



C-580-882  
Administrative Review  
POR: 01/01/2017-12/31/2017  
**Public Document**  
E&C/OVI: MYS/YB

June 22, 2020

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

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

**SUBJECT:** Issues and Decision Memorandum for the Final Results of the  
2017 Administrative Review: Certain Cold-Rolled Steel Flat  
Products from the Republic of Korea

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## 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 cold-rolled steel flat products (CRS) 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 no changes to the *Preliminary Results* and post-preliminary results.<sup>1</sup> 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 Less Than Adequate Remuneration (LTAR) Upstream Subsidy Allegation Confers a Benefit
- Comment 2: Whether POSCO Plantec Co., Ltd. (POSCO Plantec) is POSCO’s Cross-Owned Input Supplier
- Comment 3: Whether POSCO Plantec Received Countervailable Benefits Through Its Debt Restructuring Program

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<sup>1</sup> See *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2017*, 84 FR 60377 (November 8, 2019) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM); see also Memorandum, “Post-Preliminary Analysis Memorandum,” dated April 14, 2020 (Post-Prelim Analysis Memorandum).

Comment 4: Whether the Application of Adverse Facts Available (AFA) is Warranted for Sungjin Geotec Co., Ltd.'s (Sungjin Geotec's) Non-Recurring Subsidies Received During the Average Useful Life (AUL) Period

### III. Background

On November 8, 2019, Commerce published the *Preliminary Results* of this review.<sup>2</sup> In the *Preliminary Results*, Commerce indicated it would issue its post-preliminary results on the upstream subsidy on electricity and POSCO Plantec Co., Ltd.'s (POSCO Plantec's) debt workout/restructuring program after the *Preliminary Results*.<sup>3</sup> In the *Preliminary Results*, Commerce also indicated that we would examine Nucor Corporation's (Nucor's) comments on the research and development grants under the Industrial Technology Innovation Promotion Act (ITIPA).<sup>4</sup>

Between December 17, 2019, and January 10, 2020, Commerce requested additional information with respect to the upstream subsidy from the Government of the Republic of Korea (GOK), and the two mandatory respondents, Hyundai Steel Co., Ltd. (Hyundai Steel) and POSCO, to which we received timely responses.<sup>5</sup> On February 7, 2020, the GOK placed on the record the verification report and exhibits regarding the alleged upstream subsidy on electricity from certain corrosion-resistant steel (CORE) products from Korea (C-580-879), as requested by Commerce.<sup>6</sup> Also, between February 14, 2020, and March 23, 2020, Commerce requested and received additional information with respect to the ITIPA grants from POSCO and Hyundai Steel.<sup>7</sup>

On April 14, 2020, Commerce released the post-preliminary results memorandum, determining

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<sup>2</sup> See *Preliminary Results*.

<sup>3</sup> See PDM at 3 and 11.

<sup>4</sup> *Id.* at 22; see also Nucor's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Pre-Preliminary Comments," dated October 22, 2019 (Nucor Pre-Prelim Comments) at 3-6. The petitioners in the underlying CVD investigation include: AK Steel Corporation, ArcelorMittal USA LLC, Nucor, Steel Dynamics, Inc., and United States Steel Corporation (U.S. Steel) (collectively, the petitioners).

<sup>5</sup> See GOK's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea, 01/01/2017-12/31/2017 Administrative Review, Case No. C-580-882: The GOK's Response to the Upstream Subsidy Supplemental Questionnaire," dated December 23, 2019; see also Hyundai Steel's Letter, "Cold-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-882: Hyundai Steel Upstream Subsidy Supplemental Questionnaire Response," dated January 10, 2020; and POSCO's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-882: POSCO's Upstream Subsidy Supplemental Questionnaire Response," dated January 10, 2020.

<sup>6</sup> See GOK's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea, 01/01/2017-12/31/2017 Administrative Review, Case No. C-580-882: Submission of Verification Documents," dated February 7, 2020, containing Memorandum, "Verification of Information Submitted by the Government of the Republic of Korea for the Alleged Upstream Subsidy," dated January 22, 2020 (GOK Verification Report) and verification exhibits (VEs).

<sup>7</sup> See POSCO's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-882: POSCO's Fourth Supplemental Questionnaire Response," dated March 2, 2020 (POSCO March 2, 2020 SQR); see also POSCO's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-882: POSCO's Fifth Supplemental Questionnaire Response," dated March 9, 2020 (POSCO March 9, 2020 SQR); see also POSCO's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-882: POSCO's Sixth Supplemental Questionnaire Response," dated March 23, 2020 (POSCO March 23, 2020 SQR). See also Hyundai Steel's Letter, "Cold-Rolled Steel Flat Products from the Republic of Korea, Case No. C580-882: Hyundai Steel's ITIPA Supporting Documentation Supplemental Questionnaire Response," dated March 13, 2020.

that Korean CRS producers did not benefit from upstream subsidies in the form of subsidized electricity during the POR and POSCO Plantec is not POSCO's input supplier under our regulations.<sup>8</sup>

Commerce issued a briefing schedule on April 15, 2020, and April 16, 2020,<sup>9</sup> and the petitioners timely filed case briefs on April 21, 2020.<sup>10</sup> On April 24, 2020, POSCO, Hyundai Steel, and the GOK each timely filed rebuttal briefs.<sup>11</sup>

On March 3, 2020, Commerce postponed the final results of review by sixty days until May 6, 2020.<sup>12</sup> On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until June 25, 2020.<sup>13</sup>

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 have made no changes to the *Preliminary Results*.

#### **V. Scope of the Order**

The products covered by this order are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement ("width") of 12.7 mm or greater, regardless of 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

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<sup>8</sup> See Post-Prelim Analysis Memorandum.

<sup>9</sup> See Memorandum, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Briefing Schedule," dated April 15, 2020; *see also* Memorandum, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Extension of Deadline for Rebuttal Briefs," dated April 16, 2020.

<sup>10</sup> See Petitioners' Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Nucor's Case Brief Regarding POSCO," dated April 21, 2020 (Petitioners Case Brief); *see also* Petitioners' Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Case Brief of United States Steel Corporation and Nucor Corporation," dated April 21, 2020 (Petitioners Upstream Brief).

<sup>11</sup> See POSCO's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-882: POSCO's Rebuttal Brief," dated April 24, 2020 (POSCO Rebuttal Brief); *see also* Hyundai Steel's Letter, "Cold-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-882: Hyundai Steel's Rebuttal Brief," dated April 24, 2020 (Hyundai Steel Rebuttal Brief); and GOK's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Rebuttal on the Petitioners' Case Brief of the Upstream Subsidy," dated April 24, 2020 (GOK Rebuttal Brief).

<sup>12</sup> See Memorandum, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Extension of Deadline for Final Results of Countervailing Duty Administrative Review," dated March 3, 2020.

<sup>13</sup> See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

(*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:

(1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

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

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

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 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, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they

are high tensile strength or high elongation steels.

Subject merchandise includes cold-rolled 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 review if performed in the country of manufacture of the cold-rolled steel.

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

- Ball bearing steels;<sup>14</sup>
- Tool steels;<sup>15</sup>
- Silico-manganese steel;<sup>16</sup>
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in *Grain-Oriented Electrical Steel from Germany, Japan, and Poland*.<sup>17</sup>
- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan*.<sup>18</sup>

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<sup>14</sup> Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

<sup>15</sup> Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

<sup>16</sup> Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

<sup>17</sup> See *Grain-Oriented Electrical Steel from Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances*, 79 FR 42501, 42503 (July 22, 2014). This determination defines grain-oriented electrical steel as “a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of another alloy steel, in coils or in straight lengths.”

<sup>18</sup> See *Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders*, 79 FR 71741, 71741-42 (December 3, 2014). The orders define NOES as “cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term ‘substantially equal’ means that the cross grain direction of core loss is no more than

The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050.

The products subject to the order may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 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.

## **VI. Period of Review**

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

## **VII. Rate for Non-Examined Companies**

In the *Preliminary Results*, we determined that POSCO, a mandatory respondent in this review, received countervailable subsidies that are above *de minimis*. Because POSCO's calculated rate was not zero, *de minimis*, or based entirely under section 776 of the Act, we preliminarily assigned POSCO's rate of 0.59 percent *ad valorem* to all non-examined producers and exporters, pursuant to 705(c)(5)(A)(i) of the Act. For these final results, we have made no changes to POSCO's net countervailable subsidy rate above *de minimis* (*i.e.*, 0.59 percent), which was calculated in the *Preliminary Results*.<sup>19</sup> Therefore, consistent with Commerce's practice, as described in the *Preliminary Results*,<sup>20</sup> the countervailable subsidy rate calculated for POSCO (*i.e.*, 0.59 percent) is the rate assigned to all non-selected producers and exporters, pursuant to section 705(c)(5)(A)(i) of the Act.

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1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied."

<sup>19</sup> See *Preliminary Results*, 84 FR 60377. At the Post-Prelim Analysis Memorandum, we did not make any changes for the rates calculated from the *Preliminary Results*.

<sup>20</sup> See PDM at 7.

## **VIII. Subsidies Valuation Information**

### **A. Allocation Period**

We have 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 PDM.

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

We have 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 PDM at 9-11. For issues related to POSCO Plantec, *see* Comment 2.

### **C. Benchmark and Discount Rates**

We have made no changes to, and the interested parties raised no issues in their briefs regarding the benchmarks or discount rates 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 benchmark and discount rates. For a description of the benchmarks and discount rates used for these final results, *see* the *Preliminary Results* and accompanying PDM.

### **D. Denominators**

We have 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 PDM.

## **IX. Use of Facts Otherwise Available**

### **A. Legal Standard**

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply facts otherwise available (FA) if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section

782(i) of the Act.

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>21</sup> It is Commerce’s practice to consider information to be corroborated if it has probative value.<sup>22</sup> In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.<sup>23</sup> However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.<sup>24</sup>

Finally, under the new section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates.

## **B. Application of FA: Hyundai HYSCO**

Commerce relied on “facts otherwise available” for information relating to non-recurring subsidies received by Hyundai HYSCO for the 2002 through 2005 reporting period.<sup>25</sup> For further descriptions of this decision, *see the Preliminary Results*.<sup>26</sup> Because no party commented on this issue, Commerce continues to use facts available for these final results for Hyundai HYSCO.

## **X. Analysis of Programs**

### **A. Programs Determined to be Countervailable**

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

We have made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results.

POSCO:	0.01 percent <i>ad valorem</i>
Hyundai Steel:	0.02 percent <i>ad valorem</i>

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<sup>21</sup> See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316 vol. 1 (1994) at 870.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 869.

<sup>24</sup> *Id.* at 869-70.

<sup>25</sup> See PDM at 14.

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



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

We have made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results.

POSCO:	0.17 percent <i>ad valorem</i>
Hyundai Steel:	0.02 percent <i>ad valorem</i>

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

We have made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results.

POSCO: <sup>27</sup>	Less than 0.005 percent
Hyundai Steel:	0.05 percent <i>ad valorem</i>

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

We have made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results.

POSCO:	0.14 percent <i>ad valorem</i>
Hyundai Steel:	0.28 percent <i>ad valorem</i>

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

We have made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results.

POSCO:	0.05 percent <i>ad valorem</i>
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## **6. RSTA Article 11: Tax Credit for Investment in Facilities for Research and Manpower**

We have made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results.

POSCO:	0.06 percent <i>ad valorem</i>
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## **7. RSTA Article 9, formerly TERCL Article 8: Technical Development Fund**

We have made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results.

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<sup>27</sup> 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).

POSCO: 0.01 percent *ad valorem*

**8. RSTA Article 8-3: Tax Credit when Making Contributions to Funds for Collaborative Cooperation between Large Enterprises and Small or Medium Enterprises**

We have made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results.

POSCO: 0.02 percent *ad valorem*

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

We have made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results.

POSCO: 0.01 percent *ad valorem*

**10. Research and Development Grants Under the ITIPA**

We have made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results.

POSCO: 0.02 percent *ad valorem*

**11. Port Usage Fee Exemption Programs**

We have made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results.

POSCO: 0.08 percent *ad valorem*

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

We have made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results.

POSCO: 0.02 percent *ad valorem*

Hyundai Steel: 0.06 percent *ad valorem*

**13. Modal Shift Program**

We have made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results.

Hyundai Steel: 0.01 percent *ad valorem*

POSCO:<sup>28</sup>

Less than 0.005 percent

**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. KEXIM Bank Import Financing
3. KEXIM Short-Term Export Credits
4. KEXIM Export Factoring
5. KEXIM Export Loan Guarantees
6. KEXIM Loan Guarantees for Domestic Facility Loans
7. KEXIM Trade Bill Rediscounting Program
8. KEXIM Overseas Investment Credit Program
9. KDB and IBK Short-Term Discounted Loans for Export Receivables
10. Loans under the Industrial Base Fund
11. K-SURE Export Credit Guarantees
12. K-SURE Short-Term Export Credit Insurance
13. Long-Term Loans from KORES and KNOC
14. Clean Coal Subsidies
15. GOK Subsidies for “Green Technology R&D” and its Commercialization
16. Support for SME “Green Partnerships”
17. Tax Deduction under RSTA Article 10(1)(1)
18. RSTA Article 10(1)(2)
19. RSTA Article 11
20. RSTA 104(14)
21. RSLTA Articles 19, 31, 46, 84, LTA 109, 112, and 137
22. Tax Reductions and Exemptions in Free Economic Zones
23. Grants and Financial Support in Free Economic Zones
24. Sharing of Working Opportunities/Employment Creating Incentives
25. R&D Grants under ITIPA
26. GOK Infrastructure Investment at Incheon North Harbor
27. Machinery & Equipment (KANIST R&D) Project
28. Grant for Purchase of Electrical Vehicle
29. Power Business Law Subsidies
30. Provision of Liquefied Natural Gas (LNG) for LTAR
31. 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
32. The GOK’s Purchases of Electricity for MTAR
33. Incentives for Compounding and Prescription Cost Reduction

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<sup>28</sup> Rates are less than 0.005 percent and therefore not measurable.

34. Incentives for Usage of Yeongil Harbor in Pohang City
35. VAT Exemptions on Imported Goods
36. Incentives for Usage of Gwangyang Port
37. Incentives for Natural Gas Facilities
38. Subsidies for Construction and Operation of Workplace Nursery
39. Subsidies for Hyundai Steel Red Angels Women's Football Club
40. Suncheon Harbor Port Usage Fee Exemptions
41. Seoul Guarantee Insurance
42. Subsidies for Pohang Art Festival
43. Other Transactions with Government Entities
44. Fast-Track Restructuring Program
45. Reduction for Sewerage Usage Fee
46. Upstream Subsidy on Electricity. *See* Comment 1.

## POSCO

1. KEXIM Short-Term Export Credits
2. KEXIM Export Factoring
3. KEXIM Export Loan Guarantees
4. KEXIM Trade Bill Rediscounting Program
5. KEXIM Import Financing
6. KEXIM Overseas Investment Credit Program
7. KEXIM Loan Guarantees for Domestic Facility Loans
8. KEXIM Bankers Usance
9. KDB and Other Policy Banks's Short-Term Discounted Loans for Export Receivables
10. Long-Term Loans from the KORES and KNOC
11. K-SURE Export Credit Guarantees
12. K-SURE Short-Term Export Credit Insurance
13. RSTA Article 10(1)(3): Tax Reduction for Research and Human Resources Development
14. RSTA Article 22: Tax Exemption on Investment in Overseas Resources Development
15. RSTA Article 24: Tax Credit for Investment for Productivity Increase Facilities
16. RSTA Article 25: Tax Credit for Investment in Facilities for Environment or Safety
17. RSTA Article 25(3): Tax Credit for Investment in Environmental and Safety Facilities
18. RSTA Article 120: Exemption of the Acquisition Tax
19. Research, Supply, or Workforce Development Investment Tax Deduction for "New Growth Engines" under RSTA Article 10(1)(1)
20. Research, Supply, or Workforce Development Expense Tax Deductions for "Core Technologies" under RSTA Article 10(1)(2)
21. Asset Revaluation under Article 56(2) of the TERCL
22. RSTA Article 30: Special Depreciation Tax Credit
23. RSTA Article 104(14): Third Party Logistics Operation
24. RSTA Article 104(5): Special Tax Credit for Payment Records
25. Energy Savings Program
  - 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
- Energy Savings Program: Utilization of Capability of the Private Sector
- Energy Savings Program: In Accordance with Prior Announcement
- Energy Savings Program: Intelligent Electricity Savings
- Energy Savings Program: Support for Instruments with High Energy Efficiencies
- Energy Savings Program: Management of the Electricity Load Factor Program
- 26. Modal Shift Program
- 27. Power Generation Price Difference Payments
- 28. Suncheon Harbor
- 29. Daewoo International Corporation's (DWI's) Debt Workout
- 30. Tax Reductions and Exemptions in Free Economic Zones
- 31. Exemptions and Reductions of Lease Fees in Free Economic Zones
- 32. Grants and Financial Support in Free Economic Zones
- 33. The GOK Purchases Electricity from Cold-Rolled Producers for MTAR
- 34. Reimbursement on Construction Costs for Facilities at Incheon Harbor
- 35. Provision of LNG for LTAR
- 36. Dongbu Debt Restructuring
- 37. Special Accounts for Energy and Resources (SAER) Loans
- 38. Loans under the Industrial Base Fund
- 39. GOK Subsidies for "Green Technology R&D" and its Commercialization
- 40. Support for SME "Green Partnerships"
- 41. Sharing of Working Opportunities/Employment Creating Incentives
- 42. Various Government Grants Contained in Financial Statements
- 43. RSLTA Articles 19, 31, 46, 47-2, 84, 109, and 112
- 44. GOK Infrastructure Investment at Incheon North Harbor
- 45. Machinery & Equipment (KANIST R&D) Project
- 46. Grants for Purchase of Electrical Vehicle
- 47. Power Business Law Subsidies
- 48. Clean Coal Subsidies
- 49. Incentives for Compounding and Prescription Cost Reduction
- 50. Subsidies for Employment Security during Period of Childbirth and Childcare
- 51. Incentives for Usage of Yeongil Harbor in Pohang City
- 52. VAT Exemptions on Imported Goods
- 53. Import Duty Exemptions
- 54. Incentives for Usage of Gwangyang Port
- 55. Incentives for Natural Gas Facilities
- 56. Subsidies for Construction and Operation of Workplace Nursery
- 57. Subsidies for Hyundai Steel Red Angels Women's Football Club
- 58. Co-existence Project for Large- Medium- Small Enterprises as Energy Companies
- 59. One Company for One Street Clean Management Agreement
- 60. Support for Smoking Cessation Treatment
- 61. Seoul Guarantee Insurance
- 62. Purchase of Land from Government Entities
- 63. Fast-Track Restructuring Program
- 64. Grants from the Korea Agency for Infrastructure Technology Advancement

65. Land Purchases at Asan Bay
66. Discount of Expenses for Wastewater Reclamation and Reusing System
67. Discount on Expenses for Water Usage
68. Discount of Electricity Fee for Energy Storage System
69. Pre-1992 Directed Credit Loans
70. Supporting on Projects under Center for Creative Economy and Innovation
  - Job Experience Program for Job-Seekers
  - Idea Competition for Venture Business
  - Operating Expense for Projects to Support SMEs
  - Project for Supporting SME's Startups
71. Provision of Medical Services
72. Compensation for Moving Cost
73. Vocational Skills Development
74. Vocational Skills Development for Non-POSCO Employees
  - Corporate University
  - Work and Learn Program
  - Consortium Project
  - Support for Job-Seekers
  - Operating Council for Cooperation with SMEs
75. Other Assistance in the AUL Period
76. VAT Tax Deductions Due to Bad Debt
77. RSTA Article 29(4): Tax Credit for Corporations that Increase Earned Income
78. RSTA Article 104(8)(1): Tax Credit for Electronic Returns
79. Support for Inducement of Tourists
80. Assistance for Medical Business Research
81. Assistance for Small Entrepreneurs in the Cosmetic Industry
82. LTA Articles 109, 112, and 145
83. Reimbursement of Operating Expenses for the Consultative Counsel of Consigned Enterprises
84. Other Port Usage Fee Exemption Programs
85. Upstream Subsidy on Electricity. *See* Comment 1.

## **XI. 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.<sup>29</sup>

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<sup>29</sup> *See* Petitioners Upstream Brief at 8-11 (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*

- 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.<sup>30</sup>
- 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.<sup>31</sup>
- The above comparison between the generators should also take into account public statements from Korea Hydro & Nuclear Power Co., Ltd. In its 2018 Offering Circular, the company indicated that the adjusted coefficient was adjusted downwards in 2017, which contributed to a decrease in its revenue in 2017 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.<sup>32</sup>
- 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.<sup>33</sup>
- 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. Commerce may not decline to conduct the required quantitative comparison based on its own decision to exclude this information from the record because of unexplained Korean “disclosure laws.”<sup>34</sup>

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*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 (Fed. Cir. 2017)).

<sup>30</sup> *Id.* at 12-17 (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 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 1253 (Fed. Cir. 2019) (*Nucor*)).

<sup>31</sup> See Petitioners Upstream Brief at 17.

<sup>32</sup> *Id.* at 17-18.

<sup>33</sup> *Id.* at 18-19.

<sup>34</sup> *Id.* at 19-24 (citing *SC Paper*; Kim & Chang’s Letter to Commerce, re: *Certain Cold-Rolled Steel Flat Products*

- 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.<sup>35</sup>

#### *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.<sup>36</sup>
- Commerce does not have a practice that requires the use of a benchmark under 19 CFR 351.511(a)(2)(iii).<sup>37</sup>
- 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, Commerce has stated IPP prices are not comparable and, thus, cannot be used as tier (iii) benchmarks.<sup>38</sup>
- 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.<sup>39</sup>

#### *Hyundai Steel/POSCO 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.<sup>40</sup>
- Commerce's prior proceedings make plain a tier (iii) market principles analysis is applicable in this situation.<sup>41</sup>

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from the Republic of Korea, 01/01/2017-12/31/2017 Administrative Review, Case No. C-580-882: Submission of Verification Documents (Feb. 7, 2020) at Attachment 1, p. 5).

<sup>35</sup> *Id.* at 24-28.

<sup>36</sup> See GOK Rebuttal Brief at 1-6 (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).

<sup>37</sup> *Id.* at 6-9 (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; and *Melamine from Trinidad and Tobago: Final Affirmative Countervailing Duty Determination*, 80 FR 68849 (November 6, 2015) and accompanying IDM at 8).

<sup>38</sup> *Id.* at 9-11.

<sup>39</sup> *Id.* at 11-13.

<sup>40</sup> See Hyundai Steel Rebuttal Brief at 4-6; and POSCO Rebuttal Brief at 5-7.

<sup>41</sup> See Hyundai Steel Rebuttal Brief at 6-8; and POSCO Rebuttal Brief at 7-9. (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*



- 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.<sup>42</sup>
- Commerce's prior proceedings that are referenced by the petitioners to support their arguments show that Commerce neither discusses the definition of adequate remuneration in the context of a tier (iii) market principles analysis, nor does Commerce reject the notion that cost-recovery and profitability are relevant in evaluating whether a price is consistent with market principles in the tier (iii) context.<sup>43</sup>
- 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.<sup>44</sup>
- *SC Paper* does not represent a practice always to use a tier (iii) benchmark. It only demonstrates that Commerce has discretion to use a benchmark when analyzing prices under tier (iii).<sup>45</sup>
- 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.<sup>46</sup>

**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).<sup>47</sup>

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*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)).

<sup>42</sup> See Hyundai Steel Rebuttal Brief at 8-10; and POSCO Rebuttal Brief at 9-12 (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. United States*, 82 F. 3d 1039, 1044 (Fed. Cir. 1996); and *Nucor* 927 F.3d at 1254-55).

<sup>43</sup> See Hyundai Steel Rebuttal Brief at 11-12; and POSCO Rebuttal Brief at 13 (citing *Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 35642 (June 24, 2008) (*LWRP from China*), and accompanying Issues and Decision Memorandum (*LWRP from China IDM*) at Comment 7; *Circular Welded Carbon Quality Steel Pipe and Tube from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 31966 (June 5, 2008) (*Circular Welded Pipe from China*), and accompanying Issues and Decision Memorandum (*Circular Welded Pipe from China IDM*) at Comment 7; *LWRP from China IDM* at 36; *Circular Welded Pipe from China IDM* at 58-59 and 64).

<sup>44</sup> See Hyundai Steel Rebuttal Brief at 12; and POSCO Rebuttal Brief at 13-14 (citing *Nucor*, 927 F.3d at 1251, note 6; and *Maverick Tube Corp.*, 273 F. Supp. 3d at 1309).

<sup>45</sup> See Hyundai Steel Rebuttal Brief at 12-13; and POSCO Rebuttal Brief at 14-15 (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).

<sup>46</sup> See Hyundai Steel Rebuttal Brief at 13-14.; and POSCO Rebuttal Brief at 15-16.

<sup>47</sup> See Post-Prelim Analysis Memorandum at 6-9.

The petitioners argue it is illogical to determine KPX prices<sup>48</sup> for electricity to be distorted under tier (i) and consistent with market principles under tier (iii) without further analysis. 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.<sup>49</sup> 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 appropriate benchmarks.<sup>50</sup> Hence, there were no comparable prices on the record to use as a tier (i) benchmark.

The cases cited by the 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.<sup>51</sup> In each of the cited 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.<sup>52</sup> 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.<sup>53</sup> 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) and the need for a benchmark is not required.<sup>54</sup> 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 is no disconnect in our analysis of the KPX prices under tier (i) versus tier (iii).

The petitioners next argue that 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.<sup>55</sup> 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

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<sup>48</sup> *Id.* at 8-9 (nearly all of the electricity generated within Korea is sold through KPX to one distributor, KEPCO).

<sup>49</sup> See 19 CFR 351.511(a)(2)(i).

<sup>50</sup> See Post-Prelim Analysis Memorandum at 6.

<sup>51</sup> See Petitioners Upstream Brief at 9-10, n.15 and 16.

<sup>52</sup> See Post-Prelim Analysis Memorandum at 6

<sup>53</sup> *Id.* at 6-7.

<sup>54</sup> 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 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...In our experience, these types of analyses may be necessary for goods or services as electricity...").

<sup>55</sup> See Petitioners Upstream Brief at 11-17.

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.<sup>56</sup> KEPCO's tariff rates applicable to its customers are approved by the Ministry, Trade, Industry and Energy (MOTIE).

As noted in the Post-Prelim 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.<sup>57</sup> 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.<sup>58</sup>

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.<sup>59</sup> 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.<sup>60</sup> 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 costs); (4) weight average cost of capital calculation; (5) adjusted coefficient; and (6) other standardized formulas used in KPX's price setting.<sup>61</sup> These factors have all been addressed and explained in our decision as to why the pricing is made in accordance with market principles.<sup>62</sup>

The petitioners further their argument with regard to the maximization of profit and market share not equating to cost recovery and profit by referencing the Lumber Policy Bulletin,<sup>63</sup>

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<sup>56</sup> See Post-Prelim Analysis Memorandum at 8-9; see also GOK Verification Report at 3-6.

<sup>57</sup> See Post-Prelim Analysis Memorandum at 3.

<sup>58</sup> *Id.* at 4, n.26 (examples of per unit prices from GENCOs based on fuel types); see also GOK's September 20, 2019 Upstream Subsidy Questionnaire Response (GOK Initial Response) at 11 ("Generation units whose variable costs exceed the system marginal price for a given hour do not receive purchase orders of electricity for such hour.").

<sup>59</sup> See Petitioners Upstream Brief at 15-17.

<sup>60</sup> *Id.* at 16.

<sup>61</sup> See GOK Verification Report at 4-6; see also Post-Prelim Analysis Memorandum at 7-8.

<sup>62</sup> See Post-Prelim Analysis Memorandum at 7-9.

<sup>63</sup> See *Proposed Policies Regarding the Conduct of Changed Circumstance Reviews of the Countervailing Duty Order on Softwood Lumber from Canada*, 68 FR 37456 (June 24, 2003) (Lumber Policy Bulletin).

*Privatization Practice FR, LWRP from China, QSP from China*<sup>64</sup> and *Nucor*.<sup>65</sup> 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)).<sup>66</sup>

Nevertheless, while the Lumber Policy Bulletin states that “adequate remuneration” equates to “fair market value,” the petitioners did not articulate how this proposal specifically written to address the Canadian (and by extension North American) lumber market applies to the Korean electricity market.<sup>67</sup> The only direct correlation is a reference from the bulletin that “{o}pen and competitive independently functioning markets, as discussed below, are based on buyers and sellers participating unencumbered by artificial constraints that are a part of existing administered systems.”<sup>68</sup> The petitioners argue this supports their position as “the GOK has imposed a complex pricing system in which the GENCOs’ prices are artificially capped at a certain price, preventing them from competitively setting prices that {reflect} fair market value.”<sup>69</sup>

The Lumber Policy Bulletin advises to “(1) eliminate practices and policies that inhibit the ability of lumber producers to respond to changes in the market; and (2) ensure that the pricing of standing timber on provincial lands is set by reference to prices established in an open and competitive, independently functioning market for sales of standing timber or logs.”<sup>70</sup> In short, the bulletin lays out a proposed framework upon which adequate remuneration may be achieved through the removal of certain practices and policies and the provincial (*e.g.*, government) price for standing timber is set in relation to prices derived from an independent market of standing timber. As explained in the Post-Prelim Analysis Memorandum, KPX sets its electricity pricing through the generators reported variable and fixed costs and accomplishes this through the marginal and capacity prices.<sup>71</sup> They also include a standardized formula for calculating return on investment and may further adjust pricing based on reported costs.<sup>72</sup> As the prices are derived from the actual conditions of the market at the time (*e.g.*, fuel costs) and the generators’ reported costs, the petitioners have yet to establish how this pricing system is artificially capping pricing or that the prices do not reflect fair market value in a way that correlates to the Lumber Policy

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<sup>64</sup> See *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) and accompanying Issues and Decision Memorandum (*QSP from China*).

<sup>65</sup> See Petitioners Upstream Brief at 12-15.

<sup>66</sup> 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).”).

<sup>67</sup> Petitioners Upstream Brief at 12-13.

<sup>68</sup> See Lumber Policy Bulletin, 68 FR at 37457.

<sup>69</sup> See Petitioners Upstream Brief at 17.

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

<sup>71</sup> See Post-Prelim Analysis Memorandum at 8-9.

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

Bulletin. Finally, we note the bulletin also contemplated a situation where a market is dominated by the government and “it would be difficult to establish an independently functioning market.”<sup>73</sup> In those instances, Commerce “will examine whether the province’s means of setting stumpage on the administered portion of its harvest achieves the equivalent economic effects of the alternatives set out above and ensures the province receives adequate remuneration.”<sup>74</sup> As noted, we have evaluated the market and how the pricing of electricity is determined and confirmed it is consistent with market principles pursuant to 19 CFR 351.511(a)(2)(iii).<sup>75</sup>

In *LWRP from China* and *QSP from China*, the respondents requested a tier (iii) analysis for hot-rolled steel (HRS) producers.<sup>76</sup> However, in *LWRP from China*, Commerce only determined HRS producers’ profitability was not relevant in the context of the tier (i) analysis and subsequently used a tier (ii) benchmark.<sup>77</sup> In *QSP from China*, Commerce was able to use import prices, under a tier (i) analysis.<sup>78</sup> Thus, the issue of market principles under tier (iii) was never addressed in these case as Commerce was able to find a tier (ii) world market price and tier (i) import prices 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.<sup>79</sup>

The petitioners further argue, “{i}t would make no sense that a price that is higher (and more closely akin to adequately remunerative) under Tier 1 is reasonably rejected under the fair market value approach, but a price that is lower (and less adequately remunerative) could evidence adequate remuneration under a tier 3 analysis.” This argument is misplaced as it merely attempts to cast Commerce’s methodology in terms of some undefined prices with no context or application of the statute or regulations. 19 CFR 351.511 states that “{t}he Secretary will normally seek to measure the adequacy of remuneration by comparing the government price to a market-based price for the good or service resulting from actual transactions in the country.” Moreover, “{i}n choosing actual transactions, the Secretary will consider product similarity, quantities sold or imported, and other factors affecting comparability.”<sup>80</sup> Thus, the regulation does not have Commerce compare two prices based on whether it is higher or may be perceived to have adequate remuneration, we are instead seeking to find a market-based price that will provide the best comparison to measure adequate remuneration. Although a price may appear to be comparable, it may not be a market-based price if it is sourced from a market with a government majority or significant involvement or other factors that impact comparability and then would not provide the best or most accurate measurement of adequate remuneration. As noted above, in *LWRP from China* and *QSP from China*, Commerce rejected domestic prices provided on the record as part of its tier (i) analysis due to the government’s involvement in the market.<sup>81</sup> The issue is not the prices, but that government involvement may distort all pricing within the country and the comparison will not result in a true measure of adequate remuneration

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<sup>73</sup> See Lumber Policy Bulletin, 68 FR at 37462.

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

<sup>75</sup> See Post-Prelim Analysis Memorandum at 7-9.

<sup>76</sup> See *LWRP from China*, IDM at 33 and *QSP from China* at 59.

<sup>77</sup> See *LWRP from China*, IDM at 36-37.

<sup>78</sup> See *QSP from China* at 66 (“These prices are thus appropriately considered tier one benchmark prices”).

<sup>79</sup> See *CVD Preamble*, 63 FR at 65377-78.

<sup>80</sup> See *CVD Preamble*, 63 FR at 65377.

<sup>81</sup> See *LWRP from China* at 35-36 and *QSP from China* at 64-65.

(e.g., comparing a government price to itself). In this proceeding, we explained that we had no comparable prices on the record to conduct a tier (i) analysis.<sup>82</sup> Moreover, the petitioners agreed in their case brief that no tier (i) benchmark was available, so there would be no reason to compare these rejected prices to the purchase of the GENCO's electricity by KEPCO as they do not meet our regulatory standard.<sup>83</sup>

Turning to tier (iii), it is not understood why the petitioners, in their argument, return to potential tier (i) benchmark prices that have been rejected to cast an issue with the GENCO's electricity prices. As we have explained, under a tier (iii) analysis, when we do not have any available tier (i) or tier (ii) prices, we will examine the government prices to determine if they were set according to market principles.<sup>84</sup> Thus, once the rationale for rejecting potential benchmark prices has been established, any comparison conducted utilizing those potential benchmark should also be rejected. It would be inconsistent with our statute, regulations and general methodology to continue the comparison of the government price and the rejected benchmarks to somehow quantify the pricing or the adequate remuneration.

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.<sup>85</sup> 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 costs 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, are consistent with market principles.<sup>86</sup> Moreover, the petitioners' reliance on *Nucor* to equate "adequate remuneration" with "fair market value" is misplaced.<sup>87</sup> The Court was discussing Commerce's inclusion of a non-preferentiality standard and reaffirmed

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<sup>82</sup> See Post-Prelim Analysis Memorandum at 6-7.

<sup>83</sup> See Petitioners Upstream Case Brief at 2 ("Given the record as developed in this administrative review, Petitioners agree that the prices that the IPPs charge KEPCO for electricity are not an appropriate Tier 1 benchmark").

<sup>84</sup> *Id.* at 7-9.

<sup>85</sup> 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...").

<sup>86</sup> *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 the countervailing duty statute as well as practicality and other relevant considerations.") (internal citations omitted).

<sup>87</sup> See Petitioners Upstream Case Brief at 13-14.

the basis of 19 CFR 511(a)(2)(iii), which Commerce applied in this administrative review.<sup>88</sup>

Finally, in *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 in that document 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.<sup>89</sup> Although we are not examining the privatization of an entity in this case, 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.<sup>90</sup>

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.<sup>91</sup> 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."<sup>92</sup> 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.<sup>93</sup> 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.<sup>94</sup> 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.

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<sup>88</sup> See *Nucor*, 927 F.3d at 1253-55.

<sup>89</sup> 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.").

<sup>90</sup> See Post-Prelim Analysis Memorandum.

<sup>91</sup> See Petitioners Upstream Brief at 17-18.

<sup>92</sup> 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.").

<sup>93</sup> See GOK Initial Response at 23 and 38-39; see also GOK Verification Report at 4-6.

<sup>94</sup> See Post-Prelim Analysis Memorandum at 8-9.

The petitioners have also mischaracterized language cited from Korea Hydro & Nuclear Power Co., Ltd.'s 2018 Offering Circular.<sup>95</sup> 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.<sup>96</sup> 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.<sup>97</sup>

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.”<sup>98</sup> The petitioners reliance on KEPCO’s 20-F is misplaced as the conditions articulated by this quote and our statement are not similar.<sup>99</sup> 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

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<sup>95</sup> See Petitioners Upstream Brief at 18, footnote 38.

<sup>96</sup> See Petitioners’ Letter, “Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Petitioners’ Allegation of Upstream Subsidies to Korean Steel Producers”, dated May 7, 2019, at Exhibit 14, containing “Certain Corrosion-Resistant Steel Products from the Republic of Korea: Petitioners’ Responses to Upstream Subsidy Questionnaire,” dated April 15, 2019 at Exhibit 1.

<sup>97</sup> See GOK Initial response at 12 (“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 40 (“Adjusted coefficient is determined to secure generators with their fair amount of investment return calculated 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.”).

<sup>98</sup> See Upstream Analysis Memorandum at 9.

<sup>99</sup> See Petitioners Upstream Brief at 18 (“{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.”).



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 covered by KEPCO, even if in a loss position.<sup>100</sup> 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.<sup>101</sup> We note that there is no record evidence that this situation existed in 2017, nor have the petitioners argued that it did. Finally, the 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.<sup>102</sup> 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.<sup>103</sup> KEPCO's costs and underlying methodology were also examined in this administrative review and no discrepancies were found.<sup>104</sup>

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.<sup>105</sup> With regard to electricity, Commerce has normally conducted a tier (iii) analysis based on market principles.<sup>106</sup> 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.<sup>107</sup> With regard to *SC Paper*, Commerce determined the Nova Scotia electricity

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<sup>100</sup> See Upstream Analysis Memorandum at 9.

<sup>101</sup> 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.").

<sup>102</sup> See *CORE Investigation*, IDM at 23.

<sup>103</sup> *Id.*

<sup>104</sup> See GOK Verification Report at 8.

<sup>105</sup> See Petitioners Upstream Brief at 19-24.

<sup>106</sup> 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).

<sup>107</sup> 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

market applied market principles in setting tariffs under a tier (iii) analysis.<sup>108</sup> However, the respondent's rate in the proceeding was established outside this general price setting structure that was determined to be based on market principles.<sup>109</sup> A further analysis of this different electricity structure applied to the respondent resulted in a finding that the respondent's tariff was not set in accordance with market principles.<sup>110</sup> Thus, an alternate was developed using a tier (iii) benchmark to determine the benefit.<sup>111</sup> As opposed to *SC Paper*, we do not have a situation whereby a portion of fixed costs and return on investment was excluded in the development of any of the GENCO's pricing as the established KPX pricing regulations were applicable to all generators within the market, so the calculation of a tier (iii) benchmark using record information was not necessary.<sup>112</sup> The petitioners point to a benchmark methodology and note one document was redacted at verification due to disclosure laws.<sup>113</sup> However, the one instance of Commerce calculating a tier (iii) electricity benchmark involves a case where it was necessary due to missing components in the buildup of the price.<sup>114</sup> The regulation does not contemplate that Commerce examine the government price according to market principles, determine it meets the regulatory requirement and then also create or assign a tier (iii) benchmark to further evaluate the government price.<sup>115</sup> The petitioners have not cited to one instance where Commerce has done this and their one example, *SC Paper*, did not perform this methodology. 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.

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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 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).

<sup>108</sup> 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.").

<sup>109</sup> *Id.* at 47-48.

<sup>110</sup> *Id.* at 48 ("Therefore, consistent with 19 CFR 351.511(a)(2)(iii) and *Magnesium from Canada*, we determine that the Port Hawkesbury LRR was not set according to the standard pricing mechanism used by NSPI, *i.e.*, a cost-to-service methodology, and is not a market determined price. Rather, the LRR is a "below-the-line" price that does not cover all fixed costs or profits").

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

<sup>112</sup> *Id.* at 48 ("Thus, in order to determine an appropriate Tier 3 benchmark {(for the respondent's LRR)}, we have constructed a price that provides for complete coverage of fixed and variable costs, as well as a portion of ROE for profit using available information on the record").

<sup>113</sup> See Petitioners Upstream Brief at 21.

<sup>114</sup> See *SC Paper* at 48.

<sup>115</sup> See 19 CFR 351.511(a)(2)(iii).

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 POSCO Plantec is POSCO's Cross-Owned Input Supplier**

### *Petitioners' Case Brief*

- Commerce's post-preliminary results not to attribute subsidies received by POSCO Plantec to the combined sales of POSCO and POSCO Plantec are unexplained, inconsistent with Commerce's practice under 19 CFR 351.525(b)(6)(iv), and should be reconsidered in the final results as POSCO Plantec is POSCO's cross-owned input supplier.<sup>116</sup>
- Consistent with its practice, Commerce should find that POSCO Plantec is POSCO's cross-owned supplier as POSCO owned 60.84 percent of POSCO Plantec's shares during the POR and supplied certain materials to POSCO during the POR.<sup>117</sup>
- Commerce cited nothing in support of a requirement that an input supplier must exclusively supply the respondent or the relevant industry in the country under review for 19 CFR 351.525(b)(6)(iv) to apply; this exclusivity requirement does not appear in the regulation itself and is also inconsistent with Commerce's practice.<sup>118</sup>
- Commerce's input supplier analysis does not rely on whether an input supplier supplies inputs exclusively to one company, in one country, or for one purpose; rather it focuses on the nature and use of the input at issue, not on the totality of the input producer's operations.<sup>119</sup>
- An exclusivity requirement would create a loophole that would encourage gamesmanship and make it nearly impossible for Commerce to attribute subsidies to cross-owned input suppliers.<sup>120</sup>
- Commerce's explanation in its post-preliminary results that the types of services that POSCO Plantec performed for POSCO are not a part of steel production that is dedicated almost exclusively to the production of a higher value added product is unexplained as Commerce's analysis did not address certain materials and services, and is inconsistent with a previous finding with regard to the types of services; Commerce did not explain why its decision in this review is distinguishable.<sup>121</sup>

### *POSCO Rebuttal Brief*

- Commerce has wide discretion in determining what constitute input products that are primarily dedicated to the production of the downstream product; Commerce should affirm

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<sup>116</sup> See Petitioners Case Brief at 1-2.

<sup>117</sup> *Id.* at 3 (citing *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Final Affirmative Determination*, 81 FR 49940 (July 29, 2016) (*CRS Brazil Final*) and accompanying IDM at 55).

<sup>118</sup> *Id.* at 3-5 (citing *Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from Indonesia*, 71 FR 47174 (August 16, 2006) (*Certain Lined Paper Indonesia Final*), and accompanying IDM at 28 and 31; and *Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010) (*Seamless Pipe China Final*) and accompanying IDM at 98-99).

<sup>119</sup> *Id.* at 5.

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

<sup>121</sup> *Id.* at 5-6 (citing *CRS Brazil Final*).

its post-preliminary results that POSCO Plantec is not an input supplier to POSCO for attribution purposes.<sup>122</sup>

- Contrary to the petitioners' misstated argument that POSCO Plantec sold certain materials to POSCO, POSCO Plantec did not sell certain materials to POSCO; rather it sold them to other POSCO entities which then resold them to POSCO.<sup>123</sup>
- Other additional materials that POSCO Plantec provided to POSCO are not used as inputs in the downstream product including subject merchandise, and Commerce found that they do not satisfy Commerce's input supplier attribution standard in its post-preliminary results.<sup>124</sup>
- As Commerce found in its post-preliminary results, POSCO Plantec's services are not a part of steel production that meets Commerce's input supplier attribution standard.<sup>125</sup>
- The petitioners mischaracterized the exclusivity standard applied by Commerce; as opposed to what the petitioners claimed, Commerce examined whether POSCO Plantec's production and the materials it produces are dedicated almost exclusively to the production of a higher value added product rather than focusing its analysis upon whether POSCO Plantec exclusively supplied POSCO with input products.<sup>126</sup>
- Commerce's analysis was consistent with the discussion and standard articulated in the *CVD Preamble*, and the administrative determination, *Certain Lined Paper Indonesia Final*, cited by the petitioners disapproves the petitioners' argument as the fact pattern of the case shows that the exclusivity standard was met.<sup>127</sup>
- The petitioners' reliance on *CRS Brazil* is misplaced as the inputs at issue are not steel making equipment and services that are dedicated to the downstream production of steel as they were in that case.<sup>128</sup>
- Regardless of whether POSCO Plantec is POSCO's input supplier, POSCO Plantec is not cross-owned with POSCO under Commerce's regulations because POSCO Plantec was not controlled by POSCO but by its creditors during the POR as a result of the debt workout program established in 2015.<sup>129</sup>

**Commerce's Position:** We continue to find that attributing subsidies received by POSCO Plantec to POSCO is not warranted for the final results. The issue here is whether POSCO Plantec meets the criteria for a cross-owned input supplier under 19 CFR 351.525(b)(6)(iv). Commerce evaluated the facts on the record in accordance with Commerce's aforementioned regulations as well as the *CVD Preamble*, which provides guidance as to whether to attribute subsidies received by an input supplier to a downstream producer's subsidies.<sup>130</sup>

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<sup>122</sup> See POSCO Rebuttal Brief at 4.

<sup>123</sup> *Id.* at 17; see also POSCO's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-882: Response to the Affiliated Companies Section of the Initial Questionnaire," dated March 25, 2019 (POSCO AFQR) at 11, footnote 15.

<sup>124</sup> See POSCO Rebuttal Brief at 17-18.

<sup>125</sup> *Id.* at 18.

<sup>126</sup> *Id.* at 18-19.

<sup>127</sup> *Id.* at 20; see also *CVD Preamble* at 63 FR 65341.

<sup>128</sup> See POSCO Rebuttal Brief at 21.

<sup>129</sup> *Id.* at 21-22.

<sup>130</sup> See *CVD Preamble* at 63 FR 65401.

In accordance with 19 CFR 351.525(b)(6)(i), Commerce will normally attribute a subsidy to the products produced by the corporation that received the subsidy, which is also articulated in the *CVD Preamble*.<sup>131</sup> However, as exceptions to the general rule of attribution in 19 CFR 351.525(b)(6)(i), additional rules at 19 CFR 351.525(b)(6)(ii)-(v) provide for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to the respondent. Further, 19 CFR 351.525(c) states that benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm producing subject merchandise that is sold through the trading company, regardless of affiliation. The underlying assumption for 19 CFR 351.525(b)(6)(ii)-(v) and 19 CFR 351.525(c) is that subsidies received by these types of companies are likely to benefit the production of subject merchandise exported to the United States.

Regarding the input supplier attribution rule under 351.525(b)(6)(iv), the *CVD Preamble* explains that

“{t}he main concern we have tried to address is the situation where a subsidy is provided to an input supplier whose production is dedicated almost exclusively to the production of a higher value added product – the type of input product that is merely a link in the overall production chain. This was the case with stumpage subsidies on timber that was primarily dedicated to lumber production and subsidies to semolina primarily dedicated to pasta production ...

... we believe that in situations such as these, the purpose of a subsidy provided to the input supplier is to benefit the production of both the input and downstream products. Accordingly, where the input and downstream production takes places in separately incorporated companies with cross-ownership ... and the production of the input product is primarily dedicated to the production of the downstream product, {19 CFR 351.525(b)(6)(iv)} requires {Commerce} to attribute the subsidies received by the input supplier to the combined sales of the input and downstream products ....

Where we are dealing with input products that are not primarily dedicated to the downstream products, however, it is not reasonable to assume that the purpose of a subsidy to the input product is to benefit the downstream product. For example, it would not be appropriate to attribute subsidies to a plastics company to the production of cross-owned corporations producing appliances and automobiles. Where we are investigating products such as appliances and automobiles, we will rely on the upstream subsidy provision of the statute to capture any plastics benefits which are passed to the downstream producer.”<sup>132</sup>

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<sup>131</sup> See *CVD Preamble*, at 63 FR 65402 whereby Commerce stated that “{p}aragraph (b)(6)(i) states that {Commerce} will normally attribute a subsidy received by a corporation to the products produced by that corporation.”

<sup>132</sup> See *CVD Preamble* at 63 FR 65401.

The issue of whether production of the input product is primarily dedicated to production of the downstream product depends on the specific factual situations presented to Commerce because the nature of input and downstream products and production processes vary among cases. Thus, Commerce examines the facts of each case and makes a determination on a case-by-case basis.

The petitioners' arguments that the so-called "exclusivity" standard does not appear in the regulation itself and that Commerce did not cite anything to support this standard are misplaced. We also disagree that the alleged "exclusivity" standard would encourage potential manipulation and make it impossible for Commerce to attribute subsidies to cross-owned input suppliers.

To be clear, Commerce did not set an "exclusivity" standard or requirement in the post-preliminary results. Rather, in deciding whether to attribute subsidies received by POSCO Plantec to POSCO, Commerce examined POSCO Plantec's business activities on the record, followed the guidelines mentioned above, and concluded that POSCO Plantec's production is not "dedicated almost exclusively to the production of a higher value product" (*i.e.* POSCO's steel production) and that it is not reasonable to assume the purpose of a subsidy to POSCO Plantec is to benefit POSCO's products. If the record shows the sole purpose of POSCO Plantec's production activities is to provide inputs to POSCO's steel production, one might reasonably conclude that the purpose of a subsidy to POSCO Plantec is to benefit POSCO's steel production. However, on the contrary, the record shows that POSCO Plantec's productions include construction of a refinery, a cargo terminal in Taiwan, a storage tank in an LNG terminal in Korea, and a luggage processing facility in Korea, *etc.*<sup>133</sup>

More importantly, Commerce's input supplier analysis in the post-preliminary results did not *solely* rely on whether an input producer supplies an input exclusively to a particular company and/or industry. Commerce also examined the nature of the various inputs at issue to determine whether POSCO Plantec meets the criteria for a cross-owned input supplier under 19 CFR 351.525(b)(6)(iv). Commerce concluded that, similar to the plastic to automobile example set out in the *CVD Preamble*, inputs that POSCO Plantec provided to POSCO are used in a typical manufacturing process and not in a way that they are primarily and/or exclusively dedicated to the production of the downstream product.

The issue of whether production of the input product is primarily dedicated to production of the downstream product depends on the specific factual situations presented to Commerce, because the nature of input and downstream products and production processes vary among cases. For this reason, the petitioners' reliance on *Certain Line Paper Indonesia Final*, *Seamless Pipe China Final*, and *CRS Brazil Final* is misplaced.<sup>134</sup> The nature of the inputs and downstream products in those cases were different from those of this case. Accordingly, Commerce cannot

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<sup>133</sup> See POSCO's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-882: POSCO Plantec's Initial Questionnaire Response," dated June 20, 2019 (POSCO Plantec Initial QR) at Exhibit 5, 2017 Financial Statements, Note 33.

<sup>134</sup> See Petitioners Case Brief at 3-6 (citing *Certain Line Paper Indonesia Final* and accompanying IDM at 28 and 31; and *Seamless Pipe China Final* and accompanying IDM at 98-99; and *CRS Brazil Final* and accompanying IDM at 55-56).

reasonably rely on *Certain Line Paper Indonesia Final* and *Seamless Pipe China Final* as precedents to find inputs provided by POSCO Plantec in this case to be primarily dedicated.

Record evidence also show that POSCO Plantec provided various materials to POSCO. One of the inputs is scrap that was generated from POSCO Plantec's production process as a *by-product* and sold to POSCO's other intermediaries prior to being resold to POSCO.<sup>135</sup> Analogous to the plastic as an input to an automobile example in the *CVD Preamble*,<sup>136</sup> one cannot reasonably conclude that these inputs are dedicated almost exclusively to the production of downstream products and these are the type of input products that are merely a link in the overall production chain. One also cannot reasonably conclude that the purpose of a subsidy provided to POSCO Plantec is to benefit the production of POSCO's steel production. With respect to other materials provided by POSCO Plantec, due to the proprietary nature of this discussion, *see* POSCO Final Analysis Memorandum for more detailed analysis.<sup>137</sup>

In *Certain Lined Paper Indonesia Final*, Commerce specifically found that "pulp logs are used to make pulp which, in turn, is used to make paper" and that "the two upstream products {(i.e., pulp logs and pulp)} have *one purpose – as inputs to paper* (emphasis added)."<sup>138</sup> Commerce further stated that "we determine that the logs harvested by the logging companies ... and sold to the ... pulp producers, are primarily dedicated to the production of pulp and, thus, to the production of ... downstream product, ... which includes {subject merchandise}."<sup>139</sup> Citing the *CVD Preamble*, Commerce stated that "attribution relates to inputs that are 'merely a link'" and that "*pulp logs are primarily dedicated to the production of pulp, which is primarily dedicated to the downstream product, paper, including {subject merchandise}* (emphasis added)."<sup>140</sup> In that proceeding, as the two inputs (i.e., pulp logs and pulp) have one purpose, which is to be used as an input dedicated exclusively to the production of a higher value added product (i.e., the downstream product including subject merchandise), Commerce's finding was consistent with Commerce's intent stipulated in the *CVD Preamble* to address the particular concern relating to attribution of subsidies received by input suppliers (i.e., whether the purpose of a subsidy provided to the input supplier is to benefit the production of both the input and downstream products).<sup>141</sup> Similarly, in *Seamless Pipe China Final*, Commerce specifically found that "coke and coking coal are inputs to the production of steel rounds, which is primarily dedicated to the production of {subject merchandise}."<sup>142</sup> Because the coke and coking coal were used to make steel rounds, and the production of those steel rounds was primarily dedicated to the production of subject merchandise, all inputs were found to be intricately linked to the production of the downstream product. In contrast, one cannot reasonably conclude that materials provided by

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<sup>135</sup> See public version of POSCO's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-882: POSCO's Rebuttal Brief," dated April 24, 2020 (POSCO Rebuttal Brief) at 17; *see also* public version of POSCO AFQR at 11, footnote 15.

<sup>136</sup> See *Countervailing Duties*, 63 FR 65348 (November 25, 1998) (*CVD Preamble*) at 63 FR 65401.

<sup>137</sup> See Memorandum, "Final Results Analysis Memorandum for POSCO," dated concurrently with this memorandum (POSCO Final Analysis Memorandum).

<sup>138</sup> See *Certain Lined Paper Indonesia Final* IDM at 31.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at 26; *see also CVD Preamble* at 63 FR 65401.

<sup>141</sup> See *CVD Preamble*, at 63 FR 65401.

<sup>142</sup> See *Seamless Pipe China Final* IDM at 99.

POSCO Plantec, including *by product* scrap, are inputs dedicated almost exclusively to the production of downstream steel products and these are the type of input products that are merely a link in the overall steel production chain.

Record evidence also shows that POSCO Plantec provided certain services to POSCO.<sup>143</sup> The services provided by POSCO Plantec are not the type of input product that would be considered merely a link in the overall production chain of POSCO's actual production of steel. Due to the proprietary nature of this discussion, *see* POSCO Final Analysis Memorandum for more detailed analysis.<sup>144</sup> The fact pattern in the instant review is also distinct from *CRS Brazil Prelim* with respect to the information on the record related to steelmaking equipment.<sup>145</sup> In *CRS Brazil Prelim*, a cross-owned input supplier provided steel mill parts, *steel mill equipment*, and services to maintain and refurbish steel production equipment (emphasis added).<sup>146</sup> In *CRS Brazil Final*, Commerce found that "given ... {the input supplier's} provision of *equipment* ... it is appropriate to attribute to ... the subsidies received by {the input supplier} .... (emphasis added)"<sup>147</sup> As such, in *CRS Brazil*, Commerce found that the actual steel mill equipment used to make steel products to be an input primarily dedicated to the production of the downstream product. Commerce did not find services to maintain and refurbish steel production equipment to be primarily dedicated in *CRS from Brazil*. In the instant review, record evidence does not demonstrate that POSCO Plantec provided the actual steelmaking machinery or equipment, as it only provided services related to such equipment to POSCO. The parts that are associated with POSCO's provision of services were not produced by POSCO Plantec; rather, they were produced by third parties.<sup>148</sup>

Therefore, irrespective of whether POSCO Plantec is cross-owned with POSCO under Commerce's regulations and practice, we find that POSCO Plantec is not POSCO's input supplier based on our regulations because record evidence establishes that the types of materials and services that POSCO Plantec supplied to POSCO during the POR are not primarily dedicated to the production of the downstream product.

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<sup>143</sup> See POSCO's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-882: POSCO's Response to the Third Supplemental Questionnaire," dated October 2, 2019 (POSCO October 2, 2019 SQR) at 8 and Exhibit 26.

<sup>144</sup> See Memorandum, "Final Results Analysis Memorandum for POSCO," dated concurrently with this memorandum (POSCO Final Analysis Memorandum).

<sup>145</sup> See *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 80 FR 79569 (December 22, 2015) (*CRS Brazil Prelim*), and accompanying PDM at 17-18 (unchanged in *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Final Affirmative Determination*, 81 FR 49940 (July 29, 2016) (*CRS Brazil Final*), and accompanying IDM) (collectively, *CRS Brazil*).

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

<sup>147</sup> See *CRS Brazil Final* IDM at 56.

<sup>148</sup> See POSCO's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-882: POSCO's Second Supplemental Questionnaire Response," dated June 14, 2019 (POSCO June 14, 2019 SQR) at 25, footnote 7.



### **Comment 3: Whether POSCO Plantec Received Countervailable Benefits Through Its Debt Restructuring Program**

#### *Petitioners' Case Brief*

- Commerce should find that POSCO Plantec received countervailable benefits during the POR through its debt workout program and attribute such benefits to POSCO as Commerce has consistently countervailed a similar program to the one that POSCO Plantec received benefits though in recent Korea CVD proceedings.<sup>149</sup>
- Commerce should countervail benefits conferred through POSCO Plantec's program using uncreditworthiness benchmarks as POSCO Plantec was not creditworthy at the time of the debt restructuring or at any point thereafter.<sup>150</sup>

#### *POSCO Rebuttal Brief*

- The petitioners' argument should be rejected because POSCO Plantec is not POSCO's cross-owned input supplier that supplied inputs to POSCO that were used in the production of the downstream product produced by POSCO.<sup>151</sup>

**Commerce's Position:** Due to the slowdown of the global economy and unexpected bad debt losses, POSCO Plantec faced financial difficulties and, as a result, entered into corporate restructuring under the Corporate Restructuring Promotion Act (CRPA) in 2015, which resulted in the restructuring of its debt obligations.<sup>152</sup> As Commerce has determined subsidies received by POSCO Plantec are not attributable to POSCO, the issues of, as well as the comments regarding, (1) whether POSCO Plantec received countervailable benefits through its corporate restructuring program and (2) whether POSCO Plantec was uncreditworthy are moot.

### **Comment 4: Whether the Application of AFA is Warranted for Sungjin Geotec's Non-Recurring Subsidies Received During the AUL Period**

#### *Petitioners' Case Brief*

- Because POSCO refused to provide a complete questionnaire response for Sungjin Geotec in a manner requested by Commerce, Commerce should apply AFA to Sungjin Geotec's non-recurring subsidies received during the AUL period.<sup>153</sup>

#### *POSCO Rebuttal Brief*

- POSCO provided a full response regarding all non-recurring subsidies that were received by Sungjin Geotec that could have been transferred to POSCO and thus Commerce had

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<sup>149</sup> See Petitioners Case Brief at 1 and 6-7 (citing *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35310 (June 2, 2016) (*CORE Korea Final*) and accompanying IDM at 26-34).

<sup>150</sup> *Id.* at 8-11.

<sup>151</sup> See POSCO Rebuttal Brief at 16.

<sup>152</sup> See POSCO's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-882: POSCO Plantec's Initial Questionnaire Response," dated June 20, 2019 (POSCO Plantec Initial QR) at 8, 44-45 and 47-50.

<sup>153</sup> See Petitioners Case Brief at 2 and 12-13.

complete information for subsidy attribution purposes had it determined that POSCO Plantec was a cross-owned input supplier.<sup>154</sup>

- Because Commerce determined that POSCO Plantec was not a cross-owned input supplier for subsidy attribution purposes, any additional information related to Sungjin Geotec is not relevant.<sup>155</sup>
- Nucor made no argument as to what information is missing from the record and pointed to no gaps in the record that would warrant the application of AFA.<sup>156</sup>
- Commerce would have been obligated to issue a deficiency questionnaire to POSCO as per statutory requirements; Commerce did not do so and there is thus no legal basis to apply AFA.<sup>157</sup>

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

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply “facts otherwise available” if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.

The prerequisites for applying facts available under section 776 of the Act are not present in this case. Sungjin Geotec was merged with POSCO Plantec during the AUL period.<sup>158</sup> As Commerce has determined subsidies received by POSCO Plantec are not attributable to POSCO, it is no longer necessary for Commerce to examine whether the non-recurring subsidies received by Sungjin Geotec could have passed through to POSCO Plantec.

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<sup>154</sup> See POSCO Rebuttal Brief at 4 and 23.

<sup>155</sup> *Id.* at 4 and 24.

<sup>156</sup> *Id.* at 23.

<sup>157</sup> *Id.* at 24.

<sup>158</sup> See POSCO's Letter, “Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-882: POSCO's Response to the Third Supplemental Questionnaire,” dated October 2, 2020 (POSCO October 2, 2019 SQR) at 10.

## **XII. 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*.



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Agree



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Disagree

6/22/2020

X



Signed by: JEFFREY KESSLER

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Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance