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June 11, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Steel Flat Products from the Republic of Korea; 2016

I. Summary

The Department of Commerce (Commerce) analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the countervailing duty (CVD) order on certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Korea (Korea) covering the period of review (POR) August 12, 2016 through December 31, 2016.

As a result of this analysis, we have made changes since the *Preliminary Results*.[1] We recommend that you approve the positions described in the "Discussion of Comments" section of this memorandum.

Below is a complete list of the issues in this review for which we received comments from parties:

Comment 1: Whether Commerce Should Apply Adverse Facts Available (AFA) for POSCO and Hyundai Steel's Failure to Retain AUL Records for Acquired Companies
Comment 2: Whether POSCO Energy is POSCO's Cross-Owned Input Supplier
Comment 3: Whether to Treat POSCO Chemtech's Deferred Tax Liabilities Under Restriction of Special Taxation Act (RSTA) Article 9 as an Interest-Free Contingent Liability Loan
Comment 4: Which of POSCO's Reported Benchmark Loans to Use as Benchmarks for POSCO's KEXIM Loans

[1] *See Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, 2016*, 83 FR 55517 (November 6, 2018) (*Preliminary Results*), and accompanying Decision Memorandum (Preliminary Decision Memorandum).

Comment 5: Whether POSCO's Equipment Loans from the KDB are Covered by the Previously Countervailed Program "Korea Development Bank (KDB) and Other Policy Banks' Short-Term Discounted Loans for Export Receivables"
Comment 6: Whether to Use the Government of Korea's Short-Term Bond Interest Rate or International Monetary Fund Statistics as a Short-Term Interest Rate Benchmark for POSCO's Short-Term KDB Loans
Comment 7: Alleged Errors in the Preliminary Calculations for POSCO
Comment 8: Whether Hyundai Green Power is Hyundai Steel's Cross-Owned Input Supplier
Comment 9: Whether Commerce Should Countervail Benefits Received by SPP Yulchon Energy
Comment 10: Whether Suncheon Harbor Usage Fee Exemptions Under the Harbor Act are Countervailable

II. Background

On November 6, 2018, Commerce published the *Preliminary Results* of this administrative review.[2] On December 18, 2018, Commerce postponed the final results of review by 58 days until May 3, 2019.[3] 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.[4] Accordingly, the revised deadline for these final results is June 12, 2019.

On March 4, 2019, Nucor Corporation (Nucor) submitted pre-verification comments on the record to this administrative review.[5] Between March 7, 2019, and March 12, 2019, we conducted verifications of the questionnaire responses submitted by Hyundai Steel Co., Ltd. (Hyundai Steel) and POSCO. We released verification reports on April 9, 2019.[6]

On April 19, 2019, Nucor, POSCO, and Hyundai Steel submitted timely case briefs.[7] Each also submitted timely rebuttal briefs on April 24, 2019.[8]

We are conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

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[2] *See Preliminary Results.*
[3] *See* Memorandum, "Extension of Deadline for Final Results of Countervailing Duty Administrative Review," dated December 18, 2018.
[4] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive duties of the Assistant Secretary for 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.
[5] *See* Nucor's Letter, "Pre-Verification Comments," dated March 4, 2019.
[6] *See* Memoranda, "Verification of the Questionnaire Reponses of Hyundai Steel Company," (April 9, 2019) (Hyundai Steel VR); "Verification of Questionnaire Responses of POSCO, POSCO Daewoo Corporation, POSCO Chemtech, and POSCO M-Tech," (April 9, 2019) (POSCO VR).
[7] *See* Nucor's Case Brief, "Case Brief," dated April 19, 2019 (Nucor Case Brief); *see also* POSCO's Case Brief, "POSCO's Letter," dated April 19, 2019 (POSCO Case Brief); Hyundai Steel's Case Brief, "Hyundai Steel Case Brief," dated April 19, 2019 (Hyundai Steel Case Brief).
[8] *See* Nucor's Rebuttal Brief, "Rebuttal Brief," dated April 24, 2019 (Nucor Rebuttal Brief); POSCO's Rebuttal Brief, "POSCO's Letter," dated April 24, 2019 (POSCO Rebuttal Brief); Hyundai Steel's Rebuttal Brief, "Hyundai Steel Rebuttal Brief," dated April 24, 2019 (Hyundai Steel Rebuttal Brief).

III. Scope of the Order

The products covered by this order are certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement ("width") of 12.7 mm or greater, regardless of thickness, and regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the resulting measurement makes the product covered by the existing antidumping[9] or countervailing duty[10] orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products from the Republic of Korea (A-580-836; C-580-837), and

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

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

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or

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

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

- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

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

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

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

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this order unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this order:

- Universal mill plates (*i.e.*, hot-rolled, flat-rolled products not in coils that have been rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, of a thickness not less than 4.0 mm, and without patterns in relief);
- Products that have been cold-rolled (cold-reduced) after hot-rolling;[11]
- Ball bearing steels;[12]

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

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

- Tool steels;[13] and
- Silico-manganese steels;[14]

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

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

IV. Period of Review

The POR is August 12, 2016, through December 31, 2016.

V. Subsidies Valuation Information

A. Allocation Period

We made no changes to the allocation period and the allocation methodology used in the *Preliminary Results*. No issues were raised by interested parties in case briefs that would lead us to reconsider our preliminary finding regarding the allocation period or the allocation methodology for the respondent companies. For a description of allocation period and the methodology used for these final results, *see* the *Preliminary Results* and accompanying Preliminary Decision Memorandum at 7.

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

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

B. Attribution of Subsidies

Commerce has made no changes to the methodologies used in the *Preliminary Results* for attributing subsidies. For a description of the methodologies used for these final results, *see* the *Preliminary Results* and accompanying Preliminary Decision Memorandum at 7-10.

C. Benchmark Interest Rates

Commerce made changes to certain benchmarks that were used in the *Preliminary Results*. We addressed the comments raised by interested parties at Comments 4 and 6. For a description of the remaining benchmarks and discount rates used for these final results, *see* the *Preliminary Results* and accompanying Preliminary Decision Memorandum at 10-12.

D. Denominators

Commerce has made no changes to the denominators used in the *Preliminary Results*. No issues were raised by interested parties in case briefs that would lead us to reconsider our preliminary finding regarding the appropriate denominators. For a description of the denominators used for these final results, *see* the *Preliminary Results* and accompanying Preliminary Decision Memorandum at 12.

VI. Use of Facts Otherwise Available

A. Legal Standard

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply facts otherwise available if necessary information is not on the record or an interested party or any other person: (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 shall promptly inform the party submitting the response of the nature of the deficiency, and shall, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, Commerce may, subject to section 782(e) of the Act, 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 (*i.e.*, AFA) in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In so doing, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party

had complied with the request for information. Section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.

Under section 776(d) of the Act,[15] 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 CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates.

B. Application of Facts Otherwise Available

Commerce relied on "facts otherwise available" for several findings in the *Preliminary Determination*.[16] For a description of these decisions, *see* the *Preliminary Determination*. Commerce continues to use facts available for these final results for Hyundai Hysco Co., Ltd. (Hyundai Hysco) and Ricco Metal Co. (Ricco Metal). Also, as described below, Commerce is now relying on facts available for an additional finding pertaining to Pohang SPFC. We are no longer applying facts available to SPP Yulchon Energy. We further explain these decisions in Comments 1 and 4.

Application of Facts Available - Pohang SPFC

Pohang SPFC was formed in 2008 and merged into Steel Processing and Fabricating Center Co., Ltd. (SPFC) in January 2013.[17] POSCO P&S is POSCO's cross-owned supplier of inputs during the POR, which we have determined are primarily dedicated to POSCO's production of downstream hot-rolled steel in the manner described in 19 CFR 351.525(b)(6)(iv).[18] Before the merger, SPFC destroyed documents relating to Pohang SPFC that were older than five years, *i.e.*, between 2008 and 2012. Pohang SPFC did, however, have access to accounting voucher information from 2009 to 2012. In addition, POSCO had access to Pohang SPFC's audited financial statements for the 2010-2011 period, as these were available from the Korean Financial Supervisory Service.[19]

Because Pohang SPFC was acquired by SPFC during the average useful life (AUL), we considered whether any non-recurring subsidies that Pohang SPFC received could have passed through to SPFC. Thus, we requested complete questionnaire responses for Pohang SPFC. However, as described above, SPFC was unable to provide certain information for Pohang SPFC for the year 2008 reporting period. Therefore, in accordance with section 776(a) of the Act, for the purpose of these final results, we have applied facts available with respect to Pohang SPFC, because necessary information is not on the record. Thus, as facts available, we find that Pohang

[15] Section 776(c) of the Act requires that a rate being used be corroborated, unless the CVD rate was "applied in a separate segment of the same proceeding."
[16] *See* Preliminary Determination Memorandum at 12-15.
[17] *See* POSCO's Letter, "Notification of Reporting Difficulty and Request to Modify Reporting Instructions," dated May 17, 2018 at 7.
[18] *See* Preliminary Decision Memorandum at 10; *see also* POSCO's January 24, 2018 Affiliation Response at 24-25 (POSCO AFFR).
[19] *See* Preliminary Decision Memorandum at 9-10; *see also* POSCO's Letter, "Notification of Reporting Difficulties Letter," dated May 17, 2018 at 7.

SPFC used the same non-recurring subsidies during the year for which we are missing information (2008) as it did for the years in which we have information (2009-2012). On this basis, we determine Pohang SPFC did not receive subsidies that conferred a measurable benefit.

VII. Analysis of Programs

A. Programs Determined to be Countervailable

1. *Restriction of Special Location Taxation Act (RSLTA) – Local Tax Exemptions on Land Outside Metropolitan Areas – Article 78*

Commerce has modified its calculation of the subsidy rate for this program for POSCO from the *Preliminary Results*.[20]

POSCO:	0.01 percent *ad valorem*
Hyundai Steel:	0.05 percent *ad valorem*

2. *Tax Deduction Under Restriction of Special Taxation Act (RSTA) Article 26: Government of Korea (GOK) Facilities Investment Support*

Commerce has modified its calculation of the subsidy rate for this program for POSCO from the *Preliminary Results*.[21]

POSCO:	0.27 percent *ad valorem*
Hyundai:	0.42 percent *ad valorem*

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

Commerce made no changes to the *Preliminary Results* regarding this program.

POSCO:	0.07 percent *ad valorem*

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

Commerce made no changes to the *Preliminary Results* regarding this program.

POSCO:	0.13 percent *ad valorem*

[20] *See* Comment 7, below; *see also* Memorandum, "Countervailing Duty Administrative Review of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results Calculations for POSCO," dated concurrently with these final results (POSCO's Final Results Calculation Memorandum).
[21] *See* Comment 7, below; *see also* POSCO's Final Results Calculation Memorandum.

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

Commerce has modified its calculation of the subsidy rate for this program for POSCO from the *Preliminary Results*.[22]

POSCO: 0.03 percent *ad valorem*

6. RSTA Article 30: Special Depreciation Tax Credit

Commerce has modified its calculation of the subsidy rate for this program for POSCO from the *Preliminary Results*.[23]

POSCO: Less than 0.005 percent

7. Technical Development Fund RSTA Article 9, formerly TERCL Article 8

Commerce has modified its calculation of the subsidy rate for this program for POSCO from the *Preliminary Results*.[24]

POSCO: 0.02 percent *ad valorem*

8. Restriction of Special Taxation Agreement (RSTA) Article 10(1)(3): Tax Reduction for Research and Human Resources Development

Commerce has modified its calculation of the subsidy rate for this program for POSCO from the *Preliminary Results*.[25]

POSCO: Less than 0.005 percent

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

Commerce has modified its calculation of the subsidy rate for this program for POSCO from the *Preliminary Results*.[26]

POSCO: Less than 0.005 percent

10. Electricity Discounts Under Trading of Demand Response Resources (DRR) Program

Commerce made no changes to the *Preliminary Results* regarding this program.

Hyundai: 0.06 percent *ad valorem*

[22] *See* Comment 7, below; *see also* POSCO's Final Results Calculation Memorandum.
[23] *See* Comment 7, below; *see also* POSCO's Final Results Calculation Memorandum.
[24] *See* Comment 3, below; *see also* POSCO's Final Results Calculation Memorandum.
[25] *See* Comment 3, below; *see also* POSCO's Final Results Calculation Memorandum.
[26] *See* Comment 7, below; *see also* POSCO's Final Results Calculation Memorandum.

11. Various Research and Development (R&D) Grants Provided Under the Industrial Technology Innovation Promotion Act (ITIPA)

Commerce made no changes to the *Preliminary Results* regarding this program.

POSCO: Less than 0.005 percent
Hyundai: 0.01 percent *ad valorem*

12. Modal Shift Program

Commerce made no changes to the *Preliminary Results* regarding this program.

Hyundai: 0.01 percent *ad valorem*

13. Suncheon Harbor

Commerce made no changes to the *Preliminary Results* regarding this program.

Hyundai: 0.02 percent *ad valorem*

14. Loans and Credits – Export-Import Bank of Korea (KEXIM) Overseas Investment Credit Program

Commerce has modified its calculation of the subsidy rate for this program for POSCO from the *Preliminary Results*.[27]

POSCO: Less than 0.005 percent

15. Korea Development Bank (KDB) and Other Policy Banks' Short-Term Discounted Loans for Export Receivables

Commerce has modified its calculation of the subsidy rate for this program for POSCO from the *Preliminary Results*.[28]

POSCO: Less than 0.005 percent

16. Long-Term Loans from the Korean Resources Corporation (KORES) and the Korea National Oil Corporation (KNOC)

Commerce has modified its calculation of the subsidy rate for this program for POSCO from the *Preliminary Results*.[29]

POSCO: 0.02 percent *ad valorem*

[27] *See* Comment 4, below; *see also* POSCO's Final Results Calculation Memorandum.
[28] *See* Comments 5 and 6, below; *see also* POSCO's Final Results Calculation Memorandum.
[29] *See* Comment 7, below; *see also* POSCO's Final Results Calculation Memorandum.

B. Programs Determined to be Not Used or Not to Confer a Measurable Benefit During the POR

Hyundai Steel

1. KEXIM Bank Import Financing
2. KEXIM Short-Term Export Credits
3. KEXIM Export Factoring
4. KEXIM Export Loan Guarantees
5. KEXIM Loan Guarantees for Domestic Facility Loans
6. KEXIM Trade Bill Rediscounting Program
7. KEXIM Bankers Usance
8. KEXIM Overseas Investment Credit Program
9. KDB and IBK Short-Term Discounted Loans for Export Receivables
10. Loans under the Industrial Base Fund (IBF)
11. Korea Trade Insurance Corporation (K-SURE) Export Credit Guarantees
12. K-SURE Short-Term Export Credit Insurance
13. Long-Terms Loans from KORES and KNOC
14. Clean Coal Subsidies
15. GOK Subsidies for "Green Technology R&D" and its Commercialization
16. Support for Small and Medium Enterprise (SME) "Green Partnerships"
17. Tax Deduction under RSTA Article 10(1)(1)
18. RSTA Article 10(1)(2)
19. RSTA Article 11
20. RSTA 104(14)
21. RSLTA Articles 19, 31, 46, 47-2, 84, 109, and 112
22. Tax Reductions and Exemptions in Free Economic Zones
23. Grants and Financial Support in Free Economic Zones
24. Sharing of Working Opportunities/Employment Creating Incentives
25. GOK Infrastructure Investment at Inchon North Harbor
26. Machinery & Equipment (KANIST R&D) Project
27. Grant for Purchase of Electrical Vehicle
28. Power Business Law Subsidies
29. Provision of Liquefied Natural Gas (LNG) for Less Than Adequate Remuneration (LTAR)
30. Energy Savings Programs
    - Electricity Savings for Designated Period Program
    - Electricity Savings through the Bidding Process Program
    - Electricity Savings upon an Emergent Reduction Program
    - Electricity Savings through General Management Program
    - Management of the Electricity Load Factor Program
31. The GOK's Purchases of Electricity for More Than Adequate Remuneration (MTAR)
32. Incentives for Compounding and Prescription Cost Reduction
33. Subsidies for Employment Security during Period of Childbirth and Childcare
34. Incentives for Usage of Yeongil Harbor in Pohang City

35. Value Added Tax (VAT) Exemptions on Imported Goods
36. Import Duty Exemptions
37. Incentives for Usage of Gwangyang Port
38. Incentives for Natural Gas Facilities
39. Subsidies for Construction and Operation of Workplace Nursery
40. Subsidies for Hyundai Steel Red Angels Women's Football Club
41. Co-existence Project for Large- Medium- Small Enterprises as Energy Companies
42. One Company for One Street Clean Management Agreement
43. Support for Smoking Cessation Treatment
44. Seoul Guarantee Insurance
45. Purchase of Land from Government Entities
46. Fast-Track Restructuring Program

POSCO

1. KEXIM Bank Import Financing
2. KEXIM Short-Term Export Credits
3. KEXIM Export Factoring
4. KEXIM Export Loan Guarantees
5. KEXIM Loan Guarantees for Domestic Facility Loans
6. KEXIM Trade Bill Rediscounting Program
7. KEXIM Bankers Usance
8. KEXIM Import Financing
9. Loans Under the IBF
10. K-SURE Export Credit Guarantees
11. K-SURE Short-Term Export Credit Insurance
12. Clean Coal Subsidies
13. GOK Subsidies for "Green Technology R&D" and its Commercialization
14. Support for SME "Green Partnerships"
15. Tax Deduction under RSTA Article RSTA Article 10(1)(1)
16. RSTA Article 10(1)(2)
17. RSLTA Articles 19, 31, 46, 47-2, 84, 109, and 112
18. RSTA Article 22: Tax Exemption on Investment in Overseas Resources Development
19. RSTA Article 24: Tax Credit for Investment for Productivity Increase Facilities
20. RSTA Article 25: Tax Credit for Investment in Facilities for Environment or Safety
21. RSTA Article 120: Exemption of the Acquisition Tax
22. Asset Revaluation Under Article 56(2) of the TERCL
23. RSTA Article 104(14): Third Party Logistics Operation
24. RSTA Article 104(5): Special Tax Credit for Payment Records
25. Tax Reductions and Exemptions in Free Economic Zones
26. Grants and Financial Support in Free Economic Zones
27. Sharing of Working Opportunities/Employment Creating Incentives
28. GOK Infrastructure Investment at Inchon North Harbor
29. Machinery & Equipment (KANIST R&D) Project
30. Grant for the Purchase of an Electric Vehicle
31. Power Business Law Subsidies

32. Provision of LNG for LTAR
33. Energy Savings Program[30]
34. Electricity Savings for Designated Period Program
35. Electricity Savings through the Bidding Process Program
36. Electricity Savings upon an Emergent Reduction Program
37. Electricity Savings through General Management Program
38. Energy Savings Program: Utilization of Capability of the Private Sector
39. Energy Savings Program: In Accordance with Prior Announcement
40. Energy Savings Program: Intelligent Electricity Savings
41. Energy Savings Program: Support for Instruments with High Energy Efficiencies
42. R&D Grants under the ITIPA
43. Power Generation Price Difference Payments (PGPDP)
44. Reimbursements on Construction Costs for Facilities at Inchon Harbor
45. Management of the Electricity Load Factor Program
46. The GOK's Purchases of Electricity for MTAR
47. Incentives for Compounding and Prescription Cost Reduction
48. Subsidies for Employment Security during Period of Childbirth and Childcare
49. Incentives for Usage of Yeongil Harbor in Pohang City
50. VAT Exemptions on Imported Goods
51. Import Duty Exemptions
52. Incentives for Usage of Gwangyang Port
53. Incentives for Natural Gas Facilities
54. Subsidies for Construction and Operation of Workplace Nursery
55. Subsidies for Hyundai Steel Red Angels Women's Football Club
56. Co-existence Project for Large- Medium- Small Enterprises as Energy Companies
57. One Company for One Street Clean Management Agreement
58. Support for Smoking Cessation Treatment
59. Seoul Guarantee Insurance
60. Purchase of Land from Government Entities
61. Fast-Track Restructuring Program
62. Daewoo International Corporation Debt Work Out
63. Exemptions and Reductions of Lease fees in Free Economic Zones
64. Grants from the Korea Agency for Infrastructure Technology Advancement
65. KDB and IBF Loans under the IBF
66. Land Purchase at Asan Bav
67. Modal Shift Program
68. R&D Grants under Industrial Technology Innovation Promotion Act
69. Research, Supply or Workforce Development Investment Tax Deduction for
70. Research, Supply, or Workforce Development Expense Tax Deductions for
71. RSLTA Articles 46, 84
72. Special Accounts for Energy and Resources (SAER) Loans
73. Support for SME "Green Partnerships"
74. Dongbu Debt Restructuring

[30] *See Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016) (*Hot-Rolled Steel Korea Final*), and accompanying Issues and Decision Memorandum (IDM) at 119.

75. Sharing of Working Opportunities/Employment Creating Incentives
76. Various Government Grants Contained in Financial Statements

VIII. Discussion of Comments

Comment 1: Whether Commerce Should Apply AFA for POSCO and Hyundai Steel's Failure to Retain AUL Records for Acquired Companies

Nucor Case Brief

- Under U.S. law, application of AFA pursuant to sections 776(a) and (b) of the Act is warranted where a respondent fails to cooperate to the best of its ability, including by failing to retain the records that a reasonable respondent should know that it could be called upon to produce in a CVD proceeding.[31]
- Commerce requested complete questionnaire responses from POSCO's cross-owned input suppliers. POSCO notified Commerce that it could not provide these responses because the relevant business records were destroyed or because the relevant personnel no longer worked at POSCO. Commerce verified that POSCO had been destroying records regarding companies acquired during the AUL period on an ongoing basis, up to and including early 2018, after this review had been initiated.[32]
- Hyundai Steel failed to report fully with respect to its affiliate Hyundai Hysco. Hyundai Steel has asserted that AUL information for one of the companies that it acquired during the AUL period simply disappeared as a result of an accounting system update. Commerce was unable to access Hyundai Steel's accounting system at verification to confirm this.[33]
- U.S. law presumes familiarity with Commerce's CVD laws, and there is no *mens rea* requirement under the AFA standard.[34] Because of POSCO's and Hyundai Steel's failure to retain complete records for the AUL period, the record is incomplete with respect to attributable non-recurring subsidies. Commerce should apply an AFA rate in accordance with its standard practice[35] to both POSCO and Hyundai Steel for the non-recurring subsidies under review.

Hyundai Steel Rebuttal Brief

- Commerce excused Hyundai Steel for reporting for Hyundai Hysco.[36]

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[31] *See* Nucor Case Brief at 3-4 (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*)).
[32] *Id*. at 7-10.
[33] *Id*. at 10-12.
[34] *Id.* at 4 (citing *Nippon Steel* at 1383).
[35] *Id.* at 6 (citing *Certain Hot-Rolled Steel Flat Products from the Republic of Korea*, 81 FR 53439 (August 12, 2016), and accompanying IDM at 56-57 and 60-61 (*HRS Korea Final*); *see also Certain Hardwood Plywood Products from the People's Republic of China*, 82 FR 53473 (November 16, 2017), and accompanying IDM at Comment 1).
[36] *See* Hyundai Steel Rebuttal Brief at 4 (citing Hyundai Steel's Letter, "Notification of Reporting Difficulty and Request to Modify Reporting Instructions," dated September 11, 2018).

- Hyundai Steel explained why it was not able to report for years 2002-2005; the verification report supports its stated reason for its inability to report.[37] Therefore, application of AFA is unwarranted.

POSCO Rebuttal Brief

- The standard for the application of AFA has not been met. Commerce's regulations provide procedures for instances when an interested party has difficulty responding to requests for information. In such instances, Commerce may "modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party." The application of facts available is subject to these requirements, and POSCO followed these procedures by timely seeking reporting modifications and responded to the best of its ability.[38]
- With the exception of Ricco Metal, there is no evidence that POSCO's reporting difficulties left any gaps in the record.[39]
- Nucor's reliance on *HRS Korea Final* is misplaced. There, Commerce found that if POSCO had explained that it was not providing information on certain companies because POSCO's purchases were not primarily dedicated to the production of subject merchandise, Commerce would have had an opportunity to follow up on this claim."[40]
- Commerce has already preliminarily determined that there is sufficient information on the record to accurately determine POSCO's subsidy rate for non-recurring subsidies programs and should continue to do so in the final results.[41]

Commerce's Position: We have reviewed the record of this review and determine that POSCO provided complete questionnaire responses for the entire AUL period for its merged companies, with the exception of Ricco Metal (2002-2008) and Pohang SPFC (2008). POSCO based its responses to our questionnaires on accounting vouchers and audited financial statements.[42] We did not find any evidence at verification that called into question the reliability of these records or the completeness of POSCO's questionnaire responses.[43] Additionally, there is no evidence on the record that POSCO failed to comply with Commerce's with requests for information, nor did we find any such information at verification, such that application of an adverse inference would be warranted under section 776(b) of the Act. Accordingly, we are relying on this information for these *Final Results.*

However, with respect to future administrative segments of this proceeding, in these final results, we hereby put POSCO and all other interested parties on notice that Commerce expects full compliance with our reporting requirements, and that POSCO and all other interested parties

[37] *Id*. at 5-8 (citing Hyundai Steel VR at 4).
[38] *See* POSCO Rebuttal Brief at 4-7 (citing Section 776(a)(1) of the Act).
[39] *See* POSCO Rebuttal Brief at 8-9 (citing POSCO M-Tech's May 30, 2018 Supplemental Questionnaire Response; and POSCO M-Tech's August 15, 2018 Supplemental Questionnaire Response (POSCO M-Tech's August 15, 2018 SQR)).
[40] *See* POSCO Rebuttal Brief at 4-5 and 9-10 (citing Nucor Case Brief at 4-6).
[41] *See* POSCO Rebuttal Brief at 10-11 (citing Preliminary Decision Memorandum at 16).
[42] *See* POSCO's November 27, 2018 Supplemental Questionnaire Response (POSCO's November 27, 2018 SQR) at 22-25 and 27.
[43] *See* POSCO's VR at 7-8.

should retain all relevant source documents for future administrative reviews, irrespective of document retention requirements under Korean law.

With regard to the information missing on the record for Ricco Metal (2002-2008) and Pohang SPFC (2008), as described above, we are relying on facts available, pursuant to section 776(a) of the Act, to determine that POSCO did not benefit from non-recurring subsidies that may have been received by Ricco Metal and Pohang SPFC.

As explained in the *Preliminary Results*,[44] Hyundai Steel provided a complete questionnaire response for Hyundai Hysco, with the exception of three years at the beginning of the AUL. We verified Hyundai Steel's explanation that the information was missing due to Hyundai Hysco's migration of its accounting system.[45] As described above, we continue to find that necessary information is not available on the record and that it is necessary to apply facts available with respect to the three years at the beginning of the AUL pursuant to section 776(a) of the Act. Accordingly, we continue to find that Hyundai Steel received a POR benefit of 0.01 percent for non-recurring grants that may have been received by Hyundai Hysco in 2002-2005.

Comment 2: Whether POSCO Energy is POSCO's Cross-Owned Input Supplier

Nucor Case Brief

- POSCO reported that its cross-owned electricity producer, POSCO Energy, produces an input, electricity. The production of electricity is primarily dedicated to subject merchandise.[46]
- Commerce has argued before the Court of International Trade (CIT) and U.S. Court of Appeals for the Federal Circuit (CAFC) that the Korean Power Exchange (KPX) and the Korea Electric Power Corporation (KEPCO) are two distinct entities that are not part of the same "authority." Also, in the *CTL Plate Korea Final*, Commerce found that the cross-ownership attribution criteria were not met because the electricity that POSCO energy sold to KPX was sold to KPX, not KEPCO. Commerce has argued before the CIT and CAFC that KPX and KEPCO are two distinct entities that are not part of the same "authority." In other words, Commerce has interpreted its attribution to require a direct sale between the input producer and the producer of the downstream producer of subject merchandise. Nothing in Commerce's regulations supports the interpretation that a direct sale is required. Commerce's regulations provide for attribution of subsidies of an "input producer" "{i}f there is cross ownership between an input supplier and a downstream producer, and production of the input is primarily dedicated to the production of the downstream product."[47]

[44] *See* Preliminary Determination Memorandum at 13-14.
[45] *See* Hyundai Steel VR at 4.
[46] *See* Nucor Case Brief at 35-36 (citing *Nucor v. United States*, 286 F. Supp. 3d 1364, 1377 (CIT 2018); 19 CFR 351.525(b)(6)(iv); and *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea*, 82 FR 16341 (April 4, 2017) (*CTL Plate Korea Final*) and accompanying IDM); *see also* Nucor Case Brief at 21-23 (citing POSCO May 21, 2018 Supplemental Affiliations Response).
[47] *See* Nucor Case Brief at 36 (citing *Nucor v. United States*, 286 F. Supp. 3d 1364, 1377 (CIT 2018); 19 CFR 351.525(b)(6)(iv); *CTL Plate Korea Final*; and 19 CFR 351.525(b)(6)(iv)).

- In the *CWP PRC Final*, Commerce explained that the input-supplier rule focuses on subsidies received by the input producer and not the entity directly responsible for the direct sale of inputs.[48]

POSCO Rebuttal Brief

- POSCO had no purchases of electricity from POSCO Energy during the POR.[49]
- The fact that Commerce's regulation is ambiguous and has no specific language requiring a direct sale of an input means that Commerce has broad discretion to interpret and apply that regulation.[50]
- The practice in the *CWP PRC Final* relied upon by Nucor is in a completely different context and goes to the issue of financial contribution. Specifically, Commerce's practice stands for the proposition that if a government authority sells inputs to a respondent through a trading company, those inputs can be treated as a direct financial contribution from the government authority. This has nothing to do with Commerce's practice with respect to the attribution of subsidies received by a cross-owned input producer.[51]

Commerce's Position: Commerce's regulations provide for attribution of subsidies of an "input producer" "{i}f there is cross ownership between an input supplier and a downstream producer, and production of the input is primarily dedicated to the production of the downstream product."[52] However, to determine whether POSCO Energy's production of electricity was primarily dedicated to POSCO's production of subject merchandise, we find that it is not sufficient merely to establish that POSCO Energy produced electricity, and that POSCO used electricity to produce subject merchandise. POSCO reported and Commerce verified that POSCO did not purchase electricity from POSCO Energy in 2016.[53] POSCO purchased electricity only from KEPCO.[54] Thus, the record has not established that POSCO directly purchased electricity from POSCO Energy or that POSCO purchased electricity that was specifically produced by POSCO Energy. Accordingly, the claim that POSCO Energy's production of energy is primarily dedicated to POSCO's production of subject merchandise has not been established. This is consistent with our previous findings in other proceedings

[48] *See* Nucor Case Brief at 37 (citing *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 72 FR 63875 (November 13, 2007) (*CWP PRC Final*) ("With respect to Kingland Century, this company is a domestic trading company and does not produce any merchandise. Instead, it purchased and provided inputs to {producer of subject merchandise} Kingland during the POI. Because it is not an input producer, we are not treating Kingland Century as an input supplier as described in 19 CFR. 351.525(b)(6)(iv) (which refers to subsidies received by the input producer). Instead, for the preliminary determination, we are treating these inputs as being provided directly to Kingland.")).
[49] *See* POSCO Rebuttal Brief at 13-14.
[50] *Id*. at 12-13.
[51] *Id*. at 13.
[52] *See* 19 CFR 351.252(b)(6)(iv).
[53] *See* POSCO AFFR at 16, n.2, and Exhibit 2 (POSCO's 2016 unconsolidated financial statements); *see also* POSCO's February 23, 2018 Initial Section III Questionnaire Response (POSCO's Section III IQR); POSCO VR at 9-10.
[54] *See* POSCO AFFR at 16, n.2, and Exhibit 2 (POSCO's 2016 unconsolidated financial statements); *see also* POSCO's February 23, 2018 Initial Section III Questionnaire Response (POSCO's Section III IQR); POSCO VR at 9-10.

regarding POSCO Energy being an input supplier (*i.e.*, regarding POSCO's purchases of electricity and POSCO Energy's sales of electricity).[55] Accordingly, we have made no changes to the *Preliminary Results* with respect to this issue.

Comment 3: Whether to Treat POSCO and POSCO Chemtech's Deferred Tax Liabilities Under RSTA Article 9 as an Interest-Free Contingent Liability Loan

POSCO Case Brief

- POSCO and POSCO Chemtech set aside reserves, representing amounts deducted from taxable income prior to the filing of its 2015 tax return. These reserves are drawn down in two ways: 1) after three years have passed, by returning one third of the balance of each such contribution to the reserves, to taxable income in the fourth, fifth, and sixth tax year; or 2) if certain amounts set aside are not actually used for qualified purposes (*i.e.*, research or human resource development), returning such unused portions to net income after three years have passed.[56] Commerce incorrectly treated the entire delayed tax liability on the outstanding balance of the reserves, which POSCO and POSCO Chemtech had created under RSTA Article 9, as a subsidies benefit during the POR, analogous to how a tax credit would be treated as received during the POR.[57]
- As POSCO and POSCO Chemtech stated in POSCO's Section III IQR and POSCO Chemtech's Section III IQR, and as Commerce has previously concluded, corporations that accumulate reserves under RSTA Article 9 must ultimately recognize these amounts as income in future years. Thus, a benefit arises from the opportunity to delay payment of income taxes on the amounts set aside in the reserve until future years.[58]
- Commerce has previously determined that the ultimate income tax liability that was deferred should be treated as an interest-free contingent-liability loan. Thus, Commerce should recalculate the benefit received under this program consistent with the methodology used in past proceedings.[59]

Nucor Rebuttal Brief

- Commerce should not modify its treatment of RSTA Article 9 benefits received by POSCO and POSCO Chemtech because the language of the relevant legal provision is unclear with respect to POSCO's proposed calculation.[60]
- POSCO's description of RSTA Article 9 suggests that all amounts contributed to a company's reserve are ultimately returned to taxable income in a future year and taxed at the generally applicable corporate tax rate; however, RSTA Article 9 indicates that reserves equivalent to the amount used for {research and human resource development}"

[55] *See, e.g.*, *Hot Rolled Steel Korea Final* IDM at Comment 5; *CTL Plate Korea Final* IDM at Comment 1.
[56] *See, e.g.*, POSCO Case Brief at 2-3; POSCO's Section III IQR at Exhibit B-27.
[57] *See* POSCO Case Brief at 2-3.
[58] *Id.* at 3 (citing POSCO's Section III IQR at Exhibit I-12; and POSCO Chemtech's February 23, 2018 Section III IQR at Exhibit I-8).
[59] *See* POSCO Case Brief at 3.
[60] *See* Nucor Rebuttal Brief at 14.

are ultimately included in gross income in "the amount calculated by multiplying the amount given by the reserves divided by 36, by the number of months of the taxable year" but that "reserves equivalent to the exceeding part shall be included in the gross income when the amount of income is calculated for the taxable year to which the date when three years have passed."[61]

- At the very least, Commerce should calculate the benefits for POSCO and POSCO Chemtech under RSTA Article 9 using a long-term interest rate.[62]

Commerce's Position: We agree with POSCO that benefits under RSTA Article 9 should be calculated by applying an appropriate interest rate to the amount of POSCO and POSCO Chemtech's deferred tax liability on its reserves.

As Commerce explained in the *CTL Plate Korea Final*:

> With respect to the deferral of direct taxes, the Department's regulations indicate that a benefit exists to the extent that appropriate interest charges are not collected. Under Article 9 of the RSTA, a corporation that has accumulated reserves for research and human resources development may deduct the reserves up to an amount equal to three percent of its net income for the tax year, independent of the actual expenditures for research and development and human resources during the tax year. POSCO, therefore, was able to defer payment of certain income tax during the POI by the rate at which the total amount in its reserves would normally be taxed, *i.e.* the corporate income tax rate in Korea applicable to POSCO.[63]

Commerce further explained in the *CTL Plate Korea Final*:

> As Article 9 of the RSTA permits a tax deduction to be used during a tax year, we continue to treat the benefit amount as a short-term, interest-free, contingent liability loan, pursuant to 19 CFR 351.509(a)(2), and use a short-term interest rate as the benchmark to calculate the interest charges which were not collected on the deferred tax amount. Thus, we calculated the benefit for POSCO by multiplying the total amount in its reserves by the applicable corporate income tax rate in Korea, and then multiplied that product by our short-term loan benchmark. We then divided the resulting benefit amount by POSCO's total POI sales. On this basis, we determine that POSCO received a countervailable subsidy rate of 0.03 percent ad valorem.[64]

However, we agree with Nucor's argument, in the alternative, that we should depart from Commerce's methodology in *CTL Plate Korea Final* by using a long-term interest rate. POSCO has provided, as benchmarks, certain medium- to long-term borrowings issued during or within

[61] *Id*. at 3-5.
[62] *Id.* at 3 and 4-5.
[63] *See CTL Plate Korea Final* IDM at Comment 8.
[64] *Id.*

six years of the POR. We also have available certain Korean "Government Bond Yield" (*i.e.*, interest rates) statistics published by the International Monetary Fund (IMF) for 2013 through 2015.[65] POSCO Chemtech has not provided any long-term loan benchmarks.

POSCO explains:

> (1) "A company provides its net sales amount for the year and multiplies it by 3 percent to determine the maximum eligibility for contributing to the reserve in that year. However, as indicated in item (4) POSCO made no contributions to the reserve in 2015.
>
> (2) Contributions made to the reserve in prior years are listed in columns under items (9) and (10). POSCO made contributions to this reserve that were active during 2015{}.
>
> (3) Beginning in the third year after a contribution to the reserve, one-third of the balance is returned to taxable income {(column under item 12)}, and in the next two years the remaining balance of the contribution made in a particular year is returned to taxable income in one-third increments."
>
> (4) As the yearly amounts of contributions to the reserve are returned to taxable income, the remaining balance in the reserve for each year is listed in the column under item (18).[66]

According to the translation of the relevant laws provided by POSCO and POSCO Chemtech, RSTA Article 9 provides that "reserves equivalent to the amount used for {research and human resource development}" are ultimately included in gross income in the amount calculated by multiplying 1/36th of each past year's reserves by the number of months of the taxable year to which the reserves are applied, but that "if reserves included in the deductible expenses exceed the amount to be included in the gross income{as specified above}, reserves equivalent to the exceeding part shall be included in the gross income when the amount of income is calculated for the taxable year to which the date when three years have passed."[67] Thus, the maximum allowed time period for the deferral of tax liability would be either years or in thirds over the course of three, four, and five years, depending on whether the contributed amount was used for qualified purposes (*i.e.*, research or human resource development). The balance of the reserves is provided in column 18 of POSCO's 2015 tax return. Accordingly, the contingent liabilities upon which POSCO is receiving a benefit, in the form of interest forgone, were contributed to the reserve on an annual basis and must be returned to taxable income three to five years later.

Section 351.509 of Commerce's regulations provides that "{i}n the case of a program that provides for a deferral of direct taxes, a benefit exists to the extent that appropriate interest charges are not collected. Normally, a deferral of direct taxes will be treated as a government-provided loan in the amount of the tax deferred, according to the methodology described."

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[65] *See* POSCO's Final Results Calculation Memorandum.
[66] *See* POSCO Case Brief at 4; and POSCO's Section III IQR at Exhibit 19, page 8.
[67] *See* POSCO's Section III IQR at Exhibit 19; *see also* POSCO Chemtech's Section III IQR at Exhibit 5.

Accordingly, we have treated the deferral of taxes under RSTA Article 9 as a government-provided loan in the amount of the tax deferred.

Moreover, section 351.509(a)(2) of the regulations provides that "{t}he Secretary will use a short-term interest rate as the benchmark for tax deferrals of one year or less. The Secretary will use a long-term interest rate as the benchmark for tax deferrals of more than one year." RSTA Article 9 provides for deferrals of more than one year. Therefore, we have departed from the methodology applied in the *CTL Plate Korea Final* of using a short-term borrowing rate. To calculate the benefit for POSCO's and POSCO Chemtech's deferred tax liability, we have used as a benchmark, the interest rates on certain representative long-term bonds issued by POSCO during the years in which the tax liability would have been realized if POSCO and POSCO Chemtech had not contributed funds to the reserve.[68] We have separately valued the benefits for the part of each prior year's contribution to the reserve, which were remaining as of the filing of POSCO's and POSCO Chemtech's 2015 tax returns. We have based our calculations on interest rates for POSCO's corporate bonds which were contemporaneous with the required tax filing year of each year's tax return. These bonds are analogous in term of maturity, structure (fixed vs. variable interest), and currency to the contingent liability benefit which POSCO and POSCO Chemtech received under RSTA Article 9.[69]

Comment 4: Which of POSCO's Reported Benchmark Loans to Use as Benchmarks for POSCO's KEXIM Loans

POSCO Case Brief

- Commerce failed to use the company-specific loans provided by POSCO as benchmark loans for POSCO's Long-Term KEXIM Loans, and instead used an index of rates on Baa-rated commercial bonds published by the Federal Reserve Bank of St. Louis.[70]
- Commerce's regulations call for the use of "a comparable loan the terms of which were established during, or immediately before, the year in which the terms of the government-provided loan were established." In selecting a "comparable" loan, Commerce's regulations instruct Commerce to emphasize similarities in the "structure of the loans (*e.g.*, fixed interest v. variable interest rate), the maturity of the loans (*e.g.*, short-term v. long-term), and the currency in which the loans are denominated." The exception is when a company has no comparable loans issued during the period in which the government loan was established, in which case the regulations direct Commerce to use a national average interest rate.[71]
- POSCO reported company-specific U.S. dollar-denominated fixed-rate corporate bonds issued the same year as the KEXIM loans for use as benchmarks for these loans. Accordingly, Commerce's use of a national average is contrary to Commerce's regulations, as Commerce should have used POSCO's reported U.S. dollar-denominated fixed-rate corporate bonds to calculate a long-term bond benchmark.[72]

[68] *See* POSCO's Final Results Calculation Memorandum.
[69] *Id.*
[70] *See* POSCO Case Brief at 11-12 (citing POSCO's Section III IQR at 21-22 and Exhibit C-7).
[71] *See* POSCO Case Brief at 11-12 (citing 19 CFR 351.505(a)(2)(i) and (3)(ii)).
[72] *Id*. at 12-13 (citing POSCO's Section III IQR at 21 and Exhibits C-6 and C-7).

Nucor Rebuttal Brief

- Commerce should not use POSCO's bonds issued just after POSCO's long-term KEXIM loans as benchmarks. Rather, if Commerce uses a company-specific benchmark, it should use POSCO's corporate bonds issued just before POSCO's long-term KEXIM loans. These bonds, issued just before the KEXIM loans at issue, were reported in a supplemental questionnaire response and carry a much higher interest rate than the corporate bonds issued by POSCO just after the KEXIM loans in question. Also, the maturity dates of these bonds are much closer to the maturity dates of the KEXIM bonds at issue.[73]
- The interest rate on POSCO's corporate bonds issued prior to the KEXIM loan may better reflect POSCO's true cost of borrowing, as the bonds issued after may be affected by the government subsidy provided by the KEXIM loans.[74]

Commerce's Position: We agree with POSCO. Commerce's regulations provide guidance in this regard:

1) Section 351.505(a)(2) provides that "{i}n the case of a loan, a benefit exists to the extent that the amount a firm pays on the government-provided loan is less than the amount the firm would pay on a comparable commercial loan(s) that the firm could actually obtain on market;"
2) Section 351.505(a)(2)(i) provides that "{i}n selecting a loan that is 'comparable' to the government-provided loan, the Secretary normally will place primary emphasis on similarities in the structure of the loans (*e.g.*, fixed interest rate vs. variable interest rate), the maturity of the loans (*e.g.*, short-term v. long-term), and the currency in which the loans are denominated;"
3) Section 351.505(a)(2)(ii) provides that "{i}n selecting a "commercial" loan, the Secretary normally use a loan taken out by the firm from a commercial lending institution or a debt instrument issued by the firm in a commercial market;"
4) Section 351.505(a)(2)(iii) provides that "{i}n selecting a comparable loan, if the government-provided loan is a long-term loan, the Secretary normally will use a loan the terms of which were established during, or immediately before, the year in which the terms of the government-provided loans were established;" and
5) Section 351.505(a)(3) provides that "{i}n selecting a comparable commercial loan that the recipient 'could actually obtain on the market,' the Secretary normally will rely on the actual experience of the firm in question in obtaining comparable commercial loans for both short-term and long-term loans."[75]

POSCO has reported corporate bonds issued the same year as the long-term KEXIM loans being considered, which have a fixed interest rate structure, a similar term of years to maturity as issuance, are denominated in the same currency (U.S. dollars), and have interest rates, dates of

[73] *See* Nucor Rebuttal Brief at 17-18.
[74] *Id.*
[75] *See* 19 CFR 351.505(a) (emphasis added).

maturity, and other terms that were established in the same year as POSCO's KEXIM loans.[76] Because these bonds have similar terms of years to maturity and are company-specific, we find that they are more reflective of POSCO's actual experience and are superior benchmarks compared to the Baa bond rate published by the Federal Reserve, which are based on Baa rated bonds of maturities of 20 years and above.[77] Moreover, Commerce has a practice of using corporate bonds issued by respondents as benchmarks in other proceedings.[78]

In contrast, the bonds issued by POSCO, which are favored by Nucor, are not contemporaneous with the KEXIM loans at issue, having neither been issued during the same calendar year of the KEXIM loans, nor within one year of the KEXIM loans.[79] Commerce's regulations, as noted above, identify a preference for the use of "a comparable loan the terms of which were established during, or immediately before, the year in which the terms of the government-provided loan were established."[80] The bonds issued the same year as POSCO's KEXIM loans satisfy these requirements, having been established during the year in which the terms of the KEXIM loans were established.[81] The bonds favored by Nucor were not issued during or immediately before the year in which the terms of POSCO's KEXIM loans were established.[82] Moreover, apart from the fact that Nucor has received loans from KEXIM, no specific evidence has been presented to demonstrate that the interest on the bonds issued later in the same year as the KEXIM loans are not commercial interest rates.

For its part, Nucor has not explained how the loans provided by KEXIM to POSCO have specifically distorted the interest rates that POSCO's corporate bonds obtained in the market, and we do not find that the administrative record supports such a claim. Thus, in accordance with our regulations, we have used POSCO's commercial bonds issued the same year as the KEXIM loans under consideration and have made the necessary adjustments to the calculations used in the final results.[83]

[76] *See* POSCO's Final Results Calculation Memorandum at worksheets "KEXIM Overseas Investment Credit" and "Interest Rate Benchmarks."
[77] *Id.*
[78] *See, e.g.*, *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination with Final Countervailing Duty Determination*, 81 FR 63168 (September 14, 2016), and accompanying Preliminary Decision Memorandum at 15 (unchanged in *CTL Plate Korea Final*).
[79] *See* POSCO's Final Results Calculation Memorandum at worksheets "KEXIM Overseas Investment Credit" and "Interest Rate Benchmarks."
[80] *Id.*; *see also* 19 CFR 351.505(a)(iii).
[81] *See* POSCO's Final Results Calculation Memorandum at worksheets "KEXIM Overseas Investment Credit" and "Interest Rate Benchmarks"; *see also* 19 CFR 351.505(a)(iii).
[82] *See* POSCO's Final Results Calculation Memorandum at worksheets "KEXIM Overseas Investment Credit" and "Interest Rate Benchmarks"; *see also* 19 CFR 351.505(a)(iii).
[83] *See* POSCO's Final Results Calculation Memorandum at worksheets "KEXIM Overseas Investment Credit" and "Interest Rate Benchmarks"; *see also* 19 CFR 351.505(a)(iii).

Comment 5: Whether POSCO's Equipment Loans from the KDB are Covered by the Previously Countervailed Program "Korea Development Bank (KDB) and Other Policy Banks' Short-Term Discounted Loans for Export Receivables"

POSCO Case Brief

- POSCO clearly indicated in its POSCO Section III IQR that it had not received any "short-term discounted loans for export receivables from {KDB}" during the calendar year 2016. However, POSCO explained that it "did have other short-term general equipment loans from the KDB in calendar year 2016" but that these are "not under any export-related program and thus are not relevant to this program."[84]
- In response to Commerce's second supplemental questionnaire, POSCO provided responses to the standard questions, loan benchmark, and loan guarantee appendices for these loans, but reiterated that there was no allegation that the short-term general loans from the KDB are specific or provide a benefit, and thus there is no basis to investigate these loans.[85]
- In the *Preliminary Results*, Commerce incorrectly stated that these loans had been found to be countervailable in the *Hot-Rolled Steel Korea Final*, and that the GOK had reported no changes to the program.[86] However, the program referenced was the previously-countervailed "Korea Development Bank (KDB) and Other Policy Banks' Short-Term Discounted Loans for Export Receivables," not any program covering other types of loans from the KDB.[87]

Nucor Case Brief

Nucor did not comment on these specific alleged errors or adjustments.

Commerce's Position: We have not included POSCO's short term equipment loans for this final determination. The record reflects, and we verified, that these loans are not covered by the program "Korea Development Bank (KDB) and Other Policy Banks' Short-Term Discounted Loans for Export Receivables."[88] Accordingly we have removed the KDB equipment loans from our calculations.[89]

[84] *See* POSCO Case Brief at 14-16 (citing POSCO's Initial Section III Questionnaire Response at 22 and Exhibit D-1).
[85] *See* POSCO's June 21, 2018 Second Supplemental Questionnaire Response (POSCO's June 21, 2018 SQR) at 8 and Exhibit D-2; and the GOK's October 3, 2018 Supplemental Questionnaire Response (GOK October 3, 2018 SQR) at 5-8.
[86] *See Hot-Rolled Steel Korea Final* IDM.
[87] *See* Preliminary Decision Memorandum at 28-29.
[88] *See* POSCO's VR at 10, 13, and at Exhibit 7, page 14.
[89] *See* POSCO's Final Results Calculation Memorandum.

Comment 6: Whether to Use the GOK Short-Term Bond Interest Rate or IMF Statistics as a Short-Term Interest Rate Benchmark for POSCO's Short-Term KDB Loans

POSCO Case Brief

- In calculating POSCO's benefit from its short-term KDB loans, Commerce used a benchmark representing the weighted-average interest rates on short-term loans provided to POSCO M-Tech, which was reported in POSCO M-Tech's August 15, 2018 SQR. However, POSCO submitted Korean short-term government bond interest rates as benchmarks for POSCO's short-term loans from KDB.[90]
- The benchmark information submitted for POSCO's KBD loans "represent{} the Korean national average for short-term loans denominated in {Korean won} and thus serves as the appropriate benchmark to measure the benefit of loans for which there are no comparable loans under {Commerce's} regulations." Accordingly, to the extent Commerce continues to find POSCO's KDB loans countervailable, Commerce should use POSCO's reported benchmark to calculate benefits for POSCO's KDB loans.[91]

Nucor Rebuttal Brief

- POSCO argues that Commerce should use the short-term Korean government bond rate it provided, which POSCO claims represents "the Korean national average for short-term loans denominated in {Korean won}" and "serves as the appropriate benchmark to measure the benefit of loans for which there are no comparable loans under {Commerce's} regulations." However, POSCO provided no support or reasoning for the proposition that the national government's short-term interest rate somehow reflects a national average commercial interest rate, as required by Commerce's regulations.[92]
- Commerce should use the Korean average short-term interest rate from the IMF's 2017 International Financial Statistics Yearbook, which is on the administrative record. This interest rate represents the "{m}inimum rate charged to general enterprises by deposit money banks on loans of general funds for up to one year." This is the best available short-term interest rate.[93]

Commerce's Position: This issue is moot, as we have determined that the inclusion of these KDB loans in the calculations used in the *Preliminary Results* was erroneous, because these loans are the loans provided under the program "KDB Discount Loans for Export Receivables." Therefore, we have removed the KDB loans from our calculations.[94]

[90] *See* POSCO Case Brief at 16-17 (citing POSCO's June 21, 2018 SQR at Exhibit D-2, page 5, and Exhibit D-5; POSCO M-Tech's October 17, 2018 SQR at 13 and Exhibit C-4; and POSCO M-Tech's Initial Section III May 30, 2018, Questionnaire Response (POSCO M-Tech's May 30, 2018 IQR) at 19 and Exhibit C-3).
[91] *See* POSCO Case Brief at 17.
[92] *See* Nucor Rebuttal Brief 19; *see also* 19 CFR 351.505(a)(2)(iv).
[93] *See* Nucor Rebuttal Brief 19; *see also* 19 CFR 351.505(a)(2)(iv).
[94] *See* Comment 5 *supra*; *see also* POSCO's Final Results Calculation Memorandum.

Comment 7: Various Alleged Errors in the Preliminary Calculations for POSCO

POSCO Case Brief

In its case brief, POSCO alleged that Commerce made certain ministerial errors in the *Preliminary Results*, and requested certain other calculation adjustments based on minor corrections provided at verification, as follows:

- Commerce used incorrect amounts to calculate the benefit from tax credits received by POSCO Chemtech under (inflating such benefits by 1000).[95]
- Commerce overstated POSCO's benefit from RSTA Article 30 by treating the amount of special depreciation claimed by POSCO as a tax credit, rather than as a deduction from taxable income.[96]
- Commerce should revise the amounts used to calculate POSCO M-Tech's benefit from local tax exemptions under RSTA 78(4) based on the minor corrections accepted at verification.[97]
- Commerce erroneously calculated a benefit attributed to POSCO based on POSCO Daewoo Corporation's (PDC)'s KORES loans.[98]

Nucor Rebuttal Brief

Nucor did not comment on these specific alleged errors or adjustments.

Commerce's Position: We have made each of the adjustments POSCO requested consistent with the manner in which POSCO suggested these adjustments in its case brief.[99] For POSCO Chemtech's tax programs, we have corrected the calculations by using the correct benefit amounts, adjusted such that they are denominated in Korean Won (KRW) rather than 1000s of KRW.[100] For POSCO's benefit under RSTA Article 30, we have used the tax reduction on the special depreciation amount as a benefit rather than the special depreciation amount itself.[101] For POSCO M-Tech's benefit from local tax exemptions under RSTA 78(4), we have revised the amounts used to calculate the benefit based on the minor corrections accepted at verification, including POSCO's correction of the heading on its benefit table indicating that the benefit amounts are denominated in KRW rather than 1000s of KRW.[102] Regarding POSCO's and PDC's KORES loans, we have corrected the labeling of the PDC loan chart, attributed these loans to PDC for the final results, added POSCO's KORES loans to the calculation program and attributed POSCO's KORES loans to POSCO.[103]

[95] *See* POSCO Case Brief at 7; *see also* POSCO's Final Results Calculation Memorandum.
[96] *See* POSCO Case Brief at 8-9; *see also* POSCO's Final Results Calculation Memorandum.
[97] *See* POSCO Case Brief at 10; *see also* POSCO's Final Results Calculation Memorandum.
[98] *See* POSCO Case Brief at 17-18; *see also* POSCO's Final Results Calculation Memorandum.
[99] *See* POSCO's Final Results Calculation Memorandum.
[100] *See* POSCO Case Brief at 7; *see also* POSCO's Final Results Calculation Memorandum.
[101] *See* POSCO Case Brief at 8-9; *see also* POSCO's Final Results Calculation Memorandum.
[102] *See* POSCO Case Brief at 10; *see also* POSCO's Final Results Calculation Memorandum.
[103] *See* POSCO Case Brief at 17-18; *see also* POSCO's Final Results Calculation Memorandum.

Comment 8: **Whether Hyundai Green Power is Hyundai Steel's Cross-Owned Input Supplier**

Nucor Case Brief

- In the *Preliminary Results*, Commerce found that cross-ownership did not exist between Hyundai Steel and Hyundai Green Power, and also did not address the issue of benefit. Significant record evidence undermines this finding.[104] In pre-preliminary comments, Nucor called Commerce's attention to evidence in Hyundai Green Power's questionnaire response.[105] Each administrative review record is separate and the findings and conclusions of a different review concerning a different product line cannot be relied upon without substantial evidence on the record of this review.[106]
- This record presents an economic reality in which the operations of Hyundai Steel and Hyundai Green Power are so intertwined that they cannot operate independently of each other. Hyundai Green Power is essentially a joint venture between Hyundai Steel and the GOK. However, as a matter of commercial reality, Hyundai Green Power was created with massive infusions of state capital to be an intertwined component of Hyundai Steel's steelmaking operations and to accrue a benefit effectively at a time of Hyundai Steel's choosing.[107] Moreover, Hyundai Green Power operates as an integrated and interdependent part of Hyundai Steel's steelmaking operations, as record evidence indicates each could not operate independently of the other without substantial financial and operational disruption.
- The record also establishes that Hyundai Steel relies on Hyundai Green Power for the input steam for its steelmaking operations; approximately 55 percent of Hyundai Steel's power demand in Dangjin is supplied by Hyundai Green Power. While Hyundai Steel asserts it has never *purchased* electricity from Hyundai Green Power, Commerce's regulations contemplate an "input *supplier*" relationship, and not an "input *purchaser*" relationship.[108]
- In similar contexts, Commerce has focused on the economic reality of transactions in which inputs are supplied from government suppliers through private trading companies. Commerce should do the same here, and treat Hyundai Green Power as an electricity *supplier*, whether or not Hyundai Steel actually "purchased" electricity directly from Hyundai Green Power.[109]
- Information that was not available at that time of the new subsidy allegation is now on the record, which strongly suggests that the GOK loans and equity infusions that created Hyundai Green Power conferred a benefit. Thus, Commerce should clarify that because the record establishes that subsidies received by Hyundai Green Power are attributable to Hyundai Steel by virtue of a cross-owned input supplier relationship, it intends to seek

[104] *See* Nucor Case Brief at 27.
[105] *Id.*
[106] *Id.* at 27-28.
[107] *Id.* at 29.
[108] *Id*. at 33.
[109] *Id*. at 33-34.

additional information regarding subsidies received by Hyundai Green Power in the next administrative review.[110]

Hyundai Steel Rebuttal Brief

- In the *Preliminary Results*, Commerce found that cross-ownership did not exist between Hyundai Steel and Hyundai Green Power. In addition, Commerce stated that it did not even find it necessary to determine whether cross-ownership exists, because there was no benefit provided to Hyundai Green Power.[111]
- The *Preliminary Results* determination is in accord with the recent final results of *CORE Korea 2016 Final*[112] in which Commerce concluded that there was no cross-ownership between Hyundai Steel and Hyundai Green Power, and the steam produced by Hyundai Green Power was not primarily dedicated to the production of the downstream product. There is no basis to revisit this issue or decide differently.[113]
- The regulations provide that cross-ownership will normally only be shown where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. This focus on majority voting ownership is thus the starting point for any analysis of cross-ownership. This focus makes sense because in a company that is governed by a board of directors and majority ownership, majority representation on the board of directors is a vehicle for controlling a corporation. Thus, majority ownership provides a basis to control decisions of a corporation, while conversely, minority ownership does not.[114]
- The record demonstrates that Hyundai Steel owned 29 percent of Hyundai Green Power during the POR, which is not a majority share or even a particularly large minority voting interest.[115]
- Consistent with its minority ownership in Hyundai Green Power, Hyundai Steel only had one former employee who was a member of Hyundai Green Power's board during the POR. Due to the number of Hyundai Green Power's board members, of which the exact number is proprietary, Hyundai Steel has no ability to use or direct the individual assets of Hyundai Green Power as if they were their own. As a result, Hyundai Steel has no ability to control Hyundai Green Power via control of the board of directors.[116]
- Nucor asserts that Hyundai Steel and Hyundai Green Power's operations are intertwined and attempts to argue that the facts of this case are akin to *CFS Indonesia Final*. However, the facts of *CFS Indonesia Final* are inapposite and do not support Nucor's argument that Hyundai Steel and Hyundai Green Power are cross-owned.[117]

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[110] *Id*.
[111] *See* Hyundai Steel Rebuttal Brief at 17.
[112] *See Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2015-2016*, 84 FR 11749 (March 28, 2019) (*CORE Korea 2016 Final*).
[113] *See* Hyundai Steel Rebuttal Brief at 18.
[114] *Id*. at 19.
[115] *Id*. at 20.
[116] *Id*.
[117] *Id*. at 21.

- In *CFS Indonesia Final*, the central fact on which Commerce based its cross-ownership finding was that one family controlled the assets of various entities.[118] There is no similar information on the record of the instant review regarding family control of Hyundai Steel and Hyundai Green Power.[119]
- Also, Nucor's allegations of intertwined operations between Hyundai Steel, Hyundai Green Power, and other GOK stakeholders are incorrect and unsupported by the record. The assertion that Hyundai Green Power "was created with massive infusions of state capital to be an intertwined component of Hyundai's steelmaking operations" is not supported by the record.[120]
- Contrary to Nucor's statements, the Shareholders' Agreement demonstrates that Hyundai Steel does not have the power to use or direct Hyundai Green Power's assets.[121]
- Article 17 of the shareholder agreement states that upon completion of the power plant, Hyundai Steel has the option to buy the shares of Hyundai Green Power and to transfer the power plant into Hyundai Steel's internal power plant if certain proprietary conditions are met. However, the language in Article 17, which is proprietary, makes clear that Hyundai Steel lacks the ability to unilaterally force sales of shares from other shareholders, as claimed by Nucor. Moreover, the provision discussed in Article 17 cannot be invoked until October 2019, a date which post-dates the POR.[122]
- Nucor's attempts to demonstrate that Hyundai Green Power operates as an integrated and interdependent part of Hyundai Steel's steelmaking operations fail as well. While Hyundai Green Power's plant is located inside the bounds of Hyundai Steel's Dangjin Works, it is untrue to claim that Hyundai Green Power's plant is located inside the steel plant of Hyundai Steel.[123] Mere proximity of facilities provides no evidence of the ability to control and does not serve as a sole basis for an affirmative cross-ownership finding.[124]
- Further, as evidenced by the record, Hyundai Steel did not purchase electricity from Hyundai Green Power during calendar years 2015 and 2016; the record shows that the purchases were of steam and this steam is not an input for steelmaking.[125]
- While the existence of a close supplier relationship may be sufficient to demonstrate affiliation, it does not demonstrate cross-ownership, which requires a significantly higher standard of control. In fact, contrary to Nucor's claims, in *CFS Indonesia Final*,[126] Commerce found that long-term supply agreements did not support a finding of affiliation for certain suppliers.[127]

[118] *Id.* (citing *Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 72 FR 60642 (October 25, 2007) (*CFS Indonesia Final*), and accompanying IDM at 12).
[119] *Id.*
[120] *Id*.
[121] *Id*. at 22.
[122] *Id*.
[123] *Id*. at 23.
[124] *Id*. (citing 19 CFR 351.525(b)(6)(iv)).
[125] *Id*. at 25.
[126] *Id.* (citing *CFS Indonesia Final* IDM at 12).
[127] *Id.* at 29.

- Commerce has found Hyundai Steel and Hyundai Green Power not to be cross-owned in *CTL Plate Korea 2016 Final* and other prior administrative reviews. Commerce should continue to reach the same conclusion in the instant review.[128]
- Alternatively, Commerce should continue to find, as stated in the *Preliminary Results*, that it is not necessary to determine whether cross-ownership exists because there was no benefit provided to Hyundai Green Power. There is also no reason to consider this issue anew in the next administrative review.[129]
- Even if Hyundai Steel and Hyundai Green Power were cross-owned, which they are not, record evidence demonstrates that Hyundai Green Power did not sell any input products to Hyundai Steel that were primarily dedicated to the downstream production of subject merchandise.[130]
- In *CTL Plate Korea 2016 Final*,[131] Commerce found that the provision of steam by Hyundai Green Power did not constitute an input that would invoke the input producer regulation under 19 CFR 351.525(b)(6)(iv). Nucor points to nothing on this record that would require a different result.[132]
- Steam is simply not an input product that is primarily dedicated to the production of subject merchandise, as required under 19 CFR 351.525(b)(6)(iv). Hyundai Steel does not use the steam it purchases from Hyundai Green Power as an input product. Rather, it uses the steam for maintenance of equipment and materials.[133]
- Steam produced as a by-product during Hyundai Green Power's production of electricity cannot be said to be primarily dedicated to the production of hot-rolled steel and is not "merely a link in the overall production chain" of hot-rolled steel. Further, the steam sold to Hyundai Steel in 2016 does not come close to meeting the primary dedication standard. Rather, it is a by-product that is being put to use for environmental reasons, so it is not wasted.[134]
- Nucor's citation to a 2011 bond Circular and a 2014 application for carbon credits have no bearing on a 2015-2016 POR. Further, there is no evidence to show that the steam is used as an input to make steel.[135]
- Commerce should not revisit whether Hyundai Green Power supplied inputs primarily dedicated to the downstream product to Hyundai Steel and if it does, should conclude for the final that's that Hyundai Green Power has not supplied a primarily dedicated input to Hyundai Steel.[136]

Commerce's Position: We continue to find that Hyundai Steel and Hyundai Green Power are not cross-owned. Under 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more

[128] *Id*.
[129] *Id*.
[130] *Id*.
[131] *Id.* (citing *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*, 83 FR 32840 (July 16, 2018) (*CTL Plate Korea 2016 Final*), and accompanying IDM).
[132] *Id*.
[133] *Id*. at 30.
[134] *Id*. at 30-31.
[135] *Id*.
[136] *Id*. at 31-32.

corporations where one corporation can use or direct the individual assets of the other corporation in essentially the same way it can use its own assets. The regulation further states that the cross-ownership standard "normally" will be met "where there is majority ownership interest between two corporations or through common ownership of two (or more) corporations." The *Preamble* further states that, in "certain circumstances, a large minority voting interest (for example, 40 percent) or a 'golden share' may also result in cross-ownership."[137] However, the *Preamble* makes clear that the standard for finding cross-ownership is higher than the standard for finding affiliation and that a cross-ownership finding hinges on the ability of one party to have unilateral control over the other party's assets, including subsidy benefits:

> The underlying rationale for attributing subsidies between two separate corporations is that the interests of those two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same ways it can use its own assets (or subsidy benefits). The affiliation standard does not sufficiently limit the relationships we would examine to those where corporations have reached such a commonality of interests. Therefore, reliance upon the affiliated party definition would result in the Department expending unnecessary resources collecting information from corporations about subsidies which are not benefitting the production of the subject merchandise, or diluting subsidies more properly attributed to input producers by allocating such subsidies over the production of remotely related and affected downstream producers. In response to the second comment, we note that varying degrees of control can exist in any relationship.
>
> Therefore, we believe the more precise definition of cross-ownership that we have adopted in these Final Regulations is more appropriate. Contrary to the assertions of the commenters, in limiting our attribution rules to situations where there is cross-ownership, we are not reading ''affiliated'' out of the CVD law—we simply do not find the affiliation standard to be a helpful basis for attributing subsidies. Nowhere in the statute or the SAA is there any indication that the affiliated party definition was intended to be used for subsidy attribution purposes . . . we do not intend to investigate subsidies to affiliated parties unless cross-ownership exists or other information, such as a transfer of subsidies, indicates that such subsidies may in fact benefit the subject merchandise produced by the corporation under investigation.[138]

In the *CTL Plate Korea 2016 Final*, Commerce conducted a detailed analysis of whether Hyundai Steel and Hyundai Green Power were cross-owned and found that they were not. Further, Commerce found that the input Hyundai Green Power supplied to Hyundai Steel was not primarily dedicated to the production of subject merchandise. More specifically, Commerce found:

> (1) there is no means by which Hyundai Steel could have exerted control over Hyundai Green Power in a manner that allowed Hyundai Steel to use or direct the individual assets (or subsidy benefits) of Hyundai Green Power in essentially the same ways it can use its own assets (or subsidy benefits) and, thus, that Hyundai Steel and Hyundai Green Power

[137] *See Countervailing Duties: Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*Preamble*).
[138] *Id*.

were not cross-owned during the POR; and (2) the steam Hyundai Green Power supplied to Hyundai Steel is not an input that is primarily dedicated to the production of subject merchandise and, thus, Hyundai Green Power's provision of steam does not invoke the input producer regulation under 19 CFR 351.525(b)(6)(iv).[139]

The POR in the *CTL Plate Korea 2016 Final* covers calendar year 2016, which also forms the POR in the instant review. Consistent with Commerce's finding in the *CTL Plate Korea 2016 Final*, we did not find cross-ownership between Hyundai Steel and Hyundai Green Power in the *Preliminary Results*.[140] Further, while Nucor points out new information on the record exists suggesting that the GOK loans and equity infusions that created Hyundai Green Power may have conferred a benefit attributable to Hyundai Steel, that information does not affect our determination with respect to whether cross-ownership exists. As noted above, the standard for finding cross-ownership is higher than the standard for finding affiliation, and only when the companies are found to be cross-owned will Commerce then consider the subsidies received by the cross-owned company and how they must be attributed. Absent cross-ownership, we find Nucor's arguments regarding subsidies received by cross-owned companies and any consequent attribution to be moot and, thus, do not need to be addressed. We will continue to examine whether cross-ownership between Hyundai Steel and Hyundai Green Power exists in the next administrative review if warranted by the facts in that review.

Comment 9: Whether Commerce Should Countervail Benefits Received by SPP Yulchon Energy

Hyundai Steel Case Brief

- Commerce's decision to apply facts available to Hyundai Steel's failure to report for SPP Yulchon Energy should be reversed for the final results.
- Hyundai Steel purchased the assets of SPP Yulchon Energy pursuant to a bankruptcy proceeding in 2015 and, under Commerce's longstanding practice regarding bankruptcy proceedings, SPP Yulchon Energy's bankruptcy extinguished any alleged subsidies received prior to that date.
- Following the *Preliminary Results*, Hyundai Steel provided a complete Change-In-Ownership Appendix and a full questionnaire response for SPP Yulchon Energy.[141]

Nucor Rebuttal Brief

- Hyundai Steel has failed to fully explain its purchase of the assets of SPP Yulchon Energy and the role of the Korean government in the restructuring of the Korean shipbuilding industry.[142]

[139] *See CTL Plate Korea 2016 Final* IDM at 17.
[140] *See* Preliminary Decision Memorandum at 10.
[141] *Id*. at 4-5.
[142] *See* Nucor Rebuttal Brief at 3-4.

- Commerce should apply AFA, or, at minimum, continue to apply facts available regarding the company's purchase of SPP Yulchon Energy's assets in the agency's final results.[143]

Commerce Position: Hyundai Steel provided timely responses to Commerce's requests for a complete change-in-ownership appendix and CVD questionnaire for SPP Yulchon Energy.[144] We verified Hyundai Steel's responses and found no discrepancies.[145] Thus, we are relying on these responses, and not on facts available, for purposes of these final results. SPP Yulchon Energy did not receive any subsidies from the GOK that result in a measurable benefit for Hyundai Steel. Therefore, we find that the facts on the record do not give rise to the need for a change-in-ownership finding, rendering Nucor's argument about the GOK's role in the shipbuilding industry moot. Accordingly, we are no longer applying the 0.07 percent facts available rate to the information that was previously missing for SPP Yulchon Energy.

Comment 10: Whether Suncheon Harbor Usage Fee Exemptions Under the Harbor Act are Countervailable

Hyundai Steel Case Brief

- Commerce's preliminary finding that Suncheon Harbor Usage Fee Exemptions are countervailable should be reversed because it stands contrary to recent precedent from the CIT[146] and Commerce's own prior precedent.[147]
- The record is clear that Hyundai Steel's usage fee exemptions are reimbursements by the GOK for construction costs expended for the wharf at Suncheon Harbor. The *Preliminary Results* recognize that the Harbor Act was established "to compensate companies that have constructed port facilities with their own funds and have made donations to the government." Immediately after construction of the wharf, the ownership reverted to the GOK and Hyundai Steel (after it acquired Hyundai Hysco) had a right to use the harbor facilities free of charge to the extent the exempted amount reaches the total project cost. Thus, the exemptions are nothing other than reimbursements for construction of the wharf and not a financial contribution in the "form of revenue foregone." Further, the wharf was not a "donation" because it automatically reverted to the GOK as required under Korean law.[148]
- The CIT's decision in *Government of Sri Lanka v. United States* is instructive on the point that reimbursements of this kind are not benefits and thus not countervailable. The program at issue was the Guaranteed Price Scheme (GPS), where Commerce assessed reimbursements in isolation from the overall GPS program and concluded they were a financial contribution

[143] *Id.* at 4.
[144] *See* Hyundai Steel Letter, "Comments on Hyundai Steel's Third Supplemental Questionnaire Response and Hyundai HYSCO's Initial Questionnaire Response," dated October 11, 2018.
[145] *See* Hyundai Steel VR at 4 and 11.
[146] *See* Hyundai Steel Case Brief at 18 (citing *Government of Sri Lanka v. United States*, 308 F. Supp. 3d 1373 (CIT 2018) (*Government of Sri Lanka v. United States*)).
[147] *See* Hyundai Steel Case Brief at 18 (citing *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30636 (June 8, 1999) (*Stainless Steel Sheet and Strip Korea Final*)).
[148] *See* Hyundai Steel Case Brief at 19-20.

in the form of a direct transfer of funds and a benefit. The CIT reversed Commerce's determination concluding that the reimbursement was not a financial contribution and did not constitute a benefit.[149]

- In *Stainless Steel Sheet and Strip Korea Final*, after verification Commerce reversed its preliminary determination and found that the exact program at issue in this proceeding was not countervailable because the exemptions were merely a vehicle for a company to "recover its investments costs." Similarly, Commerce should revisit its finding and find that the usage fee exemptions are not countervailable in this case.[150]

Nucor Rebuttal Brief

- Relying on the CIT's opinion in *Government of Sri Lanka v. United States* and Commerce's 1999 determination in *Stainless Steel Sheet and Strip Korea Final*, Hyundai Steel argues that the fee exemptions do not provide a financial contribution or a benefit because they are reimbursements for construction costs incurred by companies that build infrastructure on the government's behalf.[151]
- Hyundai Steel's citation to *Stainless Steel Sheet and Strip Korea Final*[152] is unavailing. That determination did not address financial contribution at all, and found instead that the program was not specific based on usage data "since 1991" showing that "a diverse grouping of private sector companies across a broad range of industrial sectors have made a number of investments in infrastructure facilities at various ports in Korea," and that "{i}n each case, the company which built the infrastructure" received fee exemptions and the right to charge fees to other users. In other words, Commerce did not base its specificity finding on the fact that the program is purportedly "widely available," as Hyundai Steel argues here, but the actual users in fact were many and diverse, based on information on the record in that case.[153]
- Commerce has flatly rejected the "widely available" theory of *de facto* specificity as directly at odds with the purpose of the statute.[154]
- In the *Preliminary Results*, Commerce found that this program is *de facto* specific because "the number of companies that were approved and received assistance were limited in number."[155]
- Regarding *Government of Sri Lanka v. United States* there are distinctions – that case involved reimbursements to a purchaser of an input, ostensibly to cover the above-market price that the purchaser paid to its input supplier as a result of a government-mandated "guarantee price" scheme with three parties involved, the government, the input supplier, and the input purchaser, whereas in this case only two parties are involved, the GOK and

[149] *Id*. at 20.
[150] *Id*. at 21-25.
[151] *See* Nucor Rebuttal Brief at 11.
[152] *See Stainless Steel Sheet and Strip Korea Final*, 64 FR at 30649.
[153] *See* Nucor Rebuttal Brief at 11-12.
[154] *Id*. at 13 (citing *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35310 (June 2, 2016) (*CORE Korea Final*), and accompanying IDM at 28).
[155] *See* Nucor Rebuttal Brief at 13.

Hyundai Steel. Moreover, the disposition of this case is not yet final, as it has been appealed to the CAFC.[156]

Commerce's Position: We continue to find the exemption of usage fees under the Harbor Act to be countervailable because it meets the statutory criteria required to find a program countervailable. In determining whether a subsidy is specific, we look to section 771(5A) of the Act. Under subsection (D)(iii)(I) of this section, a subsidy may be 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. Based on information provided by the GOK, we found the program to be *de facto* specific in the instant review.[157] Section 771(5)(D)(ii) of the Act provides that a financial contribution exists in the "foregoing or not collecting revenue that is otherwise due." We find the port usage fee exemptions Hyundai Steel received from the GOK to be revenue forgone pursuant to section 771(5)(D)(ii) of the Act. Lastly, Commerce looks for whether a benefit was conferred on the recipient under section 771(5)(E) of the Act. We find that a benefit was conferred in the amount of the fees not collected by the GOK.[158] Thus, we found the exemptions of usage fees that the GOK granted Hyundai Steel were countervailable. This determination is consistent with numerous prior cases where Commerce countervailed exemptions received under the Harbor Act.[159]

We disagree with Hyundai Steel with respect to the *Stainless Steel Sheet and Strip Korea Final*. In that determination, Commerce found that POSCO and Inchon were only two out of a large number of companies from a diverse range of industries that used the program. Thus, Commerce determined that the program was not specific under section 771(5A)(D)(iii) of the Act and, therefore, not countervailable.[160] In the instant review, we examined specificity as it relates to the POR of this review. Specifically, we requested that the GOK provide the total number of companies that were approved for assistance under the program during the POR, and based on the GOK's response, we found the program to be *de facto* specific because the actual recipients, on an enterprise or industry basis, were limited in number.[161] Further, as noted earlier, since the *Stainless Steel Sheet and Strip Korea Final*, Commerce has found this program countervailable in several other proceedings. Therefore, we also disagree with Hyundai Steel's arguments that Commerce's findings in the *Stainless Steel Sheet and Strip Korea Final* mean that there is no financial contribution or benefit from this program in this review.

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[156] *Id*. at 13-14.
[157] *See* Preliminary Decision Memorandum at 26.
[158] *See* 19 CFR 351.503(b).
[159] *See, e.g.*, *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2010*, 78 FR 19210 (March 29, 2013), and accompanying IDM at 11; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*; 2011, 79 FR 5378 (January 31, 2014), and accompanying IDM at 3; *Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea*, 67 FR 62102 (October 3, 2002), and accompanying IDM at 20; *Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 72 FR 38565 (July 13, 2007), and accompanying IDM at 6 and 10-11.
[160] *See Stainless Steel Sheet and Strip Korea Final*, 64 FR at 30649 ("Port Facility Fees").
[161] *See* GOK's July 23, 2018 Supplemental Questionnaire Response at 61-71.

The facts in *Government of Sri Lanka v. United States* are in contrast to the facts in this review and are distinguishable. In *Government of Sri Lanka v. United States*, the CIT characterized payments under the GPS program as interest-free repayment of a debt rather than "a direct transfer of funds," and held that the payments constituted reimbursement of an interest-free debt that did not benefit the tire producer.[162] In the *Tires Sri Lanka Final*,[163] we determined that the government's payments to the respondent were a direct transfer of funds and countervailable in their full amount (treating the respondent's earlier payment of the "guaranteed price" to its producer as irrelevant).[164] However, the CIT found that we had erroneously assessed the reimbursements in isolation from the GPS program because the tire producer was being required to provide the government an interest free loan by paying an above-market price for which it was later reimbursed. The CIT concluded that we ignored record evidence that the respondent received payment corresponding exactly to the above-market portion of its payment to the small-scale farmer, paid on behalf of the government.[165]

The Harbor Act program in this review is not comparable to the GPS program that the CIT analyzed in *Government of Sri Lanka v. United States*. The two programs are distinguishable in the way that they work (*i.e.*, producer overpayment for an input in the *Tires Sri Lanka Final*, versus exemption of the usage fee, thereby granting Hyundai Steel free usage of the facility in the instant review) and, importantly, the type of benefit at issue (*i.e.*, a direct transfer of funds in the *Tires Sri Lanka Final* versus revenue forgone with regard to the harbor usage fee in this program). In *Government of Sri Lanka v. United States*, the CIT characterized the transaction at issue as the government repaying a debt to the respondent company.[166] In this review, the exemption of the port usage fees cannot be characterized as the repayment of a debt to Hyundai Steel by the GOK. It is not a payment or repayment at all, but rather a selective exemption from fees. Further, in *Government of Sri Lanka v. United States*, the CIT characterized the transaction at issue as resulting in a detriment, rather than a benefit, to the respondent in that case.[167] In this review, however, there is no evidence on the record demonstrating that Hyundai's building of a port, the GOK's subsequent assumption of ownership of the port, and Hyundai's exemption from payment of port usage fees, resulted in a detriment to Hyundai Steel. Therefore, Hyundai Steel's reliance on *Government of Sri Lanka v. United States* is inapposite.

[162] *See Government of Sri Lanka v. United States*, 308 F. Supp. 3d at 1381.
[163] *See Certain New Pneumatic Off-the-Road Tires from Sri Lanka: Final Affirmative Countervailing Duty Determination, and Final Determination of Critical Circumstances*, 82 FR 2949, 2950 (January 10, 2017) (*Tires Sri Lanka Final*), and accompanying IDM.
[164] *See Tires Sri Lanka Final* IDM at Comment 4.
[165] *See Government of Sri Lanka v. United States*, 308 F. Supp. 3d at 1380-83.
[166] *Id.*
[167] *Id.* at 1382.

IX. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If accepted, we will publish the final results in the *Federal Register*.

☒	☐
Agree	Disagree

6/11/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance