



C-580-879

Administrative Review
POR: 01/01/2017-12/31/2017
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March 10, 2020

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

FROM: Scot Fullerton
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
2017 Administrative Review of the Countervailing Duty Order on
Certain Corrosion-Resistant Steel Products from the Republic of
Korea

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 order on certain corrosion-resistant steel products (CORE) from the Republic of Korea (Korea) covering the period of review (POR) January 1, 2017 through December 31, 2017. As a result of this analysis, we made changes to 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:

II. List of Issues

- Comment 1: Whether the Electricity for LTAR Upstream Subsidy Allegation Confers a Benefit
- Comment 2: Whether the Subsidy Rate for the Industrial Technology Innovation Promotion Act (ITIPA) Grants Was Improperly Calculated
- Comment 3: Whether Tax Credit Programs Under the RSTA Meet the Specificity Requirement
- Comment 4: Whether Tax Benefits Should Not Be Adjusted for the Special Rural Development Tax
- Comment 5: Whether the Trading of Demand Response Resource Program is Countervailable

¹ See *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, and Rescission of Review, in Part; 2017*, 84 FR 48107 (September 12, 2019) (*Preliminary Results*) and accompanying Decision Memorandum (Preliminary Decision Memorandum).



- Comment 6: Whether the Modal Shift Program Confers a Countervailable Benefit
- Comment 7: Whether the Non-Government Banks Were Entrusted or Directed to Provide a Financial Contribution to Dongbu through the Debt Restructuring Program
- Comment 8: Whether the Restructuring of Dongbu's Existing Loans by GOK-controlled Banks Provided a Financial Contribution to Dongbu
- Comment 9: Whether the Restructured Loans Provided to Dongbu were Specific
- Comment 10: Whether Commerce Should Use the Interest Rates from Loans provided by Commercial Banks Participating in the Creditor Bank Committee as Benchmarks
- Comment 11: Whether Dongbu Is Equityworthy and the Debt-to-Equity Swaps should be Countervailed
- Comment 12: Whether Commerce Correctly Calculated the Benefit to Dongbu from KDB Short-Term Discounted Loans for Export Receivables Program

III. Background

On September 12, 2019, Commerce published the *Preliminary Results* of this review.² On September 24, 2019, we issued supplemental questionnaires to the Government of Korea (GOK), Hyundai Steel Company (Hyundai Steel), and Dongbu Steel Co., Ltd. (Dongbu Steel)/Dongbu Incheon Steel Co., Ltd. (Dongbu Incheon) (collectively, Dongbu), and received timely responses.³ Between October 21, 2019 and November 1, 2019, Commerce conducted verifications of the questionnaire responses submitted by the GOK, Hyundai Steel, and Dongbu, and released verification reports.⁴

In the *Preliminary Results*, Commerce indicated it would issue its preliminary determination on the upstream subsidy on electricity after the *Preliminary Results*. On February 5, 2020, Commerce determined that Korean CORE producers did not benefit from upstream subsidies in the form of subsidized electricity during the POR.⁵

Commerce issued a briefing schedule on December 20, 2019,⁶ and the petitioners⁷ timely filed a

² See *Preliminary Results*.

³ See GOK's October 4, 2019 Upstream Subsidy Supplemental Questionnaire Response (GOK's October 4, 2019 USSQR); see also Hyundai Steel's October 3, 2019 Upstream Subsidy Supplemental Questionnaire Response (Hyundai Steel's October 3, 2019 USSQR); and Dongbu's October 7, 2019 Upstream Subsidy Supplemental Questionnaire Response (Dongbu's October 7, 2019 USSQR).

⁴ See Memoranda, "Verification of Information Submitted by the Government of the Republic of Korea for the Alleged Upstream Subsidy," dated January 22, 2020 (GOK Verification Report); "Countervailing Duty Administrative Review of Certain Corrosion-Resistant Steel Products from the Republic of Korea," dated December 20, 2019 (Hyundai Steel Verification Report); and "Countervailing Duty Administrative Review of Certain Corrosion-Resistant Steel Products from the Republic of Korea," dated December 20, 2019 (Dongbu Verification Report).

⁵ See Memorandum, "Upstream Subsidy on Electricity," dated February 5, 2020 (Upstream Analysis Memorandum).

⁶ See Memorandum, "Briefing Schedule," dated December 20, 2019.

⁷ The petitioners identified themselves as: AK Steel Corporation, California Steel Industries, Inc., Steel Dynamics Inc., ArcelorMittal USA LLC, Nucor Corporation, and United States Steel Corporation. See Petitioners' Letter, "Certain Corrosion-Resistant Steel Products from the Republic of Korea: Request for Administrative Review," dated July 31, 2018.

case brief on January 7, 2020.⁸ In addition, the GOK and Dongbu also timely filed case briefs.⁹ On January 17, 2020, the petitioners, Hyundai Steel, Dongbu, and the GOK each timely filed rebuttal briefs.¹⁰ In addition, Commerce issued a separate briefing schedule with respect to the upstream subsidy on electricity on February 6, 2020.¹¹ A timely case brief on the subject was received from the petitioners on February 13, 2020, and timely rebuttal briefs were received from the GOK, Hyundai Steel, and Dongbu on February 20, 2020.¹²

On December 30, 2019, Commerce postponed the final results of review by sixty days until March 10, 2020.¹³

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

IV. Changes Since the *Preliminary Results*

The “Discussion of Comments” section contains summaries of the comments and Commerce’s positions on the issues raised in the briefs. As a result of this analysis, we made certain changes to the *Preliminary Results* indicated in the “Analysis of Programs” section.

V. Scope of the Order

For a full description of the scope of this order, *see* Attachment.

VI. Period of Review

The POR is January 1, 2017 through December 31, 2017.

⁸ See Petitioners’ Letter, “Nucor’s Case Brief,” dated January 7, 2020 (Petitioners Case Brief).

⁹ See GOK’s Letter, “Case Brief,” dated January 7, 2020 (GOK Case Brief); *see also* Dongbu’s Letter, “Dongbu’s Case Brief,” dated January 8, 2020 (Dongbu Case Brief).

¹⁰ See Petitioners’ Letter, “Nucor’s Rebuttal Brief,” dated January 17, 2020 (Petitioners Rebuttal Brief); *see also* Hyundai Steel’s Letter, “Hyundai Steel Rebuttal Brief,” dated January 17, 2020 (Hyundai Steel Rebuttal Brief); Dongbu’s Letter, “Rebuttal Brief,” dated January 17, 2020 (Dongbu Rebuttal Brief); and GOK’s Letter, “Rebuttal Brief,” dated January 17, 2020 (GOK Rebuttal Brief).

¹¹ See Memorandum, “Briefing Schedule for Upstream Subsidy on Electricity,” dated February 6, 2020.

¹² See Petitioners’ Letter, “Corrosion-Resistant Steel Products from the Republic of Korea: Case Brief of United States Steel Corporation and Nucor Corporation,” dated February 13, 2020 (Petitioners Upstream Brief); *see also* GOK’s Letter, “Administrative Review on Certain Corrosion-Resistant Steel Products from the Republic of Korea: Rebuttal on the Petitioners’ Case Brief of the Upstream Subsidy Case,” dated February 20, 2020 (GOK Upstream Rebuttal); Hyundai Steel’s Letter, “Certain Corrosion-Resistant Steel Products from the Republic of Korea, Case No.C-580-879: Hyundai Steel Upstream Subsidy Rebuttal Brief,” dated February 20, 2020 (Hyundai Steel Upstream Rebuttal); and Dongbu’s Letter, “Certain Corrosion-Resistant Steel Products from the Republic of Korea, Case No. C-580-879: Dongbu Upstream Subsidy Rebuttal Brief,” dated February 20, 2020 (Dongbu Upstream Rebuttal).

¹³ See Memorandum, “Certain Corrosion-Resistant Steel Products from the Republic of Korea: Extension of Deadline for Final Results of Countervailing Duty Administrative Review,” dated December 30, 2019.

VII. 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 8-9.

B. Attribution of Subsidies

Commerce has made no changes to the methodologies used in the *Preliminary Results* for attributing subsidies. No issues were raised by interested parties in case briefs that would lead us to reconsider our preliminary finding regarding the attribution of subsidies. For a description of the methodologies used for these final results, *see* the *Preliminary Results* and accompanying Preliminary Decision Memorandum at 9-10.

C. Benchmark Interest Rates

Commerce made no changes to benchmarks or discount rates used in the *Preliminary Results*. We addressed the comments raised by interested parties at Comment 8. For a description of the benchmarks and discount rates used for these final results, *see* the *Preliminary Results* and accompanying Preliminary Decision Memorandum at 10-11.

D. Creditworthiness

In accordance with 19 CFR 351.505(a)(6)(i), Commerce continues to find that Dongbu was uncreditworthy during the POR and the year(s) in which Dongbu had received restructured long-term loans from the government policy banks and restructured long-term debt held by government policy banks. Parties did not comment on this issue since the issuance of the *Preliminary Results*. For a description of our analysis used for the final results, *see* the *Preliminary Results*.¹⁴

E. Equityworthiness

In the *Preliminary Results*, we found that Dongbu's equity infusions were consistent with the usual investment practice of private investors, and there was no benefit from Dongbu's debt-to-equity conversions.¹⁵ Parties have raised comments on this issue; *see* Comment 11. For the final results, we continue to find that Dongbu did not benefit from the debt-to-equity conversions. The record continues to show that private commercial banks: (1) purchased a significant

¹⁴ *See* Preliminary Decision Memorandum at 14-15.

¹⁵ *Id.*

percentage of the shares of the debt that were converted to equity; and (2) paid the same per share price as the government-controlled policy banks.

F. 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.

VIII. Analysis of Programs

A. Programs Determined to be Countervailable

1. Dongbu's Debt Restructuring

Commerce made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results. *See* Comments 7-10.

Dongbu: 7.16 percent *ad valorem*

2. Korea Development Bank (KDB) and Industrial Base Fund (IBF) Short-Term Discounted Loans for Export Receivables

Commerce made changes to the *Preliminary Results* regarding this program on Dongbu.

Dongbu:¹⁶ Less than 0.005 percent
Hyundai Steel: Not used

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

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

Dongbu: Not used
Hyundai Steel: 0.02 percent *ad valorem*

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

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

¹⁶ Rates are less than 0.005 percent and therefore not measurable, consistent with Commerce's practice. *See, e.g., Large Diameter Welded Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 84 FR 6367 (February 27, 2019), and accompanying Issues and Decision Memorandum (IDM).

Dongbu: Not used
Hyundai Steel: 0.02 percent *ad valorem*

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

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

Dongbu: Not used
Hyundai Steel: 0.05 percent *ad valorem*

6. Tax Deduction Under Restriction of Special Taxation Act (RSTA) Article 26

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

Dongbu: Not used
Hyundai Steel: 0.28 percent *ad valorem*

7. Electricity Discounts under Trading of Demand Response Resources (DRR) Program

Commerce made no changes to the *Preliminary Results* regarding this program. *See* Comment 5.

Dongbu:¹⁷ Less than 0.005 percent
Hyundai Steel: 0.06 percent *ad valorem*

8. Modal Shift Program

Commerce made no changes to the *Preliminary Results* regarding this program. *See* Comment 6.

Dongbu: Not used
Hyundai Steel: 0.01 percent *ad valorem*

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

Hyundai Steel

1. Provision of Port Usage Rights at the Port of Incheon
2. Hyundai Steel's Acquisition of Suncheon Land
3. KEXIM Bank Import Financing
4. KEXIM Short-Term Export Credits
5. KEXIM Export Factoring

¹⁷ Rates are less than 0.005 percent and therefore not measurable.

6. KEXIM Export Loan Guarantees
7. KEXIM Loan Guarantees for Domestic Facility Loans
8. KEXIM Trade Bill Rediscounting Program
9. KEXIM Overseas Investment Credit Program
10. KDB and IBK Short-Term Discounted Loans for Export Receivables
11. Loans under the Industrial Base Fund
12. K-SURE Export Credit Guarantees
13. K-SURE Short-Term Export Credit Insurance
14. Long-Terms Loans from KORES and KNOC
15. Clean Coal Subsidies
16. GOK Subsidies for “Green Technology R&D” and its Commercialization
17. Support for SME “Green Partnerships”
18. Tax Deduction under RSTA Article 10(1)(1)
19. RSTA Article 10(1)(2)
20. RSTA Article 11
21. RSTA 104(14)
22. RSLTA Articles 19, 31, 46, 84, LTA 109, 112, and 137
23. Tax Reductions and Exemptions in Free Economic Zones
24. Grants and Financial Support in Free Economic Zones
25. Sharing of Working Opportunities/Employment Creating Incentives
26. R&D Grants under ITIPA. *See* Comment 2.
27. GOK Infrastructure Investment at Incheon North Harbor
28. Machinery & Equipment (KANIST R&D) Project
29. Grant for Purchase of Electrical Vehicle
30. Power Business Law Subsidies
31. Provision of Liquefied Natural Gas (LNG) for LTAR
32. 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
33. The GOK’s Purchases of Electricity for MTAR
34. Incentives for Compounding and Prescription Cost Reduction
35. Incentives for Usage of Yeongil Harbor in Pohang City
36. VAT Exemptions on Imported Goods
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. Suncheon Harbor Port Usage Fee Exemptions
42. Seoul Guarantee Insurance
43. Subsidies for Pohang Art Festival
44. Other Transactions with Government Entities
45. Fast-Track Restructuring Program
46. Reduction for Sewerage Usage Fee

47. Upstream Subsidy on Electricity. *See* Comment 1.

Dongbu

1. KEXIM Bank Import Financing
2. RSTA Article 25(2): Tax Deductions for Investments in Energy Economizing Facilities
3. RSLTA Article 78: Acquisition and Property Tax Benefits to Companies Located in Industrial Complexes
4. RSTA Article 26: GOK Facilities Investment Support
5. Power Business Law Subsidies
6. Provision of Liquefied Natural Gas (LNG) for LTAR
7. 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
8. KEXIM Short-Term Export Credits
9. KEXIM Export Factoring
10. KEXIM Export Loan Guarantees
11. KEXIM Trade Bill Rediscounting Program
12. KEXIM Overseas Investment Credit Program
13. KDB and IBF Loans under the Industrial Base Fund
14. K-SURE Export Credit Guarantees
15. K-SURE Short-Term Export Credit Insurance
16. Long-Terms Loans from KORES and KNOC
17. Special Accounts for Energy and Resources (SAER) Loans
18. Clean Coal Subsidies
19. GOK Subsidies for “Green Technology R&D” and its Commercialization
20. Support for SME “Green Partnerships”
21. Daewoo International Corporation Debt Work Out
22. Research, Supply or Workforce Development Investment Tax Deduction for “New Growth Engines” under RSTA Article 10(1)(1)
23. Research, Supply, or Workforce Development Expense Tax Deductions for “Core Technologies” under RSTA Article 10(1)(2)
24. Tax Reduction for Research and Human Resources Development under RSTA Article 10(1)(3)
25. Tax Credit for Investment in Facilities for Research and Manpower under RSTA Article 11
26. Tax Deduction for Investment in Environmental and Safety Facilities under RSTA Article 25(3)
27. Tax Program for Third-Party Logistics Operations under RSTA Article 104(14)
28. RSLTA Articles 46, 84
29. Tax Reductions and Exemptions in Free Economic Zones
30. Exemptions and Reductions of Lease fees in Free Economic Zones
31. Grants and Financial Support in Free Economic Zones

32. Modal Shift Program
33. Sharing of Working Opportunities/Employment Creating Incentives
34. R&D Grants under Industrial Technology Innovation Promotion Act
35. GOK Infrastructure Investment at Incheon North Harbor
36. Machinery & Equipment (KANIST R&D) Project
37. Grant for the Purchase of an Electric Vehicle
38. The GOK's Purchases of Electricity from Corrosion-Resistant Steel Producers for MTAR
39. Land Purchase at Asan Bay
40. Dongbu's Exemptions from Payment of Harbor Fees
41. Grants from the Korea Agency for Infrastructure Technology Advancement
42. Upstream Subsidy on Electricity. *See* Comment 1.

IX. Discussion of Comments

Comment 1: Whether the Electricity for LTAR Upstream Subsidy Allegation Confers a Benefit

Petitioners' Case Brief

- Commerce correctly found in its post-preliminary analysis that there is no viable tier i benchmark on the record upon which to measure adequate remuneration as the market is distorted and it is illogical to use these same prices to analyze market principles under a tier iii analysis.¹⁸
- Commerce has interpreted adequate remuneration to mean “fair market value” and a government price having cost recovery and profitability, in and of itself, does not mean the price reflects fair market value. In addition to cost recovery and profitability, a price-setting methodology is only consistent with market principles insofar as it permits the maximization of profit and market share. There is ample evidence on the record that the Korean Power Exchange's (KPX) price-setting methodology does not allow the Korea Electric Power Corporation's (KEPCO) generation subsidiaries (GENCOs) prices to reflect fair market value. For example, based on the merit order system, an electricity generator could reduce its price and it would not result in any competitive advantage and the GENCOs could raise their prices and not lose any sales volume or market share.¹⁹

¹⁸ *See* Petitioners Upstream Brief at 9-11 (citing *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination* Final Affirmative Critical Circumstances Determination, 79 FR 54963 (September 15, 2014) and accompanying IDM at 15; *Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, Final Affirmative Critical Circumstances Determination, 77 FR 17017 (March 23, 2012) and accompanying IDM at 24; *Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 20, 2015) and accompanying IDM (SC Paper) at 41; *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 FR 49935 (July 29, 2016) and accompanying IDM (*Cold-Rolled Steel from Russia*) at 55; and *Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States*, 61 F. Supp. 3d 1306, 1327 (CIT 2015) (citing *Wire Decking from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32902 (June 10, 2010) and accompanying IDM, affirmed by *Maverick Tube Corporation v. United States*, 857 F3d 1353 (Federal Circuit 2017)).

¹⁹ *Id.* at 12-15 (citing *Policy Bulletin – Policies Regarding the Conduct of Changed Circumstances Reviews of the Countervailing Duty Order on Softwood Lumber From Canada*, 68 FR 37457 (June 24, 2003) (Lumber Policy

- The GENCOs' receipt of a higher rate of return than KEPCO, their affiliated electricity distributor, is irrelevant and a proper analysis would be to compare the rate of return among the GENCOs, Independent Power Producers (IPPs) and other independent generators.²⁰
- The above comparison should also take into account public statements from Korea Hydro & Nuclear Power Co., Ltd. In its 2018 Offering Circular, the company indicated the downward adjustment of the adjusted coefficient in 2017 contributed to a decrease in its revenue compared to 2016. Further, the decrease in the average unit price of electricity sold in early 2018 was mainly due to a decrease in the adjusted coefficient applicable to nuclear energy.²¹
- The regulations that require KEPCO to correct for the losses incurred by GENCOs indicate that the Korean wholesale electricity market is not consistent with market principles.²²
- Citing to *SC Paper*, petitioners argue Commerce's practice is to use a tier iii benchmark to measure adequate remuneration. As Commerce did not collect sufficient cost information on the record to construct a benchmark, the IPPs prices from KPX would serve as viable tier iii benchmarks.²³
- The alleged Electricity for Less Than Adequate Remuneration (LTAR) Upstream Subsidy has also met the statutory requirements in terms of financial contribution and specificity. On this basis, Commerce has evidence on the record to find this alleged program provides a countervailable upstream subsidy to subject merchandise producers.²⁴

GOK Rebuttal Brief

- Public utility markets, such as electricity, are mono- or oligopolistic regulated markets and do not exhibit open and competitive characteristics. Therefore, as upheld in several U.S. courts, the electricity market does not need to have electricity generators maximize profits for pricing to reflect a fair return on investment.²⁵
- Commerce does not have a practice that requires the use of a tier iii benchmark.²⁶
- The record evidence demonstrates that KPX prices are based on market principles and calculation of a benchmark price is not necessary under the tier iii analysis. Moreover,

Bulletin); *Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act*, 68 FR 37125, 37132 (June 23, 2003) (*Privatization Practice FR*); *Light-Walled Rectangular Pipe and Tube from People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008) and accompanying IDM (*LWRP from China*) at Comment 7; and *Nucor Corp. v United States* 927 F.3d 1243 (Fed. Cir. 2019) (*Nucor*)).

²⁰ See Petitioners Upstream Brief at 15.

²¹ *Id.* at 16, n.31.

²² *Id.* at 16-17.

²³ *Id.* at 17-22 (citing *SC Paper*).

²⁴ *Id.* at 22-26.

²⁵ See GOK Upstream Rebuttal at 1-5 (citing US Code § 824d; *Alabama Electric Cooperative, Inc. v. FERC*, 684 F.2d 20, 27 (District of Columbia Circuit 1982); *Bluefield Co. v. Pub. Serv. Comm.*, 262 U.S. 679, 690 (1923); *Hope, FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 604 (1944); *Potomac Edison Co. v. Pub. Serv. Comm.*, 279 Md. 573, 369 A.2d. 1035 (1977); and *Nucor*, 927 F.3d at 1254-55).

²⁶ *Id.* at 5-7 (citing *Arcelormittal USA v. United States*, Slip-Op. 18-121 (CIT 2018) at 14; *Silicon Metal from Australia: Final Affirmative Countervailing Duty Determination*, 83 FR 9834 (March 8, 2018) (*Silicon Metal from Australia*) and accompanying IDM at 10-11; and *Melamine from Trinidad and Tobago: Final Affirmative Countervailing Duty Determination*, 80 FR 68849 (November 6, 2015) and accompanying IDM at 10).

Commerce has stated IPP prices are not comparable and, thus, cannot be used as tier iii benchmarks.²⁷

- Even if a benefit is found for the alleged subsidy, the petitioners' allegation with respect to financial contribution and specificity does not meet the statutory requirements. Moreover, the alleged subsidy would not confer a competitive benefit, as defined in section 771A of the Act, and therefore, would not provide an upstream subsidy to subject merchandise producers.²⁸

Hyundai Steel/Dongbu Rebuttal Briefs

- Commerce found that there were no comparable electricity prices in its tier i analysis, not that there was a distortion in the market.²⁹
- Commerce's prior proceedings make plain a tier iii market principles analysis is applicable in this situation.³⁰
- Commerce's tier iii analysis was in accordance with law and Commerce should reject the assertion that adequate remuneration must include the maximization of profit and market share.³¹
- The tier iii analysis is a mechanism to measure adequate remuneration in regulated utility markets, like electricity, where prices are not solely dictated by supply and demand.³²
- *SC Paper* does not represent a practice to always use a tier iii benchmark. It only demonstrates that Commerce has discretion to use a benchmark when analyzing prices under tier iii.³³

²⁷ *Id.* at 8-9.

²⁸ *Id.* at 9-10.

²⁹ See Hyundai Steel Upstream Rebuttal at 4-6; and Dongbu Upstream Rebuttal at 4-6.

³⁰ See Hyundai Steel Upstream Rebuttal at 6-8; and Dongbu Upstream Rebuttal at 6-8. (citing *Countervailing Duties*, 63 FR 65348, 65378 (November 25, 1998) (*CVD Preamble*); *Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 82 FR 16341 (April 4, 2017) and accompanying IDM at 28-33; *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016) and accompanying IDM at 44-49; *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 5310 (June 2, 2016) and accompanying IDM (*CORE Investigation*) at 18-24; *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Affirmative Determination*, 80 FR 68842 (November 6, 2015) and accompanying Preliminary Decision Memorandum at 19; *Welded Line Pipe from the Republic of Korea: Final Negative Countervailable Duty Determination*, 80 FR 61365 (October 13, 2015) (*Welded Line Pipe*) and accompanying IDM at 13-18; *Nucor Corp. v. United States*, 286 F. Supp. 3d 1364, 1375 (CIT 2018); *Maverick Tube Corp. v. United States*, 273 F. Supp. 3d 1293, 1309-10 (CIT 2017) (*Maverick Tube Corp.*); *POSCO v. United States*, 337 F. Supp. 3d 1265, 1282 (CIT 2018); *POSCO v. United States*, 353 F. Supp. 3d 1357, 1372-73 (CIT 2018); and *POSCO v. United States*, 296 F. Supp. 3d 1320, 1360-61 (CIT 2018)).

³¹ See Hyundai Steel Upstream Rebuttal at 8-9; and Dongbu Upstream Rebuttal at 8-9 (citing *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council*, 467 U.S. 837, 842-43 (1984); *Timken Co. v. United States*, 354 F. 3d 1334, 1342 (Fed. Cir. 2004 (quoting *Torrington V.* 3d 1334, 1342 (Federal Circuit 2004) (quoting *Torrington V. United States*, 82 F. 3d 1039, 1044 (Fed. Cir. 1996); and *Nucor* 927 F.3d at 1254-55).

³² See Hyundai Steel Upstream Rebuttal at 9-11; and Dongbu Upstream Rebuttal at 9-11 (citing *Nucor*, 927 F.3d at 1251, note 6; and *Maverick Tube Corp.*, 273 F. Supp. 3d at 1309).

³³ See Hyundai Steel Upstream Rebuttal at 11; and Dongbu Upstream Rebuttal at 11 (citing *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016) and accompanying IDM (*Uncoated Paper from Indonesia*) at 15).

- The IPP prices through KPX are not viable tier iii benchmarks as the prices are not comparable to the GENCOs prices through KPX. Moreover, if Commerce were to compare the prices paid to IPPs and GENCOs, based on fuel type, the record evidence demonstrates they have similar per unit prices and show they are consistent with market principles.³⁴

Commerce's Position: We continue to find that a benefit was not conferred by the alleged Electricity for LTAR Upstream Subsidy for the final results. In determining whether a benefit was conferred, Commerce evaluated the program pursuant to 19 CFR 351.511 and examined KPX pricing within tier i, tier ii and tier iii as provided in 19 CFR 351.511(a).³⁵

First, petitioners argue it is illogical to determine KPX prices³⁶ for electricity to be distorted under tier i and consistent with market principles under tier iii. Under a tier i analysis, Commerce seeks to measure the adequacy of remuneration by comparing a government price to a market-determined price for the good or service resulting from actual transactions.³⁷ In this instance, Commerce preliminarily found that the KPX set prices for nearly all the electricity in Korea, including the prices paid to the IPPs, and therefore that the prices paid to IPPs were not an appropriate benchmarks.³⁸ Hence, there were no comparable prices on the record to use as a tier i benchmark.

The case cites by petitioners misconstrue Commerce's use of a tier iii benchmark to measure adequate remuneration and do not relate to our rationale for not using a tier i benchmark.³⁹ In each of these examples, the petitioners contend Commerce rationalized that use of a market-determined price in a distorted market would essentially be comparing a government price to itself and that would not lead to an adequate measurement of remuneration. To be clear, the price being distorted in these cited examples is the "market" price, not the government price. In this instance, however, Commerce did not find the KPX prices paid to IPPs to be distorted market prices.⁴⁰ Our analysis concluded the GENCOs and the IPPs participated in the same KPX pricing system and its structure did not allow comparability between the prices paid to the two groups.⁴¹ The *CVD Preamble* already contemplated a possibility where there may not be prices available at tier i and tier ii. In those circumstances, we can evaluate the government price in the context of market principles under tier iii.⁴² Under tier iii, our focus is on whether the government price was established in accordance with market principles rather than how the government price compares with a domestic or world market-determined price. Therefore, there

³⁴ See Hyundai Steel Upstream Rebuttal at 12; and Dongbu Upstream Rebuttal at 12.

³⁵ See Upstream Analysis Memorandum at 5-8.

³⁶ *Id.* at 8 (nearly all of the electricity generated within Korea is sold through KPX to one distributor, KEPCO).

³⁷ See 19 CFR 351.511(a)(2)(i).

³⁸ See Upstream Analysis Memorandum at 6.

³⁹ See Petitioners Upstream Brief at 10, and n.15 and 16.

⁴⁰ See Upstream Analysis Memorandum at 6

⁴¹ *Id.*

⁴² See *CVD Preamble*, 63 FR at 65378 ("In situations where the government is clearly the only source available to consumers in the country, we normally will assess whether the government price was established accordance with market principles." Where the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles...In our experience, these types of analyses may be necessary for goods or services as electricity...").

is no disconnect in our analysis of the KPX prices under tier i versus tier iii.

The petitioners next argue KPX's price setting mechanism is not consistent with market principles (*i.e.*, tier iii) as the mechanism sets prices that do not reflect fair market value, which should include the maximization of profit and market share.⁴³ We note that section 771(5)(E)(iv) of Act states "the adequacy of remuneration shall be determined in relation to the prevailing market conditions for a good or service being provided...Prevailing market conditions include price, quality, availability, marketability, transportation and other conditions of purchase of sale." Moreover, 19 CFR 351.511(a)(2) sets out how adequate remuneration is defined and lays out the three-tiered analysis to measure the extent a benefit exists.

Commerce reviewed and verified: (1) KPX's methodology used to forecast demand; (2) KPX's methodology to set the system marginal price; (3) the electricity generator's reporting requirements to establish variable and fixed costs; and (4) the underlying methodology to determine the electricity generator's rates of return and the adjusted coefficient.⁴⁴ KEPCO's tariff rates applicable to its customers are approved by the Ministry, Trade, Industry and Energy (MOTIE).

As noted in the Upstream Analysis Memorandum, the KPX bidding process looks at demand on an hourly basis and establishes the price paid for the hour on a merit order system.⁴⁵ Under this process, an electricity generator increasing capacity could increase its market share, an electricity generator lowering its marginal price below that of a competitor with a high capacity could gain market share, and a GENCO who has a high marginal price and establishes the system marginal price could be priced out of the market by another electricity generator that lowers its marginal price and takes its place and fulfills the balance of the hourly demand, pushing the GENCO outside the purchase order hour.⁴⁶

The petitioners posit several reasons why prices set by the KPX bidding process in the Korean electricity market may not represent fair market value or market principles, but all of the petitioners' reasons are speculative in nature.⁴⁷ For example, the petitioners claim that the system is not market-based because, they allege, there is no reason for generators to sell electricity well below the competitor with the next lowest price, as reducing one's electricity price would not result in increased market share or sales; indeed, according to the petitioners, every single GENCO could raise its prices and not lose any sales volume or market share.⁴⁸ However, the petitioners have not addressed the prevailing market of the Korean electricity market as it pertains to the: (1) structure of the KPX system; (2) varying reporting data that is part of the variable costs; (3) the electricity generators submission of financial data (including

⁴³ See Petitioners Upstream Brief at 11-15.

⁴⁴ See Upstream Analysis Memorandum at 7-8; *see also* GOK Verification Report at 3-6.

⁴⁵ See Upstream Analysis Memorandum at 3.

⁴⁶ *Id.* at 4, n.25 (examples of per unit prices from GENCOs based on fuel types); *see also* GOK's August 5, 2019 Upstream Subsidy Questionnaire Response (GOK's August 5, 2019 USQR) at 10 ("Generation units whose variable costs exceed the system marginal price for a given hour do not receive purchase orders of electricity for such hour.").

⁴⁷ See Petitioners Upstream Brief at 13-16.

⁴⁸ *Id.* at 14-15.

costs); (4) weight average cost of capital calculation; (5) adjusted coefficient; and (6) other standardized formulas used in KPX's price setting.⁴⁹

Petitioners further their argument with regard to the maximization of profit and market share not equating to cost recovery and profit with references to the Lumber Policy Bulletin, *Privatization Practice FR, LWRP from China*, and *Nucor*.⁵⁰ As an initial matter, we note the Lumber Policy Bulletin has not been adopted by Commerce and the current CVD order on *Certain Softwood Lumber Products from Canada* applied our benchmark regulations (*i.e.*, 19 CR 351.5111(a)(2)(i)).⁵¹ In *LWRP from China*, the respondents requested a tier iii analysis for a hot-rolled steel (HRS) producer.⁵² However, Commerce only determined the HRS producer's profitability was not relevant in the context of the tier i analysis and subsequently used a tier ii benchmark.⁵³ Thus, the issue of market principles under tier iii was never addressed in *LWRP from China* as Commerce was able to find a tier ii world market price for HRS, an input that is globally traded and does not have the limitations of the Korean electricity market that may necessitate a tier iii analysis.⁵⁴

In *Nucor*, the dissenting opinion did not state that cost recovery is not synonymous with fair market value, but that cost recovery, in this instance, should be defined and explained in light of the statutory requirement under section 771(5)(E)(iv) of the Act.⁵⁵ In this instance, Commerce has evaluated the Korean electricity market as it pertains to the generation of electricity and how the GENCOs receive remuneration for the generation of electricity within Korea. The laws, regulations, economic rationale and submitted cost and other required data have been examined and analyzed pursuant to the statute and regulations in determining that KPX's prices, through the price-setting mechanism and cost, are consistent with market principles.⁵⁶ Finally, in

⁴⁹ See GOK Verification Report at 4-6; see also Upstream Analysis Memorandum at 7-8.

⁵⁰ See Petitioners Upstream Brief at 13-14.

⁵¹ See *Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51814 (November 8, 2017) and accompanying IDM at 104 ("The {Lumber Policy Bulletin} was a preliminary document, through which comments were solicited from the public pertaining to proposed policies for Canadian provinces to move to market-based systems of timber sales. Those proposed policies, however, were never adopted by the Department...Rather, consistent with the Department's practice we have thoroughly evaluated the record evidence to reach a finding on the market conditions existing within a provincial stumpage system pursuant to the framework set forth in 19 CFR 351.511(a)(2)(i).").

⁵² See *LWRP from China*, IDM at 33.

⁵³ *Id.* at 36-37.

⁵⁴ See *CVD Preamble*, 63 FR at 65377-78.

⁵⁵ See *Nucor*, 927 F.3d at 1258 ("The majority does not explain what 'familiar standards of cost recovery' means or how they are consistent with the statutory requirement that price setting be in accordance with prevailing market conditions. The majority constructs...").

⁵⁶ *Id.*, 927 F.3d at 1254-55 ("In our analysis rejecting the government's broad position, we have decided that nonpreferentiality of the sort the government stresses is insufficient to meet the statutory standard of adequate remuneration, which, along with its implementing regulation, requires ensuring that the government authority's price is not too low considering what the authority is selling. That ruling is significant but limited in constraining Commerce. We readily recognize that such a standard, while excluding the government's broad preferentiality position potential, leaves a large range of potential implementation choices. One need only look outside the present statutory context to the familiar rate-regulation context to see the great variety of methodologies used over time to ensure that rates of a monopoly provider are not too low, some directly focused on value (such as "fair value"), some on various measures of "cost" (which may reflect value). Commerce has considerable *prima facie* leeway to make a reasonable choice within the permissible range, and properly justify its choice, based on the language and policies of

Privatization Practice FR, Commerce stated that it does consider profit maximization as a criterion in evaluating a privatization for fair market value. However, we also stated that, in the case of privatization, none of the factors listed, including profit maximization, are dispositive and all relevant facts and circumstances of a privatization will be considered.⁵⁷ Although we are not examining a privatization, we have considered all relevant facts and considerations in our analysis, and petitioners have provided no support that maximization of profit and market share is the main factor that should inform our tier iii analysis or determine if a good is provided for less than adequate remuneration.⁵⁸

The petitioners also argue the GENCOs' receiving a higher rate of return than their affiliated electricity distributor, KEPCO, is irrelevant and a proper analysis would be to compare the rate of return among the GENCOs, IPPs and other independent generators.⁵⁹ Commerce's regulations do not call for a tier iii analysis to be a strict comparison of rates of returns or to require that an entity absolutely maximize its returns; rather the regulations state that such rate of return ought to be "sufficient to ensure future operations."⁶⁰ The GOK has provided information on the record concerning its rate of return methodology or weighted average cost of capital (WACC) formula for the KPX pricing that provides a fair market return on capital.⁶¹ The petitioners do not provide any rationale for why a comparison of the rates of return across all electricity generators would inform a tier iii benchmark analysis. Under a tier iii market principles analysis, Commerce examined KPX prices and the relevant price setting mechanism. As part of the review, we have analyzed and verified the WACC formula operates within the KPX pricing. We also confirmed how the KPX pricing in place recognizes and accounts for the higher risk to return on investment associated with the GENCOs than that of their affiliated distributor, KEPCO, and accounts for this in the calculation of the adjusted coefficient. We have also confirmed that the costs and other financial data submitted by the electricity generators to KPX and the differences in fuel types are also accounted for in KPX's adjusted coefficient.⁶² The fact that the GENCOs have a higher rate of return in relation to KEPCO is only one of many factors considered in our tier iii analysis.

The petitioners have also mischaracterized language cited from Korea Hydro & Nuclear Power

the countervailing duty statute as well as practicality and other relevant considerations.") (internal citations omitted).

⁵⁷ See *Privatization Practice FR*, 68 FR at 37131 ("We will generally not consider any one factor in itself to be dispositive, but will consider all the relevant facts and circumstances of a privatization to determine whether the sales price was a fair market value.").

⁵⁸ See Upstream Analysis Memorandum.

⁵⁹ See Petitioners Upstream Brief at 15-16.

⁶⁰ See *CVD Preamble*, 63 FR at 65378 ("Paragraph (a)(2)(iii) provides that, in situations where the government is clearly the only source available to consumers in the country, we normally will assess whether the government price was established in accordance with market principles. Where the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government's price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination. We are not putting these factors in any hierarchy, and we may rely on one or more of these factors in any particular case. In our experience, these types of analyses may be necessary for such goods or services as electricity, land leases, or water, and the circumstances of each case vary widely.").

⁶¹ See GOK Initial Response at 20 and 34-35; see also GOK Verification Report at 4-6.

⁶² See Upstream Analysis Memorandum at 8.

Co., Ltd.’s 2018 Offering Circular.⁶³ The same document also notes that the adjusted coefficient was adjusted upward in 2016 which contributed to an increase in revenue in 2016 as compared to 2015.⁶⁴ We find that it is practical to assume that revenue will rise and fall with changes to the adjusted coefficient. However, the petitioners present no other argument or support based on record information, the prevailing market conditions of the Korean electricity market, or the basis of how the adjusted coefficient is calculated. They focus solely on the fact that the adjusted coefficient does not allow the GENCOs to maximize profit. They even go as far to say that “there is no evidence that the IPP’s prices and rates of return are artificially capped in the same way as the GENCOs.” While factually correct, certain IPPs are subject to an adjusted coefficient, which does not include a consideration of the KEPCOs’ rate of return, and petitioners choose to only cast a line between the GENCOs adjusted coefficient methodology and IPPs to couch their profit maximization argument without considering and addressing the rationale and nuance that exists in the Korean electricity market.⁶⁵

The petitioners also misconstrue our statement in the Upstream Analysis Memorandum that KEPCO “will, if necessary reimburse the GENCOs for costs, even if the company is in a loss position.”⁶⁶ The petitioners reliance on KEPCO’s 20-F is misplaced as the conditions articulated by this quote and our statement are not similar.⁶⁷ First, the language from the 20-F pertains to situations where the GENCOs receive excessive profits. As noted above, one of the functions of the adjusted coefficient for the GENCOs is to ensure a fair rate of return between the GENCOs and KEPCO. This statement in KEPCO’s 20-F confirms this concept in that if the GENCOs do receive excessive profits and KEPCO incurs a loss situation, the GENCOs must correct this imbalance. This situation may be effectuated in many ways, one of which could be a modification to the adjusted coefficient. The regulation described in the Upstream Analysis Memorandum has nothing to do with KEPCO being in a loss situation while the GENCOs have received excessive profits. Rather, the regulation merely states that the GENCOs’ costs must be

⁶³ See Petitioners Upstream Brief at 16, footnote 31.

⁶⁴ See Petitioners’ Letter, “Certain Corrosion-Resistant Steel Products from the Republic of Korea: Petitioners’ Responses to Upstream Subsidy Questionnaire,” dated April 15, 2019 at Exhibit 1.

⁶⁵ See GOK’s August 15, 2019 USQR at 11 (“In principle, the adjusted coefficient factor is applied to all nuclear and coal-fired generation units in operation regardless of whether they are operated by KEPCO’s wholly owned generation facilities or private independent power producers, and is set for the generators to receive just amount to recover all costs for generating electricity and a fair amount of investment calculated with the weighted average cost of capital formula (Exhibit USQ-24)”) and 35 (“Adjusted coefficient is using the WACC formula and their cost (both variable and fixed) to generate electricity. There is one more step taken for KEPCO’s wholly owned generation facilities... additionally adjusted to keep the ratio between KEPCO’s fair amount of investment return and KEPCO’s wholly owned generation facilities’ fair amount of investment return”); see also GOK Verification Report at 5 and 6 (“KPX officials provided the following formula to calculate the adjusted coefficient... KPX officials explained the KEPCO, GENCOs, and IPPs provide financial statements, budget and other financial information to the Market & System Development Department. The Department calculates the weighted average cost of capital (WACC) that is the return on investment (ROI) and included in the adjusted coefficients” and “We also observed the costs provided by the GENCOs and KEPCO used in the adjusted coefficient.”).

⁶⁶ See Upstream Analysis Memorandum at 8.

⁶⁷ See Petitioners Upstream Brief at 16 (“{T}he adjusted coefficient must be determined so that the price of electricity sold by our generation subsidiaries to us shall have the effect of ensuring a fair rate of return to us as a standalone entity, which means any imbalance caused by excessive profits taken by our generation subsidiaries to our loss must be corrected.”).

covered by KEPCO, even if in a loss position.⁶⁸ Hence, KEPCO may not purchase electricity generated by the GENCOs at a price that does not fully cover the GENCOs' costs. Again, the statement is not dispositive of market principles or used in determining adequate remuneration, but is one of many factors that establish how the KPX price setting mechanism operates and other factors that may impact the Korean electricity market. In this instance, the regulation, implemented in 2015 lays out how, and the extent to which, the GENCOs shall be compensated if KEPCO is in a loss position.⁶⁹ We note that there is no record evidence that this situation existed in 2017, nor have the petitioners argued that it did. Finally, petitioners' arguments pertaining to the original investigation of the electricity for LTAR allegation is inapposite. The original investigation covered calendar year 2014 and this regulation was implemented in 2015, one year later. Moreover, KEPCO's pricing mechanism was based on cost and a component of KEPCO's cost was the price paid for the electricity through KPX.⁷⁰ So, it is not clear how this regulation invalidates our prior analysis as it was demonstrated through record evidence in the investigation that KEPCO fully covered its costs.⁷¹ KEPCO's costs and underlying methodology were also examined in this administrative review and no discrepancies were found.⁷²

Finally, the petitioners argue Commerce should establish a tier iii benchmark in determining the extent of adequate remuneration in the Korean electricity market and cite to *SC Paper* as support for this exercise.⁷³ With regard to electricity, Commerce has normally conducted a tier iii analysis based on market principles.⁷⁴ When Commerce has applied a tier iii benchmark, it has done so after first concluding that the government price is not consistent with market principles.⁷⁵ With regard to *SC Paper*, Commerce determined the Nova Scotia electricity market

⁶⁸ See Upstream Analysis Memorandum at 8.

⁶⁹ See GOK Verification Report at 6 ("KEPCO will have to compensate the GENCOs for their costs, even if the company is in a loss position.") (citing GOK's August 12, 2019 Translation of Upstream Subsidy Questionnaire Response (QRT) at Exhibit 6 (Article 8.4.2.4.2)).

⁷⁰ See *CORE Investigation*, IDM at 23.

⁷¹ *Id.*

⁷² See GOK Verification Report at 8.

⁷³ See Petitioners Upstream Brief at 18-22.

⁷⁴ See, e.g., *Glycine from Thailand: Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 84 FR 38007 (August 5, 2019) and accompanying IDM at "1. The Provision of Electricity at LTAR," and Comments 3 and 4; *Silicon Metal from Australia* at "1. The Provision of Electricity for Less Than Adequate Remuneration"; *SC Paper*, IDM at "12. GNS Preferential Electricity Rate for Port Hawkesbury"; *Final Negative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*, 67 FR 55810 (August 30, 2002) and accompanying IDM at "C. Provision of Electricity"; *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 50410 (October 3, 2001) and accompanying IDM at "B. Provision of Electricity for Less Than Adequate Remuneration"; *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela*, 62 FR 55014, 55021-22 (October 22, 1997); and *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Trinidad and Tobago*, 62 FR 55003, 55006-07 (October 22, 1997).

⁷⁵ See, e.g., *Glycine from Thailand: Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 84 FR 38007 (August 5, 2019) and accompanying IDM at "1. The Provision of Electricity at LTAR," and Comments 3 and 4; *Cold-Rolled Steel from Russia*, IDM at "1. Provision of Natural Gas for LTAR"; *Uncoated Paper from Indonesia*, IDM at "1. Provision of Standing Timber for Less Than Adequate Remuneration"; *SC Paper*, IDM at "12. GNS Preferential Electricity Rate for Port Hawkesbury"; *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Affirmative Countervailing Duty Determination*, 75 FR 59209 (September 27, 2010) and accompanying IDM at "1. GOI Provision of Standing Timber for Less Than Adequate Remuneration"; *Laminated Woven Sacks from the People's*

applied market principles in setting tariffs under a tier iii analysis.⁷⁶ However, the respondent's rate in the proceeding was established outside this general price setting structure and was determined not to be a market-determined price.⁷⁷ Thus, an alternate was developed using a tier iii benchmark to determine the benefit.⁷⁸ In this instance, the GOK has provided the requested information and it was verified. Our determination has fully examined the extent that KPX's price setting mechanism is consistent with market principles and, thus, no further action is necessary to determine a benefit.

As Commerce has determined there is no benefit, the comments regarding financial contribution, specificity, and the application of the upstream subsidy methodology are moot.

Comment 2: Whether the Subsidy Rate for Industrial Technology Innovation Promotion Act (ITIPA) Grants Was Improperly Calculated

Petitioners' Case Brief

- Commerce deviated from its established calculation methodology for ITIPA grants by treating each individual grant as a separate program, and thus preliminarily determined that the grants did not confer a benefit on Hyundai Steel.⁷⁹
- Commerce's established practice, used in the previous review, is to divide the total grants by the respondent's total sales, which confirms the program conferred a measurable benefit that should be included in Hyundai Steel's subsidy rate.⁸⁰
- The change in calculation appears to be a ministerial error, or if it was a deliberate methodological decision, it was unexplained and without basis.⁸¹
- Because ITIPA is a single subsidy program, the appropriate methodology is to sum the total grants and divide it by the respondent's total sales.⁸²

Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances, 73 FR 35639 (June 24, 2008) and accompanying IDM at "1. Provision of Land for Less Than Adequate Remuneration"; *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 50410 (October 3, 2001) and accompanying IDM at "B. Provision of Electricity for Less Than Adequate Remuneration"; and *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Trinidad and Tobago*, 62 FR 55003, 55006-07 (October 22, 1997).

⁷⁶ See *SC Paper*, IDM at 47 ("As guided by the *CVD Preamble*, we continue to determine that under their normal rate setting philosophy, the NSUARB and NSPI set "above-the-line" rates in accordance with market principles for regulated monopolies when the cost-of-service method is employed (including the FAM). These rates fully incorporate the costs of fuel, generation, transmission, and distribution. Under this method of rate setting, there is a sufficient guaranteed rate of return to ensure future operations because all costs are covered, and, in order to ensure adequate investment, investors are guaranteed a rate of return on equity that is competitive with similarly risky investments available in the market.").

⁷⁷ *Id.* at 48.

⁷⁸ *Id.*

⁷⁹ See *Petitioners Case Brief* at 22-23.

⁸⁰ *Id.* at 23.

⁸¹ *Id.*

⁸² *Id.* at 24.

Hyundai Steel Rebuttal Brief

- The grants reported are not part of a single subsidy program as petitioners argue, and they should not be treated as such. In addition to 19 grants under ITIPA, one grant was received under the Defense Acquisition Program Act (DAPA), and one grant under the Information and Communications Technology Industry Promotion Act (ICTIPA).⁸³
- Further, these grants are applied for and approved by different government agencies and each grant is for a specific R&D project.⁸⁴
- Even if Commerce chooses to sum up the grants, it should not include the grants not received under ITIPA, *i.e.*, grants received under DAPA and ICTIPA.⁸⁵
- Thus, even under petitioners' theory that ITIPA grants are a single subsidy program and if all ITIPA grants were to be summed up, the calculation would result in a benefit of less than 0.005 percent.⁸⁶

GOK Rebuttal Brief

- Commerce's treatment of each ITIPA grant as a separate program is correct and consistent with its practice in other cases.⁸⁷
- Each ITIPA program grant is different and independent in various aspects including its period, companies engaged and the topic. Therefore, Commerce should continue to treat each ITIPA R&D program grant as a separate program.⁸⁸

Commerce's Position: Based on parties' arguments and upon reviewing prior cases, we have revised our calculation methodology for the ITIPA program. The *CVD Preamble* provides guidance in the context of the 0.5 test used for determining whether to allocate or expense non-recurring benefits over time. The *CVD Preamble* states that "we will apply the 0.5 percent test to all benefits associated with a particular program, not each individual benefit, if there are more than one."⁸⁹ Further, the *CVD Preamble* notes that Commerce will calculate an *ad valorem* subsidy rate by dividing the amount of the subsidy benefit by the sales value of the product or products to which the subsidy is attributed.⁹⁰ In addition, when encountering similar situations in the past, Commerce rounded only the total program rates and not individual project rates or individual cross-owned company rates.⁹¹ Therefore, we summed the benefits from grants received during the POR and divided this total benefit by Hyundai Steel's total sales, rounded to four decimal places, resulting in an *ad valorem* rate of zero percent.⁹² We note that in *Flat Rolled Products from Korea*, Commerce determined that two of the three grants received by HYSCO were tied to non-subject merchandise and excluded those grants from the subsidy

⁸³ See Hyundai Steel Rebuttal Brief at 2-3.

⁸⁴ *Id.*

⁸⁵ *Id.* at 3.

⁸⁶ *Id.*

⁸⁷ See GOK Rebuttal Brief at 13.

⁸⁸ *Id.*

⁸⁹ See *CVD Preamble*, 63 FR at 65394.

⁹⁰ *Id.*, 63 FR at 65399.

⁹¹ See *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: Final Affirmative Determination*, 81 FR 49932 (July 29, 2016), and accompanying IDM at Comment 5.

⁹² See Memorandum, "Final Results Calculation for Hyundai Steel Company," dated concurrently with this Memorandum (Hyundai Steel Final Results Calculation Memorandum).

calculation.⁹³ However, in the instant review, Hyundai Steel reported that the grants received were not tied to any particular product.⁹⁴ Therefore, we did not exclude any of the ITIPA grants.

With regard to the grants reported by Hyundai Steel under DAPA and ICTIPA,⁹⁵ for this administrative review, Hyundai reported DAPA and ICTIPA as separate programs from ITIPA. Nothing on the record of this administrative review contradicts Hyundai Steel's reporting that these are separate programs. Therefore, we have not included these grants under the ITIPA program, but rather as separate R&D grants. Using the same methodology described above, we calculated a separate rate each for DAPA and ICTIPA which resulted in *ad valorem* rates of zero percent.⁹⁶

Comment 3: Whether Tax Credit Programs Under the RSTA Meet the Specificity Requirement

GOK Case Brief

- Commerce's preliminary finding that the tax credit under RSTA Article 26 is specific is erroneous. The GOK has explained that the program is not regionally specific as its purpose is to encourage investments into Korea regardless of its region.⁹⁷
- The GOK did not limit benefits to enterprises located within designated geographical regions, but rather benefits are open to all enterprises in Korea except for those in a very small portion of territory, *i.e.*, the Seoul Metropolitan Area. Enterprises in the Seoul Metropolitan Area are ineligible because that region is overcrowded. Thus, this program is not countervailable.⁹⁸
- With respect to tax credits under RSTA 25(2) and 25(3) preliminarily found to be *de facto* specific, Commerce's interpretation of "actual recipients are limited in number" in section 771(5A)(D)(iii)(I) of the Act is not in accordance with the United States Court of International Trade (CIT) or the Statement of Administrative Action on the Agreement on Subsidies and Countervailing Measures (SAA).⁹⁹
- For instance, the CIT has stated that discounts provided under the Voluntary Curtailment Adjustment program in another proceeding¹⁰⁰ were distributed to a large number of customers, across a wide range of industries, and this finding was based on information provided by the GOK that 190 customers received benefits.¹⁰¹ Commerce's interpretation of the phrase "actual recipients are limited in number" in section 771(5A)(D)(iii)(I) of the Act is

⁹³ See *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review*; 2011, 78 FR 55241 (September 10, 2013) (*Flat Rolled Products from Korea*) and accompanying PDM at 19.

⁹⁴ See Hyundai Steel's January 4, 2019 Initial Questionnaire Response (Hyundai Steel's January 4, 2019 IQR) at Exhibit D-22.

⁹⁵ *Id.* at 34.

⁹⁶ See Hyundai Steel Final Results Calculation Memorandum.

⁹⁷ See GOK Case Brief at 10-11.

⁹⁸ *Id.* at 11.

⁹⁹ *Id.*

¹⁰⁰ See *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 64 FR 73176 (December 29, 1999) (*Steel Plate from Korea*) (with regard to the Voluntary Curtailment Adjustment program).

¹⁰¹ See GOK Case Brief at 11-12 (citing *Bethlehem Steel v. United States*, 140 F. Supp. 2d 1354 (CIT 2001)).

not in accordance with the interpretation of the CIT.¹⁰²

- In another instance, with respect to a tax program which allowed a deduction of 200 percent of training expenses from taxable income,¹⁰³ the CIT expressly took the opinion that the tax laws are not subsidies to the taxpayer if their terms are generally available. Even though the court disregarded the “generally available” theory, it recognized an exception regarding that tax program, stating that laws of taxation do not become subsidies to the taxpayer when they present equal opportunities to reduce the exaction.¹⁰⁴
- The CIT has also implied that such things as public highways and bridges, as well as tax credits for expenditures on capital investment, if available to all industries and sectors, shouldn’t be determined to be *de facto* specific.¹⁰⁵
- The SAA also implies that *de facto* specificity should not be found if the actual users of the program are too large in number to reasonably be considered a specific group. Thus, according to the SAA, Commerce needs to consider whether the number of enterprises or group of enterprises is small enough to be considered specific.¹⁰⁶
- Based on the CIT’s opinions above and the SAA, Commerce should not determine that the various RSTA tax credit programs are *de facto* specific solely relying on the actual number of recipients, and should not compare the number of recipients who used a program to the total number of tax returns filed.¹⁰⁷

Petitioners did not comment on this issue.

Commerce’s Position: We disagree with the GOK’s contention that the RSTA Article 26 program is not regionally specific. Similar to *Refrigerators from Korea*¹⁰⁸ and *Washers from Korea*,¹⁰⁹ we continue to find that this program is regionally specific under section 771(5A)(D)(iv) of the Act. The CIT sustained our findings on this issue in the *Washers from Korea* investigation.¹¹⁰ The GOK contends that the program does not limit benefits to enterprises located within designated geographical regions, but rather benefits are open to all enterprises in Korea except for a very small portion of territory, *i.e.*, the Seoul Metropolitan Area. However, the geographical size of the landmass outside of the Seoul Metropolitan Area is not relevant to our decision, so long as the GOK designates that enterprises in a geographical region (*i.e.*, the Seoul Metropolitan Area) are excluded from these benefits. The percentage or respective size of land mass bears no relationship to regional specificity, or to the percentage of economic activities excluded under this program. Thus, we continue to find that the GOK

¹⁰² *Id.*

¹⁰³ See *Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders; Certain Steel Products from South Africa*, 47 FR 39379, 39380 (September 7, 1982) (*Steel from South Africa*) (with regard to the Employee Training Program).

¹⁰⁴ See GOK Case Brief at 12 (citing *Bethlehem Steel v. United States*, 590 F. Supp. 1237 (CIT 1984)).

¹⁰⁵ *Id.* at 12-13 (citing *Carlisle Tire & Rubber Co. v. United States*, 564 F. Supp. 834 (CIT 1983)).

¹⁰⁶ *Id.* at 13-14.

¹⁰⁷ *Id.*

¹⁰⁸ See *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410 (March 26, 2012) (*Refrigerators from Korea*), and accompanying IDM at Comment 3.

¹⁰⁹ See *Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) (*Washers from Korea*), and accompanying IDM at Comment 9.

¹¹⁰ See *Samsung Elecs. Co. v. United States*, 973 F. Supp. 2d 1321, 1328-29 (CIT 2014).

established a designated geographical region to which this program is available, and that subsidies under RSTA Article 26 are specific within the meaning of section 771(5A)(D)(iv) of the Act.¹¹¹

Regarding the GOK's arguments concerning the *de facto* specificity determination made with respect to RSTA tax programs, namely, under RSTA Articles 25(2) and 25(3), section 771(5A)(D)(iii)(I) of the Act states that a subsidy is specific as a matter of fact if the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number. Further, section 771(5A) of the Act states that "any reference to an enterprise or industry is a reference to a foreign enterprise or industry and includes a group of such enterprises or industries." The SAA states that "{t}he Administration intends to apply the specificity test in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy."¹¹² Therefore, in light of the SAA, the specificity provision in section 771(5A)(D)(iii)(I) of the Act is intended to capture those subsidies that are not broadly available and widely used throughout an economy. In order to determine whether these RSTA tax credits are broadly available and widely used throughout an economy as contemplated by the SAA, we examined the nominal number of recipients of these RSTA tax incentives, other than those determined to be either regionally specific or *de jure* specific, and compared the actual number of the users of these RSTA tax incentives to the actual number of corporate tax returns.¹¹³ On this basis, we find that these programs benefitted only a limited number of users, and therefore are *de facto* specific.

The Voluntary Curtailment Adjustment Program in *Steel Plate from Korea* and the Employee Training Program in *Steel from South Africa*¹¹⁴ are not applicable to this case. The SAA makes clear that when Commerce applies the *de facto* test, "the weight accorded to particular factors will vary from case to case."¹¹⁵ The courts have long recognized that Commerce's *de facto* specificity analysis is fact-intensive and case-specific.¹¹⁶ Congress could have established a rigid formula or bright-line test to determine specificity, but it chose not to, given the fact-intensive nature of the inquiry, and the broad variety of circumstances under which subsidy programs operate. The analysis pertaining to the Voluntary Curtailment Adjustment Program in *Steel Plate from Korea* and the Employee Training Program in *Steel from South Africa* are based on the facts on those records involving different programs. Commerce cannot rely on the analysis of those determinations to determine whether a program in this case is *de facto* specific. Rather,

¹¹¹ See, e.g., *LDWP from Korea Final*, IDM at 37-38; *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Portland Hydraulic Cement and Cement Clinker from Mexico*, 48 FR 43063, 43065 (September 21, 1983); GOK's February 13, 2019 Initial Questionnaire Response (GOK's February 13, 2019 IQR) at 44; and Preliminary Decision Memorandum at 19.

¹¹² See SAA at 929. (The SAA "shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act...").

¹¹³ See GOK's February 13, 2019 IQR at 149; see also Preliminary Decision Memorandum at 17-18.

¹¹⁴ See *Steel from South Africa*, 39383 at Comment 11.

¹¹⁵ See SAA at 931.

¹¹⁶ See, e.g., *Geneva Steel v. United States*, 914 F. Supp. 563, 598 (CIT 1996) (*Geneva Steel*) (citing *PPG Industries, Inc. v. United States*, 928 F.2d 1568, 1577 (Fed. Cir. 1991) (*PPG I*), discussing *Cabot Corp. v. United States*, 620 F. Supp. 722, 732 (CIT 1985) ("A finding of *de facto* specificity requires a case by case analysis to determine whether there has been a bestowal upon a specific class.") (internal quotations omitted)).

according to the facts on this record, we determine that this program is *de facto* specific, because the recipients are limited in number.¹¹⁷

Comment 4: Whether Tax Benefits Should Not Be Adjusted for the Special Rural Development Tax

Petitioners' Case Brief

- Commerce should not adjust the tax benefits received by Hyundai Steel to account for the Special Rural Development Tax (SRDT).¹¹⁸
- The tax benefit should be calculated using the full benefit amount reported by respondent, and not just 80 percent of the amount, with the other 20 percent being adjusted for the SRDT.¹¹⁹
- The statute provides for certain subtractions, but the SRDT does not fall under one of these bases for an offset.¹²⁰
- Commerce has consistently found that the SRDT does not offset countervailable subsidies. In *Welded Line Pipe*¹²¹ Commerce explained that the SRDT obligation arises only when the exemption is granted and is not a prerequisite to the exemption the way an application fee might be. In *LDWP from Korea Prelim* Commerce did not offset the SRDT.¹²² Also, in the final results of the prior administrative review, Commerce found that the SRDT did not satisfy the statutory definition of an offset and revised its preliminary results calculation to include the full benefit amount.¹²³
- Commerce should continue to calculate the benefit under the tax credit programs using the full benefit and not the value net of the SRDT.¹²⁴

Hyundai Steel Rebuttal Brief

- In the *Preliminary Results* Commerce calculated the tax benefit inclusive of the SRDT.¹²⁵
- However, calculating the tax benefit net of the SRDT is supported by section 771(6) of the Act, as it results in a “loss in the value of the benefit,” which falls within the plain language of the statute as an amount that may be subtracted from the gross countervailable subsidy.¹²⁶
- The petitioners’ argument for Commerce to continue not to offset the SRDT is inconsistent with the statute and the calculation should be revised for the final results.¹²⁷

¹¹⁷ See GOK’s February 13, 2019 IQR at 38 and 149; see also Preliminary Decision Memorandum.

¹¹⁸ See Petitioners Case Brief at 24.

¹¹⁹ *Id.* at 25.

¹²⁰ *Id.*

¹²¹ See *Welded Line Pipe*, IDM at 36-37.

¹²² See *Large Diameter Welded Pipe from the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 30693 (June 29, 2018) (*LDWP from Korea Prelim*) and accompanying PDM at 22.

¹²³ *Id.* at 25-26.

¹²⁴ *Id.* at 26.

¹²⁵ See Hyundai Steel Rebuttal Brief at 4.

¹²⁶ *Id.* at 4-5.

¹²⁷ *Id.* at 5.

Commerce's Position: We agree with petitioners that the SRDT does not qualify as an offset and continue to use the full benefit amount received for the final results.

With regard to Hyundai Steel's arguments, section 771(6) of the Act limits the circumstances under which Commerce may recognize an offset to a subsidy, and thereby reduce the subsidy measured. The Act limits offsets to amounts related to application fees, to the loss of value of the subsidy from a deferral required by the government, and to any export taxes, duties or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received. As such, the SRDT does not satisfy the statutory definition of an offset to the countervailable benefit conferred. The application of the SRDT is a consequence of the exemption of the tax, and the obligation to pay the SRDT arises only when the exemption is granted.¹²⁸ It is not a prerequisite to the exemption. Therefore, we have not considered the SRDT as an offset. Our determination is consistent with the Act and Commerce's practice.¹²⁹

Comment 5: Whether the Trading of Demand Response Resource Program is Countervailable

GOK Case Brief

- Commerce should revisit its conclusion in the *Preliminary Results* that the Demand Response Resource (DRR) program is countervailable.¹³⁰
- The source of payments under the DRR program neither comes from the GOK nor any public entities; rather, KPX runs the program with money collected from electricity consumers.¹³¹
- The program is purely market-driven from its financial perspective, and the GOK or public entities do not make a financial contribution.¹³²
- Any and all electricity users in Korea can participate in the DRR program as long as the relevant conditions set forth in the Rules on Operation of Electric Utility Market (ROEUM) are met, and the KPX has no discretion in determining which company will take the benefit.¹³³
- Therefore, Commerce should find that the DRR program does not constitute a financial contribution, nor is it specific, and hence not countervailable.¹³⁴

Petitioners did not comment on this issue.

¹²⁸ See Hyundai Steel's January 4, 2019 Initial Questionnaire Response (Hyundai Steel's January 4, 2019 IQR) at 18; see also Hyundai Steel's July 17, 2019 Supplemental Questionnaire Response (Hyundai Steel's July 17, 2019 SQR) at 11.

¹²⁹ See *Welded Line Pipe*, IDM at Comment 4; see also *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; Calendar Year 2017*, 84 FR (August 19, 2019) (*CTL Plate 2017 Final*), IDM at Comment 1.

¹³⁰ See GOK Case Brief at 5.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.* at 6.

¹³⁴ *Id.*

Commerce’s Position: We disagree with the GOK and continue to find that this program is countervailable for the final results. In its initial questionnaire response, the GOK provided the legal basis for the program as being Article 31(5) of the Electricity Business Law and Chapter 12 of KPX’s ROEUM.¹³⁵ Further, the GOK stated that the payments made by KPX are received from KEPCO.¹³⁶ Commerce has previously found KEPCO and KPX to each be an “authority” within the meaning of section 771(5)(B) of the Act, and we continue to do so in this review.¹³⁷ In *LDWP from Korea Final*, which covers the same 2017 period as the instant review, Commerce stated:

While the GOK claims that there is no separate budget allocated by the GOK to operate this program and that the source of payments to the aggregators comes from the KPX, in the Preliminary Determination, we found that KEPCO pays KPX to administer this program through funds KEPCO collects from electricity consumers. The GOK further reiterated during verification that funding for this program comes through KEPCO....

Accordingly, because there is no information on the record regarding the source of the funds used by KPX to make payments to the aggregators other than information demonstrating that the funds are passed to KPX from KEPCO, and record evidence supports a continued finding that KEPCO and KPX are authorities, we continue to find that a financial contribution in the form of a direct transfer of funds from KPX is provided to companies participating in this program under section 771(5)(D)(i) of the Act, and that a benefit exists in the amount of the grant provided to Hyundai Steel and SeAH Steel in accordance with 19 CFR 351.504(a).¹³⁸

In the instant review, the DRR program operated in the same manner, and there is no new information or different information with respect to this program on the record of this review.¹³⁹ Therefore, we continue to find that KEPCO and KPX are authorities within the meaning of section 771(5)(B) of the Act, a financial contribution in the form of a direct transfer of funds from KPX is provided under section 771(5)(D)(i) of the Act, and a benefit exists in the amount of the grant provided in accordance with 19 CFR 351.504(a). Further, we continue to find that the program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual recipients were limited in number.¹⁴⁰

Comment 6: Whether the Modal Shift Program Confers a Countervailable Benefit

GOK Case Brief

- The modal shift program was established pursuant to the GOK’s environmental policy, and

¹³⁵ See GOK’s February 13, 2019 IQR at 224-236.

¹³⁶ *Id.* at 228.

¹³⁷ See, e.g., *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review and Rescission of Countervailing Duty Administrative Review, in Part*, 82 FR 39410 (August 18, 2017) (*CTL Plate from Korea 2015*) and accompanying IDM at 20; and *LDWP from Korea Final*, IDM at 35.

¹³⁸ See *LDWP from Korea Final*, IDM at 35-36.

¹³⁹ See GOK’s February 13, 2019 IQR at 224-236.

¹⁴⁰ *Id.* at 234-235; see also *CTL Plate from Korea 2017 Final*, IDM at 7.

not for the GOK's economic interests. The GOK conducted research and benchmarked programs in other countries before adopting this program.¹⁴¹

- Companies would not use this program if they only considered their economic interest. However, they choose to support the good of society and enhance environmental conditions at the expense of their economic interests.¹⁴²
- The GOK compensates 30 percent of a company's research expenses to comply with the policy.¹⁴³ This program does not provide any economic benefits.¹⁴⁴
- It is not appropriate to conclude that the program provides a benefit to recipients given that they suffer from economic losses rather than receiving economic benefits.¹⁴⁵
- According to the dictionary the term "benefit" means "something that produces good or helpful results or effects or that promotes well-being. Commerce should interpret the term "benefit" in section 771(5)(E) of the Act as implicitly embracing the meaning of "better off," in comparison to where no subsidies exist.¹⁴⁶
- Hyundai Steel enjoyed partial compensation for the loss incurred in adhering to the national environmental policy and there was no benefit making Hyundai Steel "better off" than it would otherwise have been. Therefore, Commerce should determine the program does not confer a countervailable benefit.¹⁴⁷

Petitioners did not comment on this issue.

Commerce's Position: As an initial matter, we note that the GOK has not disagreed that this program is intended to assist companies in recouping losses, which are incurred as a result of adhering to the GOK's transportation environmental policies. Through its Sustainable Transport and Logistics Development Act, the GOK provides support to entities, to promote a shift towards a greater use of environment-friendly means of transportation.¹⁴⁸ Rather, the GOK argues that this program is not countervailable because it does not cover all the losses incurred and does not provide an additional benefit to companies that switch from truck to marine transport. When determining whether an alleged program is countervailable, the statute directs Commerce to determine whether there is a subsidy, *i.e.*, a financial contribution is conferred by an authority, which confers a benefit to the recipient, and that the subsidy is specific to an enterprise or industry.¹⁴⁹ Further, the statute does not contemplate that the benefit determination should take into account any secondary effects, such as losses incurred.¹⁵⁰ As described in the *Preliminary*

¹⁴¹ See GOK Case Brief at 6.

¹⁴² *Id.* at 7.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ See GOK's February 13, 2019 IQR at 192-200.

¹⁴⁹ See generally section 771(5) of the Act.

¹⁵⁰ See *Countervailing Duties: Final Rule*, 63 FR 65348, 65361 (November 25, 1998) ("Section 771(5B)(D) of the Act treats the imposition of new environmental requirements and the subsidization of compliance with those requirements as two separate actions. A subsidy that reduces a firm's cost of compliance remains a subsidy (subject, of course, to the statute's remaining tests for countervailability), even though the overall effect of the two government actions, taken together, may leave the firm with higher costs."); see also section 771(5)(C) of the Act (Commerce is "not required to consider the effect of the subsidy in determining whether a subsidy exists.").

Results, Commerce determined first whether the Modal Shift program met the criteria for a countervailable subsidy by analyzing whether it provided a financial contribution, was specific, and whether it conferred a benefit to Hyundai Steel.¹⁵¹ The evidence on the record supports all three criteria, as discussed in the *Preliminary Results*.¹⁵² Therefore, because the GOK did not identify any evidence on the record which refutes our finding in the *Preliminary Results*, we continue to determine that this program is countervailable.

Comment 7: Whether the Non-Government Banks Were Entrusted or Directed to Provide a Financial Contribution to Dongbu through the Debt Restructuring Program

Petitioners' Case Brief

- Commerce should treat all loans and equity infusions provided through the Dongbu's Creditor Financial Institutions' Committee (DSCFIC) as financial contributions because the non-government financial institutions were entrusted and directed to support Dongbu.¹⁵³
- Dongbu's debt restructuring has unfolded in multiple stages, each of which has failed to return the company to sustainable footing. No aspect of Dongbu's debt restructuring is commercially reasonable, and no participant is acting in the manner of a commercial lender or a private investor. Every Korean Won conferred through the debt restructuring should be treated as a financial contribution and countervailed in full.¹⁵⁴
- Dongbu has failed to cooperate to the best of its ability by refusing to provide requested information relevant to the nature of the banks' participation in the DSCFIC under the Corporate Restructuring Promotion Act (CRPA).¹⁵⁵
- Information on the record regarding post-POI developments confirms that continuing to finance Dongbu was commercially irrational, that the GOK has a policy in place to support companies like Dongbu in politically important sectors, and that it in fact imposed these objectives on the decisions of the DSCFIC during the POR.¹⁵⁶

Dongbu Rebuttal Brief

- Commerce's decision to only countervail loans from government banks was correct as there is no financial contribution from private creditors.¹⁵⁷
- Contrary to the petitioners' argument, Commerce's determination that the government-controlled banks had control over the creditors committee by virtue of their majority voting rights alone does not constitute the type of affirmative evidence of entrustment or direction that is required.¹⁵⁸
- There is absolutely no basis to apply adverse inferences to find that the private creditors were entrusted or directed to participate in the voluntary restructuring. Dongbu fully and timely

¹⁵¹ See Preliminary Decision Memorandum at 21.

¹⁵² *Id.*; see also GOK Verification Report at 8-9.

¹⁵³ See Petitioners Case Brief at 7-8.

¹⁵⁴ *Id.* at 7.

¹⁵⁵ *Id.* at 8.

¹⁵⁶ *Id.* at 14.

¹⁵⁷ See Dongbu Rebuttal Brief at 3.

¹⁵⁸ *Id.* at 5.

responded to Commerce's information requests, and Commerce identified no deficiencies with those responses as reflected in the fact that it asked no follow-up questions.¹⁵⁹

- Had there been such deficiencies, Commerce would have been obligated to notify Dongbu of the deficiency and provide a reasonable chance to remedy or explain the deficiency in light of the time limits for completing the review.¹⁶⁰
- There is absolutely no evidence of any entrustment or direction of private banks by the GOK and no legal basis to find that the private banks provided an indirect financial contribution through the provision of restructured loans or via debt-equity swaps.¹⁶¹

Petitioners' Rebuttal Brief

- The record is clear that the Korean government controlled the actions of the creditors committee and that the non-government banks were not acting in accordance with commercial considerations.¹⁶²

Commerce's Position: For these final results, Commerce continues to find that the non-government commercial banks on both the Creditor Bank Committee and the DSCFIC are not "authorities," within the meaning of section 771(5)(B) of the Act and that they were not entrusted or directed by the GOK to provide financial contributions within the meaning of section 771(5)(B)(iii) of the Act.

In the underlying investigation and first administrative review, we determined that non-government-owned banks in the Creditor Bank Committee were private commercial banks and therefore, were not either the government or public entities as defined by section 771(5)(B) of the Act.¹⁶³ Furthermore, we did not find that the dominant voting position of GOK-controlled banks indicated that the private lenders on the Creditor Bank Committee were entrusted or directed to accept the terms of the restructuring package, and we recognized that those private banks accepted those terms voluntarily.¹⁶⁴ In an administrative review, we do not revisit findings of countervailability or non-countervailability that were made in an earlier segment of the proceeding, absent new evidence.¹⁶⁵ Again, there is no new evidence on the record of the instant review that would cause us to reach a different determination. Therefore, we continue to find that these restructured loans from private commercial banks are not financial contributions as defined by section 771(5)(B) or 771(5)(D)(i) of the Act.

¹⁵⁹ *Id.* at 9.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 13.

¹⁶² See Petitioners Rebuttal Brief at 2.

¹⁶³ See *CORE from Korea Final Determination*, IDM at Comment 4; see also *CORE from Korea First Admin Review*, IDM at Comment 7.

¹⁶⁴ See *CORE from Korea Final Determination*, IDM at Comment 4; see also *CORE from Korea First Admin Review*, IDM at Comment 7.

¹⁶⁵ See *Magnola Metallurgy, Inc. v. United States*, 508 F.3d 1349 (Fed. Cir. 2007) (*Magnola*).; see also *PPG Industries, Inc. v. United States*, 978 F.2d 1232 (Fed. Cir. 1992); and *Solar Cells 2012 Final Results*, IDM at 27.

Comment 8: Whether the Restructuring of Dongbu's Existing Loans by GOK-controlled Banks Provided a Financial Contribution to Dongbu

Dongbu Case Brief

- Commerce erred in countervailing bonds and loans (“existing financing”) that were issued prior to the Voluntary Restructuring in July 2014. The existing financing was provided based on ordinary commercial consideration. Dongbu’s creditors also acted in a commercially reasonable manner in agreeing to restructure the existing financing and this decision was consistent with the goal of seeking to minimize their losses and maximize their recovery.¹⁶⁶
- The restructuring of existing financing by Dongbu’s creditors in 2014 provided neither a new financial contribution. The fact that the terms of the existing financing were modified in the context of the Voluntary Restructuring does not result in a new financial contribution. Moreover, the original loans from both GOK and private banks were provided on ordinary commercial terms.¹⁶⁷

Petitioners’ Rebuttal Brief

- Dongbu presented arguments that ignore the fact that Commerce’s longstanding practice is to treat revisions to the terms of original loans as new loans and thus a separate financial contribution.¹⁶⁸
- Commerce’s longstanding practice is to treat revisions to the terms of original loans as new loans and thus a separate financial contribution.¹⁶⁹ Whether the original loans were provided on “commercially reasonable” terms is irrelevant. Commerce should therefore continue to treat any revision to the terms of original loans in Dongbu’s debt workout program as financial contributions.¹⁷⁰
- Dongbu’s assertion that the “existing financing was originally provided based on ordinary commercial considerations” is not supported by the record. The factual circumstances surrounding the original loans have not been investigated or reviewed by Commerce.¹⁷¹

Commerce’s Position: For these final results, Commerce determines that parties presented no new information that would lead to a change from the *Preliminary Results* and we continue to conclude that the loans made by GOK-controlled banks through this program are countervailable. Dongbu’s argument that the original financing was arranged on commercial terms is not relevant, as we are examining the restructuring of “existing financing” as new loans containing new terms.¹⁷²

¹⁶⁶ See Dongbu Case Brief at 1-2.

¹⁶⁷ *Id.* at 4.

¹⁶⁸ See Petitioners Rebuttal Brief at 1 (citing *Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 FR 60639 (October 25, 2007) and accompanying IDM at 38 (*CFS Paper*); and *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003) and accompanying IDM at 20-21 (*DRAM from Korea*)).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 1.

¹⁷¹ *Id.* at 5.

¹⁷² See *CORE from Korea Final Determination*, IDM at Comment 5; see also *CFS Paper*, IDM at 38; and *DRAM*

As an initial matter, we continue to find that the GOK-controlled policy banks (*i.e.*, the KDB, Korea Export-Import Bank (KEXIM), Woori Bank (Woori), Industrial Bank of Korea (IBK) and Korea Financial Corporation (KoFC)) are authorities within the meaning of section 771(5)(B) of the Act.¹⁷³ We note that the new terms of the loans provided by the GOK-controlled banks did not just include the extension of repayment terms and early settlement, but also included a reduction of the interest rates charged by the banks.¹⁷⁴

We found that these restructured loans are new financial contributions as these loans involved new terms including interest rate reduction.¹⁷⁵ We also determined that under this debt restructuring these six authorities provided a financial contribution to Dongbu, as defined under section 771(5)(D)(i) of the Act.¹⁷⁶

Comment 9: Whether the Restructured Loans Provided to Dongbu were Specific

Dongbu Case Brief

- The voluntary restructuring operates in a similar manner as formal bankruptcy proceedings, and it is well settled that Commerce does not treat concessions made by creditors in the context of a formal bankruptcy as specific and countervailable.¹⁷⁷
- Dongbu's choice of going through a voluntary restructuring, as opposed to a formal bankruptcy or corporate workout procedure, was not motivated or influenced by the GOK, but was based on commercial considerations and the recommendations of an independent auditor. There was no GOK program that was specific to Dongbu or to the steel industry.¹⁷⁸
- Absent evidence that the manner in which a voluntary restructuring was carried out was done in a way to provide specific recipients with access to its benefits, there is no reasonable basis for treating concessions made by creditors in the context of a bankruptcy proceeding differently than when such concessions are made in the context of a voluntary restructuring.¹⁷⁹
- The voluntary restructuring is generally available to a wide array of debtors from all industries.¹⁸⁰
- Commerce's interpretation of section 771(5A)(D)(iii)(I) of the Act is much too broad and results in any voluntary restructuring being found to be specific because the number of distressed companies that would be availing themselves of any of the three types of corporate restructuring in Korea is necessarily going to be limited in number.¹⁸¹ The purpose of the specificity requirement is "to differentiate between those subsidies that distort trade by aiding

from Korea, IDM at 20-21.

¹⁷³ See *CORE from Korea Final Determination*; and *CORE from Korea First Admin Review*.

¹⁷⁴ *Id.*

¹⁷⁵ See *CORE from Korea Final Determination*, IDM at Comment 5; see also *CFS Paper*, IDM at 38; and *DRAM from Korea*, IDM at 20-21.

¹⁷⁶ See *CORE from Korea Final Determination*; and *CORE from Korea First Admin Review*.

¹⁷⁷ See *Dongbu Case Brief* at 13.

¹⁷⁸ *Id.* at 16.

¹⁷⁹ *Id.* at 22.

¹⁸⁰ *Id.* at 17.

¹⁸¹ *Id.* at 18.

a specific company or industry, and those that benefit society generally . . . and thus minimally distort trade, if at all.¹⁸²

Petitioners' Rebuttal Brief

- Neither Dongbu nor the Korean government even attempted to establish any legal or quantitative similarities between formal Korean bankruptcies and the *ad hoc* debt restructuring program at issue in this review.¹⁸³
- Commerce's finding that this program is specific because the actual recipients are limited in number is precisely what the statute requires and is the very purpose underlying the *de facto* specificity provisions.¹⁸⁴

Commerce's Position: As we stated in the original investigation, Dongbu was one of a very limited number of companies that went through such a government-assisted restructuring program.¹⁸⁵ This debt restructuring program remains specific to Dongbu as the actual recipients of financing pursuant to restructurings by creditors' councils are limited in number, making this subsidy specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.¹⁸⁶

In the *CORE from Korea Final Determination* and *CORE from Korea First Admin Review*, we found this program specific, and Dongbu has presented no new evidence that would lead us to re-examine this program's specificity.¹⁸⁷ Our position in the *Preliminary Results* still stands, where we found that Dongbu was one of a very limited number of companies that went through restructuring by a creditors' council prior to the POR. The restructuring of Dongbu's debt was not overseen by an independent party.¹⁸⁸ Instead, Dongbu's debt restructuring was controlled by the Creditor Bank Committee, which in turn was controlled by GOK policy banks such as the KDB. We continue to find that because the actual recipients of financing pursuant to restructurings by creditors' councils are limited in number, this subsidy is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.¹⁸⁹

¹⁸² *Id.* at 19.

¹⁸³ See Petitioners Rebuttal Brief at 2.

¹⁸⁴ *Id.*

¹⁸⁵ See *CORE from Korea Final Determination*, IDM at Comment 4.

¹⁸⁶ *Id.*

¹⁸⁷ See *Magnola*, 508 F.3d 1349.

¹⁸⁸ See *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*; 2010, 78 FR 19210, 19212 (March 29, 2013) (Commerce distinguished between a bankruptcy proceeding, which Commerce characterized as "essentially a liquidation process" and other types of "debt workouts" in Korean CVD proceedings that "involved out-of-court corporate restructuring agreements implemented by a body of creditors dominated by government-owned or controlled entities.").

¹⁸⁹ See *CORE from Korea Final Determination*; and *Preliminary Results*.

Comment 10: Whether Commerce Should Use the Interest Rates from Loans provided by Commercial Banks Participating in the Creditor Bank Committee as Benchmarks

GOK Case Brief

- The private commercial banks in the Creditor Bank Committee were not controlled by GOK policy banks, so the loans from private creditors in the Creditor Bank Committee should be used as benchmarks.¹⁹⁰
- Specifically, Commerce should find that the loans from private banks on the Creditor Bank Committee are “comparable commercial loans” and can be used as a “commercial benchmarks” under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(c)(2).¹⁹¹
- Even if we assume that Dongbu was uncreditworthy, the formula found in 19 CFR 351.505(a)(3)(iii) should not be applied to Dongbu’s debt restructuring because what Commerce is benchmarking are loans extended by government-owned banks that already had substantive amount of outstanding loans to Dongbu, and those banks consider different factors when extending new loans.¹⁹²
- Commerce’s regulations provide the legal basis to utilize a benchmarking formula different from the one in 19 CFR 351.505(a)(3)(iii) by stating that “the Secretary *normally* will” use such formula. Consequently, Commerce should use the interest rate adopted by the commercial banks of the Creditor Bank Committee as a benchmark.¹⁹³
- The formula in 19 CFR 351.505(a)(3)(iii) is inapplicable to KDB’s debt restructuring program because this formula assumes the bank has no existing loans when extending the new loan, while KDB already had large amount of loans extended to Dongbu at the time of the debt restructuring.¹⁹⁴

Dongbu Case Brief

- The GOK and private banks agreed to restructure these existing loans on the same terms.¹⁹⁵
- Commerce erroneously disregarded Dongbu Steel’s loans from private creditors as “comparable commercial loans” for purposes of a benchmark under 19 CFR. 351.505(c)(2) on the grounds that these loans were made by banks that were part of the Creditor Bank Committee that was controlled by the GOK-controlled banks. However, there is nothing in the statute or regulations to prevent loans from private banks from meeting the “comparable commercial loans” standard for use as a benchmark.¹⁹⁶
- As in *CFS Paper*, there is no basis to exclude the loans that Dongbu received from private creditor banks as comparable commercial loans.¹⁹⁷ There is no lawful basis for Commerce’s rejection of the interest rates from these private loans as benchmarks. These loans constitute

¹⁹⁰ See GOK Case Brief at 7.

¹⁹¹ *Id.* at 7-8.

¹⁹² *Id.* at 9.

¹⁹³ *Id.* at 9-10.

¹⁹⁴ *Id.* at 10.

¹⁹⁵ See Dongbu Case Brief at 4.

¹⁹⁶ *Id.* at 6.

¹⁹⁷ *Id.* at 12 (citing *CFS Paper*).

comparable commercial loans that Dongbu actually received from private banks and should be used as the benchmark for measuring any benefit in the final results.¹⁹⁸

- Citing to WTO's Panel report in *Korea-Measures Affecting Trade in Commercial Vessels*, Commerce should examine the financing in the context of the financial distress that Dongbu was going through and whether the existing creditors were acting in a commercially reasonable manner.¹⁹⁹
- To facilitate the Voluntary Restructuring, Dongbu and its creditors hired an independent auditor, PricewaterhouseCoopers (PWC), who recommended the terms of Dongbu's Voluntary Restructuring, which the Creditors' council adopted. As part of its report, PWC concluded that the going-concern value of Dongbu was greater than the liquidation value and thus it made commercial sense for the creditors to participate in the Voluntary Restructuring in order to try and maximize their recovery on the existing financing. All the creditors – GOK banks and private banks alike – agreed to restructure the existing financing on the same terms.²⁰⁰

Petitioners' Case Brief

- The regulations state that the Commerce “will not consider a loan ... provided by a government owned special purpose bank, to be a commercial loan” for the purpose of its benefit analysis. The record shows that the GOK resorted to the KDB's policy orientation in the wake of the global financial crisis specifically to provide government financial support to Korean industrial firms like Dongbu.²⁰¹

Petitioners' Rebuttal Brief

- Loans provided by non-government banks in the context of the debt restructuring cannot reasonably be treated as commercial loans that Dongbu could actually obtain on the market, as Commerce's regulations require, and they cannot be used as a benchmark to determine the benefit conferred by the loans from the government banks.²⁰²

GOK Rebuttal Brief

- The restructured loans were made by GOK-controlled banks: (i) in accordance with the advice from PWC with the purpose to maximize its market interest; and (ii) under the same conditions as commercial banks. Therefore, Commerce should find that the loans extended by GOK-controlled banks provided no benefit.²⁰³

Commerce's Position: In the *CORE from Korea Final Determination* and *CORE from Korea First Admin Review*, we did not use restructured loans provided by private banks on the Credit Banker Committee as benchmarks. In this review, Dongbu has presented no new evidence that would lead us to reconsider these findings. The record demonstrates that Dongbu did not obtain any new long-term loans from conventional commercial sources in 2017, other than the

¹⁹⁸ *Id.* at 13.

¹⁹⁹ *Id.* at 4.

²⁰⁰ *Id.* at 6.

²⁰¹ See Petitioners Case Brief at 16.

²⁰² See Petitioners Rebuttal Brief at 1-2.

²⁰³ See GOK Rebuttal Brief at 9.

restructured loans from Dongbu's existing government and commercial banks. Similar to our findings in the underlying investigation and first administrative review, we have not used restructured loans provided by commercial banks on the Creditor Bank Committee as benchmarks, as we found that these private banks' decisions and interest rates were influenced by the GOK-controlled banks, and that these private loans do not reflect credit that would have been available to Dongbu in the marketplace.²⁰⁴ Furthermore, 19 CFR 351.505(a)(3)(iii) states that when an uncreditworthy firm receives government-provided long-term loans, Commerce normally will calculate the interest rate by using an uncreditworthy benchmark. This regulation is applicable here, as Commerce continues to find Dongbu to be uncreditworthy during the POR, pursuant to 19 CFR 351.505(a)(4). Therefore, Commerce used an uncreditworthiness benchmark with an added risk premium, in accordance with 19 CFR 351.505(a)(3)(iii), to measure Dongbu's countervailable long-term debts/loans during the POR.

Because Dongbu was uncreditworthy, we disagree with the arguments of Dongbu and the GOK that it was commercially reasonable for Dongbu's creditors to restructure their loans with the company in 2014. We find that Dongbu's reliance on 19 CFR 351.505(a)(3)(i) which states "in determining if a loan is one that the recipient 'could actually obtain on the market' it 'normally will rely on the actual experience of the firm in question' is misplaced. The regulation actually begins with "{i}n selecting a comparable loan..." Thus, the regulation envisions Commerce selecting a comparable commercial loan in terms of the actual experience of the firm, not the examining the government-provided loan in terms of the actual experience of the firm. In fact, 19 CFR 351.505(2)(ii) and the Preamble explicitly reject the use of a loan provided by a government-owned special purpose bank or a loan provided under a government program to be used as "commercial loan."²⁰⁵

Furthermore, Dongbu's reliance on *Korea-Measures Affecting Trade in Commercial Vessels* to hold that Commerce must determine whether the terms of the restructured loans provided by commercial banks were "commercially reasonable" before disregarding them as potential benchmarks is misplaced. The WTO report cited did not involve the United States. Even if the United States were a party to that dispute, findings of the WTO are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements (URAA). As is clear from the discretionary nature of this scheme, Commerce did not intend for WTO reports to trump automatically replace or override the exercise of Commerce's discretion in applying the statute. Moreover, it is the Act and Commerce's regulations that have direct legal effect under U.S. law, not the WTO Agreements or WTO reports.

The facts on the record of this review differ from the facts in *CFS Paper*. In *CFS Paper*, Commerce did not find the evidence of GOK influence over the decision-making ability of the Korean respondent's Creditors Council at issue.²⁰⁶ Here, we found Dongbu's Creditor Banks Committee was dominated by GOK-controlled policy banks and are authorities under section 771(5)(B) of the Act.²⁰⁷ There is no basis on this record to find that the GOK-controlled

²⁰⁴ See *CORE from Korea Final Determination*; and *CORE from Korea First Admin Review*.

²⁰⁵ See 19 CFR 351.505(2)(ii).

²⁰⁶ See *CFS Paper*, IDM at 43.

²⁰⁷ See *CORE from Korea Final Determination*; and *CORE from Korea First Admin Review*.

and private banks on the Creditor Bank Committee acted in a “commercially reasonable” manner (*i.e.*, seeking to maximize interest income) on the restructured loans without comparing the terms of the renegotiated loans to those of a similar loan provided by a commercial bank. Moreover, the PWC report on the record of this review is identical to that on the record of the LFTV and first administrative review.²⁰⁸ After reviewing the PWC report we found the restructuring of Dongbu’s existing loans provided a financial contribution and benefit to Dongbu. While the PWC report might have evaluated the assets of Dongbu at the time of restructuring, the final terms of the loans were not reflected in the PWC report. Thus, we cannot determine the terms of restructured loans offered by private banks on the Creditor Bank Committee are commercially reasonable simply based on the fact that an outside auditor was involved in the restructuring process.

Comment 11: Whether Dongbu Is Equityworthy and the Debt-to-Equity Swaps should be Countervailed

Petitioners’ Case Brief

- For the final results, Commerce should find that actual private investor prices are not available for the purpose of its benchmark analysis. Given Dongbu’s persistent inability to return to stable financial footing despite multiple rounds of government bailouts, Commerce should find that Dongbu was otherwise unequityworthy and treat the debt-to-equity portion of the debt restructuring as a grant.²⁰⁹
- Private investors were not acting as actual private investors in the debt-to-equity portion of the workout program, and their participation in the workout program was not significant.²¹⁰ Commerce should find that the participating commercial banks do not represent actual private investor prices, even if it does not find that they were entrusted or directed for the purpose of the financial contribution determination.²¹¹
- Commerce should find that Dongbu was unequityworthy pursuant to factors under 19 CFR 351.507(a)(4)(i).²¹²
- Commerce should disregard the PWC reports that Dongbu provided as evidence of the commercial reasonableness of the transactions. The PWC reports are incomplete and otherwise unreliable and should not be used as evidence of equityworthiness.²¹³
- Dongbu’s financial performance confirms that the company was not equityworthy. In the final results, Commerce should therefore treat the entire amount of the equity infusions provided by the debt-to-equity swap portion of the debt restructuring program as the benefit.²¹⁴

²⁰⁸ See Dongbu’s January 4, 2019 Initial Questionnaire Response (Dongbu’s January 4, 2019 IQR) at Exhibit A-15.

²⁰⁹ See Petitioners Case Brief at 15.

²¹⁰ *Id.* at 17-18 (citing *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410 (March 26, 2012) (*Refrigerators from Korea*), and accompanying IDM at 100).

²¹¹ *Id.* at 18.

²¹² *Id.*

²¹³ *Id.* at 19.

²¹⁴ *Id.* at 22.

GOK Rebuttal Brief

- The facts in the record exactly show that all banks constituting the Creditor Bank Committee followed the advice that the PWC prepared through analyzing the Korean market in accordance with the market principles and provided to the members of the creditors committee, in executing the debt-to-equity swaps and debt restructuring. Consequently, both the “debt-to-equity” swaps and “debt restructuring” were prepared and executed in accordance with market principles, thus both should be determined not to be countervailable.²¹⁵
- The fact that none of the commercial banks that were part of the Creditor Bank Committee exercised their opt-out right under the Korean law is strong evidence that Dongbu’s debt-to-equity conversion ratio was within the market range.²¹⁶
- No evidence exists to support that the PWC’s reports are inaccurate and the petitioners are unclear on their assertion of the inaccuracy of the PWC’s report. Consequently, to the contrary of the petitioners’ assertion, the creditors’ decision to trigger the workout program and make further investments in Dongbu with the purpose to maximize the amount of their debt collection was made on a sound and commercially reasonable basis.²¹⁷
- If the workout program was not acceptable from the market participants’ viewpoint, private creditors on the Creditor Bank Committee ought to have exercised their legal opt-out right against other Creditor Bank Committee members and sell their shares.²¹⁸

Dongbu Rebuttal Brief

- Commerce correctly determined that the 2015 and 2016 debt-to-equity swaps provided no countervailable benefit to Dongbu.²¹⁹
- Actual private investor prices were available, and Commerce correctly used them as a benchmark to find that Dongbu received no benefit from the debt-to-equity swaps.²²⁰
- Commerce found that private investor prices were available as a benchmark, and that private investor participation was significant. Therefore, no equityworthiness analysis was done consistent with its regulations and with Commerce’s statement in the first review.²²¹
- Commerce’s decision to find that Dongbu received no benefit from the debt-equity swaps in the *Preliminary Results* was consistent with the decision made in *CFS Paper*.²²²

Commerce’s Position: For these final results, we continue to find that the debt-to-equity swaps in Dongbu’s debt restructuring program did not confer a benefit to Dongbu. No new information has been provided on the record since the *Preliminary Results* that would cause us to reach a different determination. As we explained in the *Preliminary Results*, and consistent with our findings in the underlying investigation and first administrative review, the participating banks for the debt conversions included both GOK-controlled policy banks (*i.e.*, KDB, KEXIM, Woori,

²¹⁵ See GOK Rebuttal Brief at 6.

²¹⁶ *Id.* at 8.

²¹⁷ *Id.* at 9.

²¹⁸ *Id.* at 13.

²¹⁹ See Dongbu Rebuttal Brief at 13.

²²⁰ *Id.* at 14.

²²¹ *Id.*

²²² *Id.* at 20 (citing *CFS Paper*).

IBK, and KoFC),²²³ and private commercial banks (*i.e.*, the Nonghyup Bank, Shihan Bank, Hana Bank, Korea Exchange Bank).²²⁴ In addition, information on the record indicates that private commercial banks: (1) participated in the two equity infusions at issue;²²⁵ (2) paid the same per share price as the government-controlled policy banks;²²⁶ and (3) purchased a significant percentage of the shares of debt that were converted to equity.²²⁷ Because of the private commercial banks actively participated and paid the same price as government banks, we find that Dongbu's equity infusions are consistent with usual investment practice of private investors. The facts on the record of this review differ from the facts in *Refrigerators from Korea*.²²⁸ In *Refrigerators from Korea*, less than half of the private creditors voted in favor of the debt-to-equity conversion, while in this case, all private investors agreed with the debt-to-equity swap rates and participated in the two separate debt-to-equity swaps.²²⁹ Furthermore, the private investors accounted for a significant percentage of the shares and much higher than the private investors' shares in *Refrigerators from Korea*.²³⁰ Therefore, we continue to find there is no benefit from Dongbu's debt-to-equity conversions.

Comment 12: Whether Commerce Correctly Calculated the Benefit to Dongbu from KDB Short-Term Discounted Loans for Export Receivables Program

Dongbu Case Brief

- In the final results and in accordance with 19 CFR 351.525(b)(4)-(5), Commerce should revise its preliminary calculations to include only the benefits from Dongbu's KDB D/A loans on exports of subject merchandise to the United States during the POR.²³¹

Petitioners did not comment on this issue.

Commerce's Position: We agree with Dongbu that the benefit should not include non-subject merchandise and exports to countries other than the United States. For these final results, we have limited the benefit calculation to the exports of subject merchandise to the United States only.²³²

²²³ See *Preliminary Results*, PDM at 14-15; see also GOK's February 13, 2019 IQR at 22.

²²⁴ See *Preliminary Results*, PDM at 14-15.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ See *Refrigerators from Korea*, IDM at Comment 26.

²²⁹ See *Preliminary Results* PDM at 14-15; see also GOK's February 13, 2019 IQR at 22.

²³⁰ See *Preliminary Results* PDM at 14-15.

²³¹ See Dongbu Case Brief at 24.

²³² See Memorandum, "Dongbu Final Analysis Memorandum," dated concurrently with this memorandum.

X. 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

3/10/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance,

Attachment

Scope of the Order

The products covered by this order are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, 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 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 covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice 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:

- (2) 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, and
- (3) 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
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), 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 and high strength low alloy (“HSLA”) steels. 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.

Furthermore, this scope also includes Advanced High Strength Steels (“AHSS”) and Ultra High Strength Steels (“UHSS”), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering 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 in-scope corrosion resistant 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:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin free steel”), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the order may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

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