 1.05 percent *ad valorem* for respondent Samsung.

<sup>248</sup> In the *Preliminary Determination*, we determined that this program is specific within the meaning of section 771(5A)(B) of the Act because eligibility is contingent upon export performance. See *Preliminary Determination* and accompanying PDM at 18.

<sup>249</sup> See *Washers from Korea* IDM at 14, where we determined the countervailable subsidy for the RSTA Article 26 program to be 1.05 percent *ad valorem* for respondent Samsung.

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> *Id.* at 13, where we determined the countervailable subsidy for this program to be 0.72 percent *ad valorem* for respondent Samsung.

<sup>253</sup> *Id.* at 14, where we determined the countervailable subsidy for the RSTA Article 26 program to be 1.05 percent *ad valorem* for respondent Samsung.

<sup>254</sup> *Id.*

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> *Id.*

<sup>258</sup> *Id.*

<sup>259</sup> *Id.*

<sup>260</sup> *Id.*

Industrial Grants under the ITIPA <sup>261</sup>	1.05 percent	No
Modal Shift Program	0.01 percent	No
Sharing of Working Opportunities/Employment Creating Incentives <sup>262</sup>	1.05 percent	No
High Efficiency Energy Market Project <sup>263</sup>	1.05 percent	No
RSLTA Article 19 <sup>264</sup>	1.05 percent	No
RSLTA Article 31 <sup>265</sup>	1.05 percent	No
RSLTA Article 46 <sup>266</sup>	1.05 percent	No
RSLTA Article 84 <sup>267</sup>	1.05 percent	No
Local Tax Article 109 <sup>268</sup>	1.05 percent	No
Local Tax Article 112 <sup>269</sup>	1.05 percent	No
Incentives for Usage of Yeongil Harbor in Pohang City <sup>270</sup>	1.05 percent	No
Incentives for Usage of Gwangyang Port <sup>271</sup>	1.05 percent	No
Incentives for Natural Gas Facilities <sup>272</sup>	1.05 percent	No
Subsidies for Construction and Operation of Workplace Nursery <sup>273</sup>	1.05 percent	No
<b>Total</b>	<b>27.42 percent</b>	

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<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

<sup>268</sup> *Id.*

<sup>269</sup> *Id.*

<sup>270</sup> *Id.*

<sup>271</sup> *Id.*

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*