C-580-888
Administrative Review
POR: 1/1/2018 – 12/31/2018
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March 16, 2021

MEMORANDUM TO: Christian Marsh
Acting 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 Countervailing Duty Administrative Review: Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea; 2018

I. Summary

The Department of Commerce (Commerce) analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the countervailing duty (CVD) order[1] on certain carbon and alloy steel cut-to-length plate (CTL plate) from the Republic of Korea (Korea) covering the period of review (POR) January 1, 2018 through December 31, 2018.

As a result of this analysis, we have made one change since the *Preliminary Results*.[2] 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 administrative review for which we received comments from interested parties:

Comment 1: Whether Commerce Should Reconsider Its Decision Not to Initiate on the "Off-Peak Electricity for Less Than Adequate Remuneration (LTAR)" New Subsidy Allegation
Comment 2: Whether POSCO Plantec (Plantec) and POSCO Satisfy the Requirements for a Cross-Owned Input Supplier Relationship

[1] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Countervailing Duty Order*, 82 FR 24103 (May 25, 2017) (*Order*).
[2] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, and Intent to Rescind Review, in Part; 2018*, 85 FR 45185 (July 27, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

Comment 3: Whether Commerce Should Countervail Benefits Provided to Plantec through Its Debt Restructuring Program
Comment 4: Whether the Government of Korea's (GOK) Purchase of Electricity for More Than Adequate Remuneration (MTAR) Is Countervailable
A. Whether the Purchase of Electricity for MTAR Is Specific
B. Whether Commerce Should Use POSCO's Electricity Purchase Price as a Benchmark
Comment 5: Whether the Quota Tariff Import Duty Exemptions Under Article 71 of the Customs Act Program Are Countervailable
A. Whether the Import Duty Exemptions Program Is Specific
B. Whether the GOK Provides a Financial Contribution through the Import Duty Exemptions Program
C. Whether the Import Duty Exemptions Program Confers a Benefit
Comment 6: Whether Commerce Should Cumulate the Benefits of POSCO's Cross-Owned Affiliates When Calculating the Benefit under Restriction of Special Local Taxation Act (RSLTA) Article 78(4)
Comment 7: Whether Commerce Should Correct the Principal Value of POSCO's Benefit Amount under Restriction of Special Taxation Act (RSTA) Article 9

II. Background

A. Case History

On July 27, 2020, Commerce published the *Preliminary Results* of this administrative review in the *Federal Register*, and invited interested parties to comment.[3] On August 26, 2020, Nucor Corporation (Nucor), POSCO, and the GOK submitted timely case briefs.[4] Nucor, POSCO, and the GOK also submitted timely rebuttal briefs on September 9, 2020.[5] On January 11, 2021, Commerce postponed the final results of review by 30 days until February 16, 2021.[6] On February 2, 2021, Commerce postponed the final results of review by an additional 30 days until March 18, 2021.[7]

[3] *Id.*
[4] *See* Nucor's Letter, "Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Case Brief," dated August 26, 2020 (Nucor Case Brief); *see also* POSCO's Letter, "Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, Case No. C-580-888: POSCO's Case Brief," dated August 26, 2020 (POSCO Case Brief); the GOK's Letter, "Administrative Review of the Countervailing Duty Order on Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: The GOK's Case Brief," dated August 26, 2020 (GOK Case Brief).
[5] *See* Nucor's Letter, "Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Rebuttal Brief," dated September 9, 2020 (Nucor Rebuttal Brief); *see also* POSCO's Letter, "Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, Case No. C-580-888: POSCO's Rebuttal Brief," dated September 9, 2020 (POSCO Rebuttal Brief); the GOK's Letter, "Administrative Review of the Countervailing Duty Order on Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: The GOK's Rebuttal Brief," dated September 9, 2020 (GOK Rebuttal Brief).
[6] *See* Memorandum, "2018 Countervailing Duty Administrative Review of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Extension of Deadline for Final Results," dated January 11, 2021.
[7] *See* Memorandum, "2018 Countervailing Duty Administrative Review of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Second Extension of Deadline for Final Results," dated February 2, 2021.

B. Period of Review

The POR is January 1, 2018, through December 31, 2018.

III. Partial Rescission of Administrative Review

In August 2019, we received timely filed no-shipment certifications from the Hyundai Steel Company (Hyundai) and Dongkuk Steel Mill Co., Ltd. (DSM).[8] In June 2020, Commerce issued no-shipment inquiries to U.S. Customs and Border Protection (CBP) requesting any information that might contradict Hyundai and DSM's no-shipment claims.[9] We received no information from CBP that contradicts Hyundai's or DSM's claims of no sales, shipments, or entries of subject merchandise to the United States during the POR.[10] Consequently, in the *Preliminary Results*, Commerce announced its intent to rescind the review of Hyundai and DSM.[11] No interested party submitted comments on Commerce's intent to rescind the review of either company. Because there is no evidence on the record to indicate that Hyundai or DSM had entries, exports, or sales of subject merchandise to the United States during the POR, we are rescinding the administrative review with respect to Hyundai and DSM pursuant to 19 CFR 351.213(d)(3).

IV. Scope of the *Order*

The products covered by this order are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances (cut-to-length plate). Subject merchandise includes plate that is produced by being cut-to-length from coils or from other discrete length plate and plate that is rolled or forged into a discrete length. The products covered include (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a thickness of not less than 4 mm, which are not in coils and without patterns in relief), and (2) hot-rolled or forged flat steel products of a thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are not in coils, whether or not with patterns in relief. The covered products described above may be rectangular, square, circular or other shapes and include products of either rectangular or non-rectangular cross-section where such non-rectangular 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).

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[8] *See* Hyundai Steel Company's Letter, "Carbon and Alloy Steel Cut-To-Length Plate from Korea: Notice of No Sales," dated August 13, 2019; *see also* Dongkuk Steel Mill Co., Ltd.'s Letter, "Administrative Review of the Countervailing Duty Order on Carbon and Alloy Steel Cut-to-Length Plate from Korea for the 2018 Review Period – No Shipments Letter," dated August 14, 2019.

[9] *See* Message Number 0169402, "No Shipments Inquiry for Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea Exported by Hyundai Steel Company/ Hyundai Steel Co. (C-580-888)," dated June 17, 2020; *see also* Message Number 0168401, "No Shipments Inquiry for Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea Exported by Dongkuk Steel Mill Co., Ltd. (C-580-888)," dated June 16, 2020.

[10] *See* Memorandum, "Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea (C-580-888)," dated June 19, 2020; *see also* Memorandum, "Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea (C-580-888)," dated June 22, 2020.

[11] *See Preliminary Results* PDM at 4-5.

For purposes of the width and thickness requirements referenced above, the following rules apply:

(1) except where otherwise stated where the nominal and actual thickness or width measurements vary, a product from a given subject country is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the product is already covered by an order existing on that specific country (*i.e.*, *Certain Hot-Rolled Steel Flat Products from Brazil and the Republic of Korea: Amended Final Affirmative Countervailing Duty Orders*, 81 FR 67960 (October 3, 2016)); 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; and (2) the carbon content is 2 percent or less by weight.

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

All products that meet the written physical description, are within the scope of this order unless specifically excluded or covered by the scope of an existing order. The following products are outside of, and/or specifically excluded from, the scope of this order:

(1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances;

(2) military grade armor plate certified to one of the following specifications or to a specification that references and incorporates one of the following specifications:

- MIL-A-12560,
- MIL-DTL-12560H,
- MIL-DTL-12560J,
- MIL-DTL-12560K,
- MIL-DTL-32332,
- MIL-A-46100D,
- MIL-DTL-46100-E,
- MIL-46177C,
- MIL-S-16216K Grade HY80,

- MIL-S-16216K Grade HY100,
- MIL-S-24645A HSLA-80;
- MIL-S-24645A HSLA-100,
- T9074-BD-GIB-010/0300 Grade HY80,
- T9074-BD-GIB-010/0300 Grade HY100,
- T9074-BD-GIB-010/0300 Grade HSLA80,
- T9074-BD-GIB-010/0300 Grade HSLA100, and
- T9074-BD-GIB-010/0300 Mod. Grade HSLA115,

except that any cut-to-length plate certified to one of the above specifications, or to a military grade armor specification that references and incorporates one of the above specifications, will not be excluded from the scope if it is also dual – or multiple-certified to any other non-armor specification that otherwise would fall within the scope of this order;

(3) stainless steel plate, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(4) CTL plate meeting the requirements of ASTM A-829, Grade E 4340 that are over 305 mm in actual thickness;

(5) Alloy forged and rolled CTL plate greater than or equal to 152.4 mm in actual thickness meeting each of the following requirements:

(a) Electric furnace melted, ladle refined & vacuum degassed and having a chemical composition (expressed in weight percentages):

- Carbon 0.23-0.28,
- Silicon 0.05-0.20,
- Manganese 1.20-1.60,
- Nickel not greater than 1.0,
- Sulfur not greater than 0.007,
- Phosphorus not greater than 0.020,
- Chromium 1.0-2.5,
- Molybdenum 0.35-0.80,
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) With a Brinell hardness measured in all parts of the product including mid thickness falling within one of the following ranges:

(i) 270-300 HBW,
(ii) 290-320 HBW, or
(iii) 320-350HBW;

(c) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.0, C not exceeding 0.5, D not exceeding 1.5; and

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 2 mm flat bottom hole;

(6) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, Ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.23-0.28,
- Silicon 0.05-0.15,
- Manganese 1.20-1.50,
- Nickel not greater than 0.4,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.20-1.50,
- Molybdenum 0.35-0.55,
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.5, C not exceeding 1.0, D not exceeding 1.5;

(c) Having the following mechanical properties:

(i) With a Brinell hardness not more than 237 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 75ksi min and UTS 95ksi or more, Elongation of 18% or more and Reduction of area 35% or more; having charpy V at -75 degrees F in the longitudinal direction equal or greater than 15 ft. lbs (single value) and equal or greater than 20 ft. lbs (average of 3 specimens) and conforming to the requirements of NACE MR01-75; or

(ii) With a Brinell hardness not less than 240 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 90 ksi min and UTS 110 ksi or more, Elongation of 15% or more and Reduction of area 30% or more; having charpy V at -40 degrees F in the longitudinal direction equal or greater than 21 ft. lbs (single value) and equal or greater than 31 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301;

(7) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.25-0.30,
- Silicon not greater than 0.25,
- Manganese not greater than 0.50,
- Nickel 3.0-3.5,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.0-1.5,
- Molybdenum 0.6-0.9,
- Vanadium 0.08 to 0.12
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm.

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.0(t) and 0.5(h), B not exceeding 1.5(t) and 1.0(h), C not exceeding 1.0(t) and 0.5(h), and D not exceeding 1.5(t) and 1.0(h);

(c) Having the following mechanical properties: A Brinell hardness not less than 350 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 145ksi or more and UTS 160ksi or more, Elongation of 15% or more and Reduction of area 35% or more; having charpy V at -40 degrees F in the transverse direction equal or greater than 20 ft. lbs (single value) and equal or greater than 25 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301.

At the time of the filing of the petition, there was an existing countervailing duty order on certain cut-to-length carbon-quality steel plate from Korea. *See Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea*, 64 FR 73176 (December 29, 1999), as amended, 65 FR 6587 (February 10, 2000) (*1999 Korea CVD Order*). The scope of the countervailing duty order with regard to cut-to-length plate from

Korea covers only (1) subject cut-to-length plate not within the physical description of cut-to-length carbon quality steel plate in the *1999 Korea CVD Order* regardless of producer or exporter, and (2) cut-to-length plate produced and/or exported by those companies that were excluded or revoked from the *1999 Korea CVD Order* as of April 8, 2016. The only revoked or excluded company is Pohang Iron and Steel Company, also known as POSCO.

The products subject to the *Order* are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

The products subject to the *Order* may also enter under the following HTSUS item numbers: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.0000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7226.11.1000, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180.

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

V. Rate for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to respondents not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Tariff Act of 1930, as amended (the Act). Generally, Commerce looks to section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents which we did not examine in an administrative review. Section 705(c)(5)(A) of the Act articulates a preference that we are not to calculate an all-others rate using rates which are zero, *de minimis*, or based entirely on facts available. Accordingly, Commerce's practice in determining the rate for respondents not selected for individual examination has been to average the weighed-average net subsidy rates for the selected companies, excluding rates that are zero, *de minimis*, or based entirely on facts available.[12] Section 705(c)(5)(A)(ii) of the Act also provides that, where all rates are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for establishing the all-others rate, including averaging the estimated weighted-average net subsidy rates determined for the exporters and producers individually investigated.

In the *Preliminary Results*, we found that POSCO, the sole mandatory respondent in this review, received countervailable subsidies that are above *de minimis*.[13] For the final results, we find that

[12] *See, e.g.*, *Certain Pasta from Italy: Final Results of the 2008 Countervailable Review*, 75 FR 37386, 37387 (June 29, 2010).
[13] *See Preliminary Results*, 85 FR at 45186.

POSCO received *de minimis* countervailable subsidies during the POR. In past reviews, Commerce determined that a "reasonable method" to use when the rates of the selected mandatory respondents are all zero or *de minimis* is to assign the non-selected respondents the average of the most recently determined rates that are not zero, *de minimis*, or based entirely on facts available (which may be from a prior review, a new shipper review, or the investigation).[14] However, if a non-selected respondent has its own calculated rate that is contemporaneous with or more recent that such previous margins, Commerce found it appropriate to apply that calculated rate to the non-selected respondent, including when that rate is zero or *de minimis*.[15]

In this and all prior segments of this proceeding, POSCO was the sole company to be individually examined.[16] In the respondent selection memorandum issued in this review, we noted that, out of the companies for which a review was requested the CBP data indicated that POSCO accounted for all of the CTL plate entered for consumption into the United States during the POR, and that based on the record, selecting POSCO would "capture all of the POR exports of companies for which a review was requested."[17] Likewise, in the previous review[18] of the *Order* and in the *CTL Plate Investigation*,[19] we selected POSCO as the sole mandatory respondent capturing an overwhelming majority of imports. Thus, the only other calculated rates in all segments of this proceeding are those rates we calculated for POSCO in the *CTL Plate Investigation* and in *CTL Plate AR1*. Furthermore, while POSCO was assigned above *de minimis* net countervailable subsidy rates in both the *CTL Plate Investigation* and in *CTL Plate AR1*, those rates were partially based on adverse facts available and facts otherwise available, respectively.[20]

As explained above, when the rates of selected mandatory respondents are all zero or *de minimis*, Commerce's practice has been to assign non-selected respondents the average of the most recently determined rates that are not zero, *de minimis*, or based entirely on facts available (which may be from a prior review, a new shipper review, or the investigation). In this proceeding, however, the facts are distinct from most other CVD proceedings in that POSCO is the only company that has ever been selected for individual examination and assigned an individual rate in all segments of the proceeding to date.

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[14] *See, e.g.*, *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2015*, 83 FR 16051 (April 13, 2018).
[15] *Id.*
[16] *See* Memorandum, "Respondent Selection," dated August 2, 2019 (Respondent Selection Memorandum).
[17] *Id.*
[18] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Final Results and Partial Rescission of Countervailing Duty Administrative Review, 2017*, 85 FR 2710 (January 16, 2020) (*CTL Plate AR1*), and accompanying Issues and Decision Memorandum (IDM).
[19] *See 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) (*CTL Plate Investigation*), and accompanying IDM. We note that in the *CTL Plate Investigation*, Commerce selected two mandatory respondents, POSCO and POSCO Daewoo Corporation (PDC) (formerly, Daewoo International Corporation), but during the course of the investigation, Commerce determined that PDC was POSCO's cross-owned trading company and considered POSCO the sole mandatory respondent.
[20] *See CTL Plate Investigation* IDM at "Use of Facts Otherwise Available and Adverse Inferences;" *see also CTL Plate AR1* IDM at "Use of Facts Otherwise Available."

In CVD proceedings, Commerce's concern is with government subsidization and the extent to which different companies may use or benefit from the subsidy programs. Where the CVD case records show a history of subsidization for a certain respondent, there is a reasonable basis to conclude that the respondent continues to receive and benefit from that subsidy. Therefore, if the mandatory respondents in a given segment are found not to use or not to benefit from a certain subsidy, their rates may not be reflective of the subsidy rate for another company not currently under individual examination but found in a prior segment to have benefited from the same subsidy. This would be particularly true where the mandatory respondents in the current segment have *de minimis* rates under that program, but the other company was significantly above *de minimis* in the prior segment for the same program.

None of these factual scenarios are present in this or prior segments under the *Order*. As noted, in this proceeding to date, POSCO is and has always been the only company subject to individual examination and for which a CVD rate was calculated based on its usage of the subsidy programs under examination. It is POSCO's rate that presents the only level of subsidization in the industry. Accordingly, for purposes of this review, and based on the unusual situation present here, we find it appropriate to depart from our normal practice and to assign POSCO's calculated *de minimis* net countervailable subsidy rate to the non-selected companies.

VI. Subsidies Valuation Information

A. Allocation Period

Commerce made no changes to, and the interested parties raised no issues in their briefs regarding, the allocation period or the allocation methodology used in the *Preliminary Results*. For a description of allocation period and the methodology used for these final results, *see* the *Preliminary Results* PDM at 10-11.

B. Attribution of Subsidies

Commerce made no changes to the methodologies used in the *Preliminary Results* for attributing subsidies. For further discussion, *see* Comment 2. For a description of the methodologies used for these final results, *see* the *Preliminary Results* PDM at 11-13.

C. Benchmarks and Discount Rates

Commerce made no changes to, and the interested parties raised no issues in their briefs regarding, the benchmarks used in the *Preliminary Results*. For a description of the benchmarks and discount rates used for these final results, *see* the *Preliminary Results* PDM at 13-15.

D. Denominators

Commerce has made no changes to, and the interested parties raised no issues in their briefs regarding, the denominators used in the *Preliminary Results*. For a description of the denominators used for these final results, *see* the *Preliminary Results* PDM at 14-15.

VII. Analysis of Programs

A. Programs Determined to be Countervailable

1. RSTA Article 10(1)(3): Tax Reduction for Research and Human Resources Development

No issues were raised by the interested parties regarding this program. For the description, analysis, and calculation methodology for this program, *see* the *Preliminary Results* PDM at 15-16. The final subsidy rate for this program remains unchanged at 0.05 percent *ad valorem*.

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

No issues were raised by the interested parties regarding this program. For the description, analysis, and calculation methodology for this program, *see* the *Preliminary Results* PDM at 16-17. The final subsidy rate for this program remains unchanged at 0.19 percent *ad valorem*.

3. RSTA Article 26: GOK Facilities Investment Support

No issues were raised by the interested parties regarding this program. For the description, analysis, and calculation methodology for this program, *see* the *Preliminary Results* PDM at 17-18. The final subsidy rate for this program remains unchanged at 0.11 percent *ad valorem*.

4. RSLTA Article 78(4): Reduction and Exemption for Industrial Complexes

Interested parties raised issues with regard to the cumulation of benefits with POSCO and its cross-owned input suppliers for this program. After considering those arguments, Commerce made no changes from the *Preliminary Results*.[21] *See* Comment 6 *below*. The final subsidy rate for this program remains unchanged at 0.01 percent *ad valorem*.

5. RSTA Article 10-2: Special Taxation for Contribution, etc., for R{esearch} & D{evelopment}

No issues were raised by the interested parties regarding this program. For the description, analysis, and calculation methodology for this program, *see* the *Preliminary Results* PDM at 20. The final subsidy rate for this program remains unchanged at 0.01 percent *ad valorem*.

6. Energy Savings Program Subsidies: Demand Response Market Program for Peak Curtailment

No issues were raised by the interested parties regarding this program. For the description, analysis, and calculation methodology for this program, *see* the *Preliminary Results* PDM at 20-21. The final subsidy rate for this program remains unchanged at 0.01 percent *ad valorem*.

[21] *See Preliminary Results* PDM at 19.

7. R&D Grants Under the Industrial Technology Innovation Promotion Act (ITIPA)

No issues were raised by the interested parties regarding this program. For the description, analysis, and calculation methodology for this program, *see* the *Preliminary Results* PDM at 21-22. The final subsidy rate for this program remains unchanged at 0.01 percent *ad valorem*.

8. Provision of Electricity for MTAR

Interested parties raised issues with regard to the countervailability of this program. After considering those arguments, Commerce made no changes from the *Preliminary Results* regarding this program.[22] *See* Comment 4 *below*. The final subsidy rate for this program remains unchanged at 0.02 percent *ad valorem*.

9. RSTA Article 8-3: Tax Credit when Making Contributions to Funds for Collaborative Cooperation between Large Enterprises and SMEs

No issues were raised by the interested parties regarding this program. For the description, analysis, and calculation methodology for this program, *see* the *Preliminary Results* PDM at 24-25. The final subsidy rate for this program remains unchanged at 0.01 percent *ad valorem*.

10. RSTA Article 24: Investment in Productivity Improving Facilities

No issues were raised by the interested parties regarding this program. For the description, analysis, and calculation methodology for this program, *see* the *Preliminary Results* PDM at 25-26. The final subsidy rate for this program remains unchanged at 0.01 percent *ad valorem*.

11. Research, Supply, or Workforce Development Investment Tax Deduction for "New Growth Engines" under RSTA Article 10(1)(1)

No issues were raised by the interested parties regarding this program. For the description, analysis, and calculation methodology for this program, *see* the *Preliminary Results* PDM at 26. The final subsidy rate for this program remains unchanged at 0.03 percent *ad valorem*.

12. Quota Tariff Import Duty Exemptions under Article 71 of the Customs Act

Interested parties raised issues with regard to the countervailability of this program. After considering those arguments, Commerce made no changes from the *Preliminary Results*.[23] *See* Comment 5 *below*. The final subsidy rate for this program remains unchanged at 0.03 percent *ad valorem*.

[22] *Id.* at 22-24.
[23] *Id.* at 27-28.

B. Programs Determined to Be Not Used or Not to Confer a Measurable Benefit

1. *RSTA Article 9: Reserve for Research and Human Resources Development*

We preliminarily found that this program provided a measurable benefit to POSCO.[24] Interested parties raised issues regarding an error in POSCO's principal amount used in the calculation of the program that resulted in incorrectly attributing a measurable benefit to POSCO. For these final results, we find that this program does not provide a measurable benefit. *See* Comment 7 *below*.

No interested parties filed case or rebuttal comments regarding Commerce's preliminary analysis regarding the following programs. Thus, Commerce's determination with respect to these programs remains unchanged for the final results.[25]

2. RSTA Article 25(3): Tax Credit for Investment in Environmental and Safety Facilities
3. RSTA Article 104(14): Third Party Logistics Operation
4. Asset Revaluations Pursuant to Article 56(2) of the Tax Reduction and Exemption Control Act
5. Unreported Government Subsidies Indicated on POSCO M-Tech's Income Tax Return
6. RSTA Article 22: Tax Exemption on Investment in Overseas Resources Development
7. Port Usage Grants for Pohang Yeongil Port
8. Energy Savings Program Subsidies – Demand Adjustment Program of Emergency Load Reduction
9. Power Generation Price Difference Payments
10. Korea Export-Import Bank (KEXIM) Import Financing
11. KEXIM Overseas Investment Credit Program
12. Korea Development Bank (KDB) and Other Policy Banks' Short-Term Discounted Loans for Export Receivables
13. Long-Term Loans from the Korean Resources Corporation (KORES) and the Korea National Oil Corporation (KNOC)
14. RSTA Article 25(2): Tax Deductions for Investments in Energy Economizing Facilities
15. PDC's Debt Workout
16. Modal Shift Program
17. Various Government Grants Contained in Financial Statements
18. RSTA Article 7-2: Tax Credit to Improve Corporate Payment System Including Negotiable Instruments
19. RSTA Article 25: Investment in Certain Enumerated Safety Facilities
20. RSTA Article 30: Investment in Certain Fixed Assets for Use for Business Purposes
21. RSTA Article 94: Acquisition of Facilities to Improve Corporate Welfare
22. RSTA Article 104(15): Development of Overseas Resources
23. RSTA Article 104(8)(1): Tax Credits for Electronic Returns
24. RSTA Article 121(2): Corporate Tax Reductions or Exemptions for Foreign Investment
25. Pre-1992 Directed Credit Loans
26. R&D and Other Subsidies in average useful life (AUL) Period

[24] *Id.* at 18.
[25] *Id.* at 28-29.

27. Grants from the Korea Workers' Compensation and Welfare Service
28. Grants Under the Human Resources Consortium Program
29. Power Business Law Subsidies
30. Provision of Liquified Natural Gas (LNG) for LTAR
31. Short-Term Export Credits
32. Export Factoring
33. Export Loan Guarantees
34. Trade Bill Rediscounting Program
35. Loans under the Industrial Base Fund
36. Export Credit Guarantees
37. Special Accounts for Energy and Resources (SAER) Loans
38. Clean Coal Subsidies
39. GOK Subsidies for "Green Technology R&D" and its Commercialization
40. Support for SME "Green Partnerships"
41. Research, Supply, or Workforce Development Expense Tax Deductions for "Core Technologies" under RSTA Article 10(1)(2)
42. Adjustment for any Foreign Source Income under Article 57 of the Corporate Tax Act
43. Tax Reductions and Exemptions in Free Economic Zones
44. Exemptions and Reductions of Lease Fees in Free Economic Zones
45. Grants and Financial Support in Free Economic Zones
46. Sharing of Working Opportunities/Employment Creating Incentives
47. Dongbu's Debt Restructuring
48. PDC – Various Transactions with KDB during 2015
49. Hyosung – Korea Finance Corporation/ KDB Facility Loans
50. Hyosung – KDB Usance Loans
51. Hyosung-Industrial Bank of Korea Short-Term Discounted Loans for Export Receivables
52. PNR – Long-Term Facility and General Loans from the KDB

VIII. Discussion of Comments

Comment 1: Whether Commerce Should Reconsider Its Decision Not to Initiate on the "Off-Peak Electricity for LTAR" New Subsidy Allegation

Nucor's Case Brief:[26]

- Commerce should reconsider its decision not to initiate an investigation into the alleged off-peak electricity for LTAR program. Nucor provided sufficient evidence to allege that Korea Electric Power Corporation (KEPCO) charges POSCO significantly less than its cost of production.
- Nucor submitted the average cost of industrial electricity during the POR as evidence that off-peak electricity prices are below the cost of production, and used the Court of Appeals for the Federal Circuit's (Federal Circuit) rejection of Commerce's "standard pricing mechanism" analysis in *Nucor* as a basis to examine whether KEPCO's off-peak electricity prices satisfied the adequate remuneration standard during the POR.[27]

[26] *See* Nucor Case Brief at 1-11.
[27] *Id.* at 4 (citing *Nucor Corp. v. United States*, 927 F.3d 1243 (Fed. Cir. 2019) (*Nucor*)).

- Under a tier three market analysis, Commerce analyzes market principles through an analysis of the government entity's price-setting methodology, costs (including rates of return sufficient to ensure future operations), or possible price discrimination, without giving hierarchical weight to any particular factor.[28]
- Nucor did not attempt to equate the system marginal price (SMP) with the average cost of electricity; Nucor maintains that the SMP only represents one portion of the cost of supplying electricity and is a conservative estimate of the actual benefit.[29]
- Nucor submitted the average cost of electricity during the POR, which was higher than the SMP, to support its assertion that off-peak electricity prices were significantly below the cost of production.[30]
- Contrary to Commerce's assertion, Nucor did account for the quantity of electricity provided by various generators that would affect the overall cost of the provision of electricity by demonstrating that there were no significant fluctuations in total demand or variations in the mix of generations supplying electricity over the course of an average day.[31]
- Commerce did not provide evidence against Nucor's assertions regarding the quantity of electricity, nor did they request Nucor to provide more information or explain how such information might be readily available. Furthermore, Commerce did not mention what would be sufficient evidence of LTAR pricing that would result in reexamination.[32]
- Commerce's assertion that a system should recover, or was designed to cover, costs necessary to ensure future operations does not demonstrate that it does so, and Commerce's finding that costs are recovered, as well as its reliance on its determination that KEPCO recovered its costs during the *CORE from Korea* investigation, is incorrect.[33]
- Nucor provided evidence of a pattern of significant losses by KEPCO, evidence tying those losses to the manner in which KEPCO subsidized off-peak electricity prices to large industrial users, and quantitative evidence that the subsidized prices were significantly below KEPCO's cost of supply during the POR.
- Nucor met its statutory burden alleging the elements of a countervailable subsidy and providing information reasonably available supporting its allegation.
- Commerce's decision not to initiate on Nucor's allegation in this proceeding was incorrectly based on the preferentiality standard the Federal Circuit rejected in *Nucor*; determining adequate remuneration solely on lack of preferentiality by the GOK is insufficient.[34]

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[28] *Id.* at 3-4 (citing Memorandum, "Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Post-Preliminary Analysis Memorandum," dated August 6, 2020 at 10).
[29] *Id.* at 4-5 (citing Nucor's Letter, "Request for Reconsideration of New Subsidy Allegation," dated April 9, 2020, (Nucor Request for Reconsideration) at 3).
[30] *Id.* at 5 (citing Nucor's Letter, "New Subsidy Allegations," dated November 4, 2019 (NSA Submission) at 7-11).
[31] *Id*. at 5 (citing NSA Submission at 12 and 15; Nucor Request for Reconsideration at 3-4).
[32] *Id.* at 6 (citing Memorandum, "Decision Memorandum on New Subsidy Allegations," dated April 1, 2020 (NSA Memorandum) at 9).
[33] *Id.* at 5 (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 from Korea*), and accompanying IDM at Comment 2).
[34] *Id*. at 7 (citing *Nucor*, 927 F.3d at 1255).

- The definition of adequate remuneration, which conveys a payment of an amount that reflects the value of what is being paid for, was not reflected in Commerce's decision. Commerce equated nondiscrimination with fair value.[35]
- Nucor's burden was not to provide information demonstrating that KEPCO's operations are outside of the prevailing market conditions of an electricity utility in Korea, but that KEPCO's pricing of off-peak electricity is below the fair value of electricity.
- By definition, a supplier within a market will operate within the prevailing conditions of the market, especially when they are the only supplier in the market, as is the case with KEPCO in Korea. This anchors the LTAR determination in considering whether KEPCO is operating in a manner consistent with its own operations.
- Nucor's allegation was based on the manner in which KEPCO's time-of-use (TOU) operations create a system of cross-subsidization explicitly for the benefit of energy-intensive industries. Nucor provided discrepancies between 'peak' and 'off-peak' pricing, despite lack of correlating differences in demand. That the TOU system across tariff rates allows KEPCO to recover costs does not address the substance of the allegation.[36]
- Commerce did not identify or quantify a rate of return it considers sufficient to ensure future operations. As KEPCO is a government entity, the fact that it continues to operate does not mean rates of return are commercially sufficient.
- Furthermore, Commerce did not provide an explanation as to how KEPCO is recovering costs sufficient to ensure future operations, even though KEPCO operated at a loss during the POR.
- In *Aluminum Sheet from Bahrain Prelim*, Commerce examined not only cost recovery, but examined whether the electric utility both covered its costs and made a reasonable rate of return.[37]
- Commerce should follow the methodology used in *Supercalendered Paper from Canada*, where Commerce determined that there was a system of cross-subsidization in the electricity market and the subsidized costs were not set by a market-determined method for a regulated monopoly. In that case, Commerce constructed a tier three benchmark including all fixed costs, variable costs, and amount for profit.[38]
- A cost recovery standard with the absence of appropriate profit is appropriate to determine whether the adequate remuneration standard is satisfied; Commerce should at minimum identify a metric based on the value of electricity to determine whether KEPCO is receiving a sufficient rate of return to ensure future operations.

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[35] *Id.* (citing *Nucor*, 927 F.3d at 1250).

[36] *Id.* (citing NSA Memorandum at 9; NSA Submission at 11-13; Nucor Request for Reconsideration at 10).

[37] *Id.* at 9-10 (citing *Common Alloy Aluminum Sheet from Bahrain: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 85 FR 63535 (August 14, 2020) (*Aluminum Sheet from Bahrain Prelim*), and accompanying PDM at 15 ("{I}n order to construct a tier three benchmark, we used the costs for the generation, transmission, and distribution of electricity during the POI reported by the GOB {Government of Bahrain} and divided the total costs by the total POI consumption reported by the GOB in order to calculate the per-unit cost of electricity during the POI. To arrive at a market price, we need to add a suitable rate of return for the electric utility sector. Consequently, we are relying on publicly available data sourced from CSIMarket, a stocks analytics service available online that reports return on earnings information for electric utilities by quarter, which we are placing on the record of this proceeding. We used the data to calculate a POI-specific return on earnings rate and, by applying this rate to the per-unit electricity cost, we constructed a benchmark price for electricity during the POI.")).

[38] *Id.* at 10 (citing *Supercalendered Paper from Canada: Final Countervailing Duty Determination*, 85 FR 63535 (October 20, 2015) (*Supercalendered Paper from Canada*), and accompanying IDM at "Analysis of Programs").

- Off-peak electricity prices do not cover the cost of production; therefore Commerce's decision to rely on *CORE from Korea* when stating that the evidence KEPCO operated at a loss during the POR is not sufficient to reexamine KEPCO's cost recovery does not address the substance of Nucor's allegation.

POSCO's Rebuttal Brief:[39]

- Nucor presented no new evidence or arguments in its case brief that it did not make in its new subsidy allegation (NSA) or request for reconsideration that Commerce already considered and failed to present any reasoning warranting reconsideration of the decision not to initiate on the alleged provision of off-peak electricity for LTAR program.
- Nucor's use of the SMP and average cost of electricity during the POR as benchmarks was inappropriate because they are not tariff rates, but the maximum marginal price of electricity at any given hour.[40]
- Under section 771(5)(E) of the Act, Commerce does not have an obligation to establish a benchmark price for the purposes of a tier three analysis. Adequacy of remuneration determinations involve prevailing market conditions; the statute provides no definition of "adequate remuneration" and does not require the use of any particular methodology for measuring the adequacy of remuneration.
- Sections 351.511(a)(2)(i)-(iii) of Commerce's regulations clearly demonstrate that a tier three analysis is applicable in this situation. Furthermore, the *CVD Final Rule* identifies electricity as a situation for a suitable tier three analysis and states that tier three factors are not put into any hierarchy and that Commerce may rely on one or more of the factors.[41]
- *Nucor* affirmed the tier three market principles analysis when Commerce accounted for cost recovery and price setting methodology as key components of its analysis; moreover, it affirmed Commerce's broad discretion in its choice of methodology when examining whether prices are adequately remunerative. Commerce is not obligated to use Nucor's benchmarks.[42]
- Commerce was correct in finding that Nucor did not provide sufficient evidence that an examination of off-peak electricity in isolation would be consistent with the prevailing market conditions for electricity provision in Korea.
- The TOU system supplies electricity consistently throughout a 24-hour period and costs are recovered to the extent necessary to ensure future operations. TOU pricing is a demand management tool that allows for more efficient use of electricity, helping the GOK to avoid disruptions in electricity supply and limit investment costs. It is logical not to examine only one segment of the system in isolation for cost recovery.[43]
- Examining the TOU pricing schedule as a whole is consistent with legal precedent. The Court of International Trade (CIT) has broadly interpreted a subsidy program as "includ{ing} multiple elements and multiple actors, brought together for an overarching government objective." For example, the CIT remanded Commerce's selective analysis of payments in

[39] *See* POSCO Rebuttal Brief at 3-16.
[40] *Id.* at 4-5 (citing NSA Submission at 14; NSA Memorandum at 8).
[41] *Id.* at 6 (citing *Countervailing Duties: Final Rule*, 63 FR 65348, 65378 (November 25, 1998) (*CVD Final Rule*)).
[42] *Id.* at 6-7 (citing *Nucor*, 927 F.3d at 1255).
[43] *Id.* at 10 (citing the GOK's Letter, "Comments on Nucor's New Subsidy Allegation," dated November 22, 2019 at 2-4; NSA Memorandum at 8).

Sri Lanka, determining that analyzing the reimbursement payments in isolation from the overall program was not in accordance with section 771(5)(C) of the Act.[44]

- Nucor did not adequately link the off-peak tariff to industrial users and the steel industries. Off-peak rates are available to other sectors. Nucor's allegation claimed the steel industry accounts for 14 percent of industrial and 7.1 percent of total Korean electricity consumption. This does not support Nucor's allegation that KEPCO operates a system of cross-subsidization explicitly for the benefit of energy-intensive industries.[45]
- There is no legal authority that would require Commerce to identify a rate of return that is sufficient to ensure future operations; doing so would be inconsistent with Commerce's practice of evaluating each review on a case-by-case basis.
- Setting a specific rate of return in each year for a large, regulated utility such as KEPCO in order to demonstrate it would be able to continue operations in the future is inconsistent with business understanding of utilities, which are capital-intensive businesses that necessarily incur high fixed costs.
- Costs will not increase or decrease in exact proportion to sales, as costs are not solely dependent on sales performance but are tied to other expenses, including depreciation and construction of new assets. Future operations cannot hinge on the financial performance of a single year as a measured rate of return.
- *Aluminum Sheet from Bahrain Prelim* is inapplicable because in that case, Commerce determined that prices for electricity were not consistent with market principles in a proprietary analysis, with a different electricity provider with different price setting principles in a different market.[46]
- Likewise, *Supercalendered Paper from Canada* is inapplicable because there was no standard pricing mechanism; the respondent's electricity tariff was individually negotiated with the electricity provider. The most relevant precedent would be previous cases related to the Korean electricity market, upon which Commerce relied in its preliminary determination.[47]
- Nucor's assertion that Commerce based its decision on a preferentiality standard rejected in *Nucor* is incorrect, as the court did not mandate any particular method that had to be applied in future cases and did not require a "fair value" analysis.
- When rejecting the preferentiality standard, *Nucor* recognized a 'large range of potential implementation choices, ' including fair value and various measures of cost. Commerce has *prima facie* leeway to make a choice and justify it based on the statute and other considerations such as practicality.[48]
- Treating the TOU pricing system as a whole is consistent with CIT precedent. Commerce's decision that Nucor did not provide enough evidence to support its allegation was consistent with *Nucor*, which allowed Commerce to determine the adequacy of remuneration by examining cost recovery.[49]

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[44] *Id.* at 11-12 (citing *Government of Sri Lanka v. United States*, 308 F. Supp 3d 1373 (CIT 2018) (*Sri Lanka*) at 1379-130; *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003), and accompanying IDM at Comment 1, upheld in *Hynix Semiconductor Inc. v. United States*, 391 F. Supp 2d 1337, 1345-1346 (CIT 2005)).
[45] *Id.* at 12 (citing NSA Submission at 12 and Exhibits 12 and 13).
[46] *Id.* at 14-15 (citing *Aluminum Sheet from Bahrain Prelim* PDM at 15).
[47] *Id.* at 15-16 (citing *Supercalendered Paper from Canada* IDM at "Analysis of Programs").
[48] *Id.* at 7-8 (citing *Nucor*, 927 F.3d at 1254-1255).
[49] *Id.* at 8 (citing *Nucor*, 927 F.3d at 1254-55; NSA Memorandum at 9).

- Commerce correctly found that KEPCO's TOU pricing system was consistent with market principles because it examined KEPCO in previous investigations and found it recovered its costs.[50]
- Nucor's argument that KEPCO operated at a loss during the POR is insufficient because Commerce has previously found that poor financial performance by a government-owned company in a particular year does not necessarily indicate that an input was being provided for LTAR. KEPCO was profitable the previous four years.[51]
- Commerce correctly conducted a tier three market principles analysis in a manner upheld by the Federal Circuit, clearly explained its reasoning, and did not rely on the preferentiality standard as Nucor claims.

GOK's Rebuttal Brief:[52]

- Nucor did not provide the average cost of industrial electricity in its NSA, but the average unit sales price of industrial electricity. As the GOK explained in its response to Nucor's Request for Reconsideration, Nucor misinterpreted the "Sale Cost by Contract Classification" page on the Korean Power Exchange's (KPX) statistics information website, Electric Power Statistics Information System, as a cost rather than a sales price.[53]
- Because Nucor did not provide the average cost of electricity, there is no evidence that KEPCO's TOU pricing system is inconsistent with market principles. Nucor's allegation is without merit, because its assertion that the average cost of industrial electricity during the POR was higher than the SMP is not supported by sufficient evidence.
- The Federal Circuit upheld Commerce's determination that KEPCO's pricing was consistent with market principles, finding that KEPCO's pricing met familiar standards of cost recovery and that the combination of facts was sufficient to meet the "adequate remuneration" standard. Contrary to Nucor's argument, the decision was not based only a preferentiality standard, but accounted for cost recovery.[54]
- For the purpose of the TOU pricing scheme, the off-peak price is, from its nature, lower than the mid-peak or on-peak price because electricity prices vary according to demand by time.
- The time periods should be considered in conjunction with, not separately from, each other when determining cost recovery through the TOU system for electricity pricing in Korea. The purpose of KEPCO's TOU pricing is to ensure 24-hour electricity supply with overall cost recovery.

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[50] *Id.* at 8-9 (citing NSA Memorandum at 8; *Countervailing Duty Investigation of Certain Cold- Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49946 (July 29, 2016), and accompanying IDM at Comment 2; *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 Comment 2; *CTL Plate Investigation* IDM at Comment 2).

[51] *Id.* at 9 (citing NSA Memorandum at 9; Nucor's Letter, "Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: New Subsidy Allegations Supplemental Questionnaire Response," dated December 31, 2019, (NSA Supplemental Response) at Exhibit 1).

[52] *See* GOK Rebuttal Brief at 2-4.

[53] *Id* at 2 (citing GOK's Letter, "Response to Nucor's Request for Reconsideration," dated May 27, 2020 (GOK Comments on Request for Reconsideration); NSA Submission at Exhibit 13; NSA Supplemental Response at 4-5).

[54] *Id.* at 3 (citing *Nucor*, 927 F.3d at 1252 ("We {…} uphold Commerce's decision about KEPCO's pricing in this case. Commerce did not find only the absence of preferential rates. It also found, and gave specific reasons for finding, that KEPCO's pricing met familiar standards of cost recovery. We have been shown no reversible error in Commerce's decision to rely on that combination of facts as sufficient to meet the 'adequate remuneration' standard.").

Commerce's Position:

We continue to find that Nucor provided insufficient evidence to initiate an investigation into the alleged provision of off-peak electricity for LTAR. Commerce declined to initiate an investigation of the off-peak electricity for LTAR allegation on the basis that Nucor did not provide evidence of the existence of a benefit. Specifically, Commerce examined the allegation for evidence of both cost recovery and inconsistency with prevailing market conditions and found insufficient support in the allegation.[55]

Nucor filed NSAs, including an allegation of the GOK's provision of off-peak electricity for LTAR, on November 4, 2019; the GOK submitted comments in response to the off-peak electricity for LTAR allegation.[56] On December 20, 2019, Commerce issued a supplemental questionnaire to Nucor regarding its off-peak electricity for LTAR allegation, including a request for further supporting documentation and information regarding steel industry electricity use in the Korean market as well as further information regarding the use of the SMP in the allegation.[57] On December 31, 2019, Nucor filed a response to the questionnaire.[58]

When declining to investigate the allegation, Commerce noted that the SMP, the basis of Nucor's price comparison, was the accepted bid price from the generation unit with the highest variable cost that receives a purchase order at any given hour (*i.e.*, the highest price at which electricity is supplied at any given time) and that a maximum electricity price could not be statistically reflective of an average electricity price which Commerce could use to determine the existence of a benefit.[59] Furthermore, Commerce found that the SMP is one variable in the formula used by KEPCO to determine the market price paid to electricity generators and that the SMP was not an appropriate proxy for a market price or, without adjustment from a coefficient,[60] reflective of a rate that KEPCO would pay electricity generators.[61] To determine if Nucor properly alleged the existence of a benefit under 19 CFR 351.511(a)(2)(iii), Commerce also examined whether Nucor provided evidence that the provision of off-peak electricity, in isolation within the TOU pricing system, was inconsistent with prevailing market conditions under a tier three analysis of market principles in accordance with section 771(5)(E)(iv) of the Act.[62] Commerce found that Nucor did not provide sufficient information demonstrating that KEPCO's TOU pricing system

[55] *See* NSA Memorandum at 4-9.
[56] *See* NSA Submission at 7-17; *see also* GOK's Letter, "Comments on Nucor's New Subsidy Allegations," dated November 22, 2019.
[57] *See* Commerce's Letter, "New Subsidy Allegation Supplemental Questionnaire," dated December 20, 2019 (NSA Supplemental Questionnaire).
[58] *See* NSA Supplemental Response.
[59] *See* NSA Memorandum at 7.
[60] *Id.* at 8. As noted in the NSA Memorandum, the price of electricity at which KEPCO's generation subsidiaries sell electricity is determined using the following formula: variable cost (*i.e.*, capacity price) + (SMP – variable cost)*adjusted coefficient (*i.e.*, coefficient factor). Thus, the SMP, capacity price, and coefficient factor are inextricably linked and together account for the cost of KEPCO's electricity purchases. The coefficients vary by electricity generator and the real value of the marginal cost for each generator cannot be determined without this coefficient. *See* NSA Supplemental Response at Exhibit 1.
[61] *Id.* at 7-8.
[62] *Id.* at 9.

was inconsistent with prevailing market conditions.[63] Lastly, Commerce noted that, consistent with Commerce practice, a single year of poor financial performance from a government-owned entity (*i.e.*, KEPCO failing to recover its costs during the POR) did not sufficiently demonstrate that an input was provided for LTAR.[64]

After we declined to initiate an investigation of the off-peak electricity for LTAR NSA, Nucor submitted pre-preliminary comments asking Commerce to reconsider its determination on April 9, 2020.[65] On May 27, 2020, the GOK submitted comments responding to Nucor.[66] In its case brief, Nucor again contends that Commerce should reconsider its decision not to initiate an investigation into the off-peak electricity for LTAR allegation because Nucor submitted evidence demonstrating that off-peak electricity prices were below the cost of production during the POR and Commerce incorrectly based its decision to not initiate on a preferentiality standard rejected by the Federal Circuit.[67] POSCO and the GOK counter that Commerce's decision not to investigate the alleged provision of off-peak electricity for LTAR was appropriate because Nucor did not provide sufficient evidence to support its allegation and Commerce has already considered and rejected the arguments that Nucor puts forth in its case brief.[68]

Commerce's regulation at 19 CFR 351.511(a)(2)(iii) outlines that if there is no world market price available to purchasers in the country, Commerce measures the adequacy of remuneration by assessing whether the government price is consistent with market principles. Section 771(5)(E)(iv) of the Act states that the adequacy of remuneration is determined in relation to prevailing market conditions in the country where the subsidy is provided, which include "price, quality, availability, marketability, transportation, and other conditions of purchase or sale." There is no specific hierarchy under which Commerce examines these conditions.[69]

Nucor's case brief reiterates the arguments in its NSA submission which focused on the pricing of off-peak electricity as the prevailing market condition under which a benefit would be conferred. In its allegation, Nucor provided the average off-peak SMP, which Nucor maintained "represents only the variable cost of electricity and does not include fixed costs or profit," and what Nucor described as "KPX data showing … the annual average cost of sale for industrial electricity."[70] Nucor claimed that both of those values reflect the cost of providing off-peak electricity in Korea, and demonstrate a benefit when compared to the tariff rates POSCO reported in the investigation segment of this proceeding.[71] Nucor identified no additional or previously unconsidered information in its case brief and we continue to find that these benchmarks are not a suitable comparison to the tariff rate POSCO paid for off-peak electricity. As we explained in the NSA Memorandum, neither of these benchmarks provide a "benefit calculation on a comparison of the price the respondent firm paid to the government for the good in question to a market determined benchmark price for the good that would have been available

[63] *Id.*
[64] *Id.* at 8-9.
[65] *See* Nucor Request for Reconsideration.
[66] *See* GOK Comments on Request for Reconsideration.
[67] *See* Nucor Case Brief at 1.
[68] *See* POSCO Rebuttal Brief at 1; *see also* GOK Rebuttal Brief at 3-4.
[69] *See Countervailing Duties, Final Rule*, 63 FR 65348, 65377-79 (November 25, 1998) (*CVD Final Rule*) at 65378.
[70] *See* NSA Submission at 14-15.
[71] *Id.*

in the country of provision," because neither of the offered benchmarks reflect the average price of off-peak electricity for LTAR.[72]

With respect to the SMP Nucor provides as a benchmark, we continue to find that the SMP reflects "the generation unit with the highest variable cost that receives a purchase order at any given hour, which is, in effect, the highest price at which electricity is supplied at any given time."[73] As we noted in the NSA Memorandum, the SMP is both a maximum cost not statistically reflective of an average unit cost and a variable in the formula used by KEPCO to determine market payment to electricity generators. Therefore, the SMP is not an appropriate proxy for a market price because the SMP in and of itself neither reflects a real-world average unit cost of providing electricity nor the rates that KEPCO would pay electricity generators.[74] Nucor attempts to address this deficiency by arguing that there were no significant fluctuations in electricity consumption based on time of day and a similar maximum price would result in similar total costs paid to electricity generators at all hours;[75] however, this is an insufficient explanation because we cannot determine what those costs are from the information provided. The SMP, which represents only a maximum marginal cost at any given hour, does not reflect the average value of those generation costs over the course of the day, or even during off-peak electricity consumption, and whether the generation costs would be higher than the tariff rates charged to POSCO, thus providing a benefit.

Furthermore, while Nucor claims that the total quantities of electricity used in Korea during the day and at night are similar, the hourly SMP rates found in the Electric Power Statistics Information System's database for the dates of the POR indicate that the SMPs for off-peak hours were lower than the daily averages of the SMPs.[76] The below-average SMP during off-peak hours clearly demonstrates that electric generators were offering KPX electricity bids at lower prices, and KPX was accepting bids either from different, less expensive generators or the same generators' electricity at a lower price. Thus, Commerce cannot reasonably assume that the same generators were providing electricity at similar quantities at peak and off-peak hours or that electricity from high-cost generators accounts for a similar proportion of electricity provided at peak and off-peak hours.

The record evidence demonstrates that the average KPX pricing data that Nucor described as the "annual average cost of sale"[77] is the average price that KPX charged KEPCO across all hours.[78] While this could be a suitable benchmark for comparing the tariff rates POSCO paid for electricity across all hours, the allegation at hand is the provision of off-peak electricity.[79] Unless the average price KPX provided to KEPCO can be isolated to off-peak hours, this benchmark cannot make an equivalent comparison to the tariff schedules' off-peak prices POSCO paid because it does not account for the demonstrated differences between TOU tariff rates during peak, mid-peak, and off-peak usage.

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[72] *See* NSA Memorandum at 7.
[73] *Id.*
[74] *Id.* at 7-8.
[75] *See* Nucor Case Brief at 5.
[76] *See* NSA Submission at Exhibit 9.
[77] *Id.* at 14-15.
[78] *See* GOK Rebuttal Brief at 2 (citing NSA Submission at Exhibit 13; NSA Supplemental Response at 4-5).
[79] *Id.*

We also examined whether KEPCO's cost recovery as an entity was a sufficient benchmark to examine whether KEPCO's losses would merit initiating an investigation of the provision of electricity for LTAR. Although Nucor claims that Commerce "concludes that 'costs are recovered to an extent necessary to ensure future operation' without conducting any kind of price and cost analysis,"[80] Commerce did not make a finding regarding whether KEPCO recovered its costs. Rather, we noted that Commerce does not find one year without cost recovery sufficient to demonstrate that a government-owned entity is not recovering its costs.[81] Given precedent, we found that KEPCO's one year of losses following several previous years of profits was insufficient to initiate on an LTAR allegation; we made no determination that KEPCO had recovered its costs providing electricity, and in fact, acknowledged KEPCO's losses during the POR.[82] Furthermore, when determining to decline the initiation, we examined whether Nucor sufficiently alleged that the GOK's provision of off-peak electricity for LTAR to POSCO was inconsistent with market principles beyond pricing. In a tier three assessment of adequacy of remuneration, there are a number of factors identified for assessing whether a program is 'consistent with market principles, ' and there is no hierarchical order for said principles.[83] We addressed the market principles Nucor included in its allegation, namely KEPCO's cost recovery, but also addressed industry preferentiality, *i.e.*, whether the GOK's provision of off-peak electricity for LTAR was consistent with market principles. The CIT decision upheld by *Nucor* elucidates that there is a place within this analysis for an examination of the tariff schedule and whether a government treats certain entities in a preferential manner, noting "Commerce recognized 'what constitutes adequate remuneration depends on the nature of the marketplace, and where the marketplace is a government-controlled monopoly, there is a role for a preferentiality based test.' …{T}he tier three benchmark analysis preserves a place for the preferentiality test in the absence of either an in country or a world market price."[84]

Nucor recognizes that the preferentiality standard could fail if a "foreign government authority engaged in a uniform, non-discriminatory, tariffed practice of charging a price so low that the authority consistently lost large sums of money in a way no private seller could sustain."[85] Likewise, some form of preferentiality could be practiced wherein a government provided a good for a price at a profit, but at a preferred lower price than provided to other consumers, thus creating a benefit. *Nucor* identifies the possibility of this scenario and the need for an examination of discriminatory pricing, stating, "discrimination in the price-lowering direction might be some evidence that a rate fails to be adequately remunerative: that a price is discriminatorily low can be an indication that the seller is subsidizing the beneficiaries of that price and not receiving adequate compensation."[86] As Nucor alleged that POSCO paid for off-

[80] *See* Nucor Case Brief at 2.
[81] *See* NSA Memorandum at 8 ("Further, in making its LTAR allegation, Nucor claims that KEPCO has not recovered its costs during the POR. We have previously examined KEPCO in other investigations and determined that it recovers its costs; that decision was upheld by the Federal Circuit in *Nucor*. Additionally, we have previously found that poor financial performance by a government-owned company in a particular year does not necessarily indicate that an input was being provided for LTAR.").
[82] *Id.* at 9.
[83] *See CVD Final Rule* at 65378.
[84] *See Nucor Corporation v. United States*, 286 F. Supp. 3d 1364 (CIT 2018) (citing *Maverick Tube Corp. v. United States*, 273 F.Supp.3d at 1304-1307 (CIT 2017); *CVD Final Rule* at 65377-78; 19 CFR 351.511(a)(2)(iii)).
[85] *See Nucor*, 927 F.3d at 1243.
[86] *Id.*

peak electricity at industrial tariff rates given to all industrial electricity buyers in Korea,[87] we found there was insufficient evidence in the allegation indicating the existence of a benefit from price discrimination in the GOK's provision of off-peak electricity. In the NSA Memorandum, we examined whether Nucor made an allegation in regard to whether the electricity system was consistent with market principles for the purposes of assessing whether other aspects of the GOK's provision of off-peak electricity was inconsistent in the provision of "quality, availability, marketability, transportation, and other conditions of purchase or sale," in addition to, and not in lieu of, assessing Nucor's allegation regarding pricing. *Nucor* accepted this approach, noting that:

> We nevertheless uphold Commerce's decision about KEPCO's pricing in this case. Commerce did not find only the absence of preferential rates. It also found, and gave specific reasons for finding, that KEPCO's pricing met familiar standards of cost recovery. We have been shown no reversible error in Commerce's decision to rely on that combination of facts as sufficient to meet the "adequate remuneration" standard.[88]

The deficiency in examining preferentiality outlined by *Nucor* is the practice of examining only preferentiality and not addressing other factors, including cost recovery, that would make the provision of a good inconsistent with prevailing market conditions. *Nucor* upheld this practice, and the decision in *CORE from Korea*, because *CORE from Korea* addressed both cost recovery and preferentiality.[89] Commerce, when assessing the allegation of the off-peak electricity for LTAR program, likewise examined Nucor's allegation for evidence of KEPCO's lack of cost recovery, as well as for evidence of inconsistency with prevailing market conditions. Regardless, Commerce addressed Nucor's arguments on cost recovery and why the allegation was deficient regarding evidence that off-peak electricity costs were above sales prices in its NSA Memorandum. Despite Nucor's claim in its case brief that Commerce inappropriately relied on preferentiality standards is contrary to *Nucor*, the Federal Circuit upheld the practice as long as cost recovery is addressed. Therefore, we disagree with Nucor that Commerce inappropriately relied on a preferentiality standard; Commerce acted consistently with *Nucor* in analyzing the NSA because we examined multiple methods, including cost recovery.

Finally, Commerce was consistent with *Nucor* and our practice in *Aluminum Sheet from Bahrain* and *Supercalendered Paper from Canada* because we did not make a determination about the countervailability of the provision of electricity in Korea or conduct analysis beyond examining whether there was sufficient evidence of a benefit provided to POSCO in the context of the allegation concerning the provision of off-peak electricity for LTAR. In *Aluminum Sheet from Bahrain* and *Supercalendered Paper from Canada*, we initiated an investigation into the allegations and made determinations of countervailability based on the specific records of those cases and the electricity market of the country in question. In *Aluminum Sheet from Bahrain*, we found in a tier three market principles analysis that "the price of electricity in Bahrain is not set

[87] *See* NSA Submission at 14 ("Because the same tariff schedule {as in the *CTL Plate Investigation*} remained in effect during the POR here, these prices are likely representative of what POSCO paid for off-peak electricity during the POR.")
[88] *See Nucor*, 927 F.3d at 1243.
[89] *Id.*

in a manner that is consistent with market principles."[90] The distinct factual findings of an investigated benefit in another tier three market analysis for a different market have no direct bearing on the record here, and the calculation of the benefit in that case is not applicable because Korea is a different market with a differing set of market principles.[91] Similarly, in *Supercalendered Paper from Canada*, Commerce found that the electricity providers in Nova Scotia specifically granted the respondent a lowered price for electricity as part of a credit protection program and to ensure a paper mill was able to reopen.[92] The "system of cross-subsidization" alleged by Nucor in the instant review does not have any relation to the cross-subsidization we found in *Supercalendered Paper from Canada*; there was no allegation or evidence whatsoever that POSCO or the steel industry were offered or granted a lower electricity price unavailable to the rest of the market. Further, *Nucor* upholds the finding in *CORE from Korea* that the electricity for LTAR program was not countervailable. Here, we merely found that the instant allegation did not contain a reasonable benchmark or other sufficient evidence of a benefit that would satisfy the standard for initiation.

We disagree with Nucor that Commerce set an unreasonably high standard for initiation by declining to initiate on the alleged program. Under section 702(b)(1) of the Act, the petitioner must allege the elements necessary for the imposition of a countervailing duty as set forth by section 701(a) of the Act. The allegation must be accompanied by information reasonably available to the petitioner supporting those allegations. Section 771(5)(B) of the Act elaborates that a subsidy shall be deemed to exist if: (1) there is a financial contribution by an "authority" (defined as a government of a country or any public entity within the territory of the country) or an "authority" entrusts or directs a private party to make a financial contribution to a person, and (2) a benefit is thereby conferred. To be countervailable, the subsidy must also be specific within the meaning of section 771(5A) of the Act. Parties are obligated to support their subsidy allegations and must identify the elements of a countervailable subsidy (*i.e.*, specificity, benefit, and financial contribution); it is not the responsibility of Commerce to amend insufficient allegations.[93] This practice was affirmed in *SolarWorld*, wherein the CIT held that Commerce reasonably declined to initiate an investigation into subsidy programs alleged in the petition that lacked a sufficient evidentiary basis.[94] The CIT rejected assertions that Commerce should have supplemented the allegations on its own accord, holding that "{u}nder Section {702}(b)(1), it is not for Commerce to seek out evidence supporting the interested party's petition."[95]

Commerce gave Nucor an opportunity to amend, clarify, and provide additional supporting documentation in regard to the existence of a benefit in Nucor's provision of off-peak electricity for LTAR allegation, emphasizing that "there are other factors that determine the price for

[90] *See Aluminum Sheet from Bahrain Prelim* PDM at 15; unchanged in *Common Alloy Aluminum Sheet from Bahrain: Final Affirmative Countervailing Duty Determination*, 86 FR 13333 (March 8, 2021), and accompanying IDM.
[91] *See Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Product from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 FR 49935 (July 29, 2016), and accompanying IDM at Comment 15.
[92] *See Supercalendered Paper from Canada* IDM at "Analysis of Programs."
[93] *See* section 702(b) of the Act.
[94] *See SolarWorld Ams., Inc. v. United States*, 125 F. Supp 3d at 1330 (CIT 2015) (*SolarWorld*).
[95] *Id.*

electricity other than the SMP."[96] As previously noted, Nucor did not provide explanations or sufficient evidence to support its allegation concerning the existence of a benefit for this program. The *CVD Final Rule* notes that where a tier three benchmark is used, Commerce's practice is to "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."[97] However, Commerce does not prioritize any one factor and "may rely on one or more of these factors in any particular case."[98] The lack of detailed administrative procedure for conducting a tier three market analysis not only allows Commerce leeway in determining the existence of a countervailable subsidy, but also allows a party flexibility in making the allegation.

Furthermore, there was a substantial amount of information available to Nucor and it is reasonable to assume that Nucor would have familiarity with the electricity system in Korea. Commerce previously examined the provision of electricity for LTAR in the investigation segment of this proceeding, and Nucor provided documents from the investigation of this subsidy in its allegation of the provision of off-peak electricity for LTAR.[99] Moreover, KEPCO is a public entity and the nature of the transactions between it and the KPX are a matter of public record. As described above, it is the burden of the party making the allegation to identify the elements of a countervailable subsidy, and to support the allegation with sufficient evidence; in this case Commerce examined the allegation and the supporting documentation therein for evidence providing the existence of a benefit, and as discussed above, and found the information Nucor provided regarding the benefit to be insufficient. Commerce asked Nucor to clarify this information and Nucor maintained that the SMP "serves as a reasonably available and conservative proxy for what the price of electricity should be at any specific time of day."[100] Thus, Commerce was unable to initiate on the allegation based on the evidence provided.

For the reasons described above, we continue to find that the benchmarks offered by Nucor do not sufficiently support its allegation of a benefit, as the SMP-based benchmarks are based on one element of a pricing formula that does not reflect an average price. Moreover, Nucor did not provide sufficient evidence to support its allegation that the GOK provided off-peak electricity inconsistent with market principles regarding price, quality, availability, or other purchasing conditions that would result in a benefit to the CTL plate industry. Furthermore, Commerce's decision not to initiate an investigation into the provision of off-peak electricity for LTAR program was not inconsistent with *Nucor* because Commerce made no countervailability finding in regard to off-peak electricity in the Korean market. Rather, we merely examined the sufficiency of specific evidence offered by Nucor to support its allegation. We therefore continue to find that Nucor did not satisfy the requirements under sections 702(b)(1) and 771(5)(A) of the Act in order for Commerce to initiate an investigation into the provision of off-peak electricity for LTAR subsidy allegation.

[96] *See* NSA Supplemental Questionnaire at 3.
[97] *See CVD Final Rule.*
[98] *Id.*, 63 FR at 65378.
[99] *See* NSA Submission at Exhibit 5.
[100] *See* NSA Supplemental Response at 4.

Comment 2: Whether Plantec and POSCO Satisfy the Requirements for a Cross-Owned Input Supplier Relationship

Nucor's Case Brief:[101]

- Subsidies received by Plantec should be attributed to POSCO because Plantec is POSCO's cross-owned input supplier within the meaning of 19 CFR 351.525(b)(6)(vi). POSCO owned 73.94 percent of Plantec's shares during the POR and purchased inputs primarily dedicated to production of the downstream product.[102]
- In *Steel Rebar from Turkey*, Commerce determined that the production of scrap was "primarily dedicated to the production of the downstream product," and did not consider whether the affiliates' production was "exclusively" dedicated to rebar production when determining that the affiliates that produced the scrap were cross-owned input suppliers.[103]
- Likewise, in *Tubular Goods from Turkey*, Commerce found that the producer used scrap provided by an affiliate to produce intermediate goods that were turned into downstream product. Scrap is the exact same input with the exact same application in this case.[104]
- In *Cold-Rolled Steel from Brazil,* Commerce found that steelmaking equipment and services are inputs into the downstream production of steel. Commerce considers the provision of capital equipment to constitute a subsidy, and the CIT recognized that Congress intended for U.S. CVD law to apply to "subsidies which provide an enterprise with capital equipment or a plant."[105]
- Commerce determined in *Cold-Rolled Steel from Brazil* that the cross-owned input supplier rule "is not a 'tying' analysis under 19 CFR 351.525(b)(5) and that Commerce's investigation is not limited to whether subsidies received are tied to the production of particular products or subject merchandise.[106]
- *Cold-Rolled Steel from Brazil* also established that the focus of the analysis under 19 CFR 351.525(b)(6)(iv) is on whether the input is "primarily dedicated to production of the

[101] *See* Nucor Case Brief at 12-21. As parts of the argument have been bracketed to protect POSCO's business proprietary information (BPI), the details of the argument are discussed in the Memorandum, "Business Proprietary Information Accompanying the Issues and Decision Memorandum for the Final Results," dated concurrently with this memorandum (BPI Memorandum) at Note 1.

[102] *Id*. at 12 (citing POSCO's Letter, "Response to the Affiliated Companies Section of the Initial Questionnaire," dated August 19, 2019 (POSCO AQR) at Exhibit 2).

[103] *Id.* at 13 (citing *Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind the Review in Part; 2017*, 85 FR 3030 (January 17, 2020) (*Rebar from Turkey Prelim*), and accompanying PDM at 9-11, unchanged in final (regarding cross-ownership and attribution) *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2017*, 85 FR 42353 (July 14, 2020) (*Rebar from Turkey Final*), and accompanying IDM at "Cross-Ownership and Attribution of Subsidies" (collectively, *Steel Rebar from Turkey*).

[104] *Id.* at 13-14 (citing *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) (*Tubular Goods from Turkey*), and accompanying IDM at "Attribution of Subsidies").

[105] *Id.* at 14 (citing *Can-Am Corp. v. United States*, 11 CIT 424, 432 (1987) (documenting Congressional intent that capital equipment subsidies be subject to countervailing duties)); *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014), and accompanying IDM at Comment 5; *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Final Affirmative Determination*, 81 FR 49940 (July 29, 2016) (*Cold-Rolled Steel from Brazil*), and accompanying IDM at Comment 16).

[106] *Id.* at 15 (citing *Cold-Rolled Steel from Brazil* IDM at Comment 16).

downstream product," not whether the affiliate's operations are exclusively dedicated to supporting production.[107]

- Commerce erred in determining that record evidence did not demonstrate that Plantec provided steelmaking machinery or equipment in both this case and *Cold-Rolled Steel from Korea 2017*. As in *Cold-Rolled Steel from Brazil*, which has a similar fact pattern and wherein Commerce determined the supplier was cross-owned, the "equipment and related services" were inputs primarily dedicated to steel production.[108]
- This conclusion is supported by the *CVD Final Rule*, which explains Commerce intended for the term "input" to encompass"a broad range of money, goods, and services." It is unclear what else the inputs provided to POSCO could be used for other than steelmaking.[109]
- Commerce did not cite to anything on the record or explain the significance of the distinction between assets and services regarding "maintenance, repair, and operation of pre-existing machinery" and how to determine whether the services Plantec performed were for steelmaking. Whether the assets and services were for pre-existing machinery or new machinery has no bearing on attribution rules. Applying this distinction is a departure from previous determinations that allows respondents in future proceedings to avoid application of the CVD laws.
- Commerce erred in both *Cold-Rolled Steel from Korea 2017* and the immediate proceeding by determining there is no input supplier relationship because the cross-owned affiliate did not "produce" the input. In *CTL Plate from Korea INV*, Commerce found that there was no input supplier relationship between POSCO Energy, the producer of electricity, and POSCO because the electricity was supplied through a third party, and not "directly" to POSCO. Commerce should base its analysis on which company supplied the input.[110]
- In *Cold-Rolled Steel from Korea 2017*, Commerce incorrectly emphasized that the scrap provided by Plantec was generated from Plantec's production process as a by-product. How an input is generated is immaterial to the analysis of whether it is an input primarily dedicated to the production of downstream products or whether it is supplied by a cross-owned affiliate.[111]
- Commerce should not rely on *Cold-Rolled Steel from Korea 2017*, which erroneously determined that Plantec was not POSCO's cross-owned input supplier because Plantec was not solely dedicated to POSCO's steel production. Section 351.525(b)(6)(iv) of Commerce's regulations does not require that the sole purpose of the affiliate's production activities is to support the respondent's production of subject merchandise; it instead requires that the input product itself is primarily dedicated to the production of downstream product.[112]

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[107] *Id.*

[108] *Id.* at 16 (citing *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2017*, 85 FR 38361 (June 26, 2020) (*Cold-Rolled Steel from Korea 2017*), and accompanying IDM at Comment 2; *Cold Rolled Steel from Brazil* IDM at Comment 16).

[109] *Id.* at 16-17 (citing *CVD Final Rule* at 65630 ("{W}hen we talk about input costs in the context of the definition of benefit, we are not referring to cost of production in a strict accounting sense. Nor are we referring exclusively to inputs into subject merchandise. Instead, we intend the term 'input' to extend broadly to any input into a firm that produces subject merchandise.")).

[110] *Id.* at 18-19 (citing *Cold-Rolled Steel from Korea 2017* IDM at Comment 2; *CTL Plate Investigation* IDM at Comment 1).

[111] *Id.* at 19 (citing *Cold-Rolled Steel from Korea 2017* IDM at Comment 2).

[112] *Id.*

- Commerce should not focus its analysis on the affiliate's production activities rather than on the nature of the input itself. It is immaterial whether Plantec's business is primarily dedicated to the construction of industrial plants; rather, according to Commerce's regulations, the focus of analysis should be on whether the assets and services provided were primarily dedicated to the production of steel products.
- In *Lined Paper from Indonesia*, Commerce rejected the argument that inputs are not primarily dedicated to a particular product because the inputs produced a variety of products and because the companies sell to third parties. Commerce's input supplier analysis focuses on the nature and use of the input at issue and not on the totality of the input supplier's operations.[113]
- A requirement that a cross-owned input supplier "provide its materials or services for the mandatory respondent or the industry under investigation or review exclusively," would create a loophole that would make it nearly impossible for Commerce to attribute subsidies to cross-owned input suppliers.
- The correct analysis is whether the inputs provided were primarily dedicated to the production of steel products. The record establishes that the assets and services Plantec supplied POSCO are primarily dedicated to POSCO's downstream production of steel products.

POSCO's Rebuttal Brief:[114]

- Section 351.525(b)(vi) of Commerce's regulations states that cross ownership exists where one corporation can use or direct the individual assets of the other corporation in essentially the same ways it can use its own assets. Although POSCO owned 73.94 percent of Plantec's shares, Plantec's agreement with creditors meant that POSCO did not have the ability to use or direct the assets of Plantec in the same way it could use its own assets.
- POSCO provided a detailed description of Plantec's debt restructuring and how POSCO had no ability to use or direct Plantec's assets in its NSA questionnaire response, including the Agreement for Compliance of Business Normalization Plan for Plantec's Creditor Financial Institutions Committee (PPCFIC).[115]
- The details of this agreement include the PPCFIC's control over shareholders' meetings, disposal of property, business or contract transfers, new money, new business promotion including investment, mergers, acquisitions, securities investment, bankruptcy procedure, credit lines, and executives. A fund management contract overseas financing, restructuring, and compliance.[116]
- POSCO's inability to control Plantec is indicated in its consolidated financial statements, where it is listed as an associate rather than a subsidiary. Korean International Financial

[113] *Id.* at 20-21 (citing *Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Lined Paper Products from Indonesia*, 71 FR 47174 (August 16, 2006) (*Lined Paper from Indonesia*), and accompanying IDM at Comment 3; s*ee also 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 from China*), and accompanying IDM at Comment 21 (finding that steel rounds, coke, and coking coal are primarily dedicated over arguments that the inputs are "used in numerous products")).

[114] *See* POSCO Rebuttal Brief at 17-39.

[115] *Id.* at 18-19 (citing POSCO's Letter, "POSCO's Response to Nucor's New Subsidy Allegations," dated November 21, 2019 (POSCO NSA Response) at 2-7).

[116] *Id.* at 19-20 (citing POSCO NSA Response at 3).

Reporting Standards (K-IFRS) Articles 5-8 require Plantec to be considered a non-consolidated associate as it does not have the ability to use its power over the investee to affect the amount of the investor's returns.[117]

- POSCO purchased neither scrap, nor equipment used to produce subject merchandise, from Plantec. Plantec sold scrap to PDC, which in turn resold the scrap to POSCO.[118]
- POSCO reported in its NSA Response that it purchased equipment, certain fixed assets, and outsourcing services from Plantec. The equipment was not part of the steelmaking process and not an input product used in the production of downstream product. POSCO's reported that its purchases of fixed assets were not actual equipment or machinery used to produce the downstream product but were related to repair and maintenance of pre-existing machinery.[119]
- Commerce's decision is consistent with precedent in *Cold-Rolled Steel from Korea 2017*.[120]
- The question of whether an input product is primarily dedicated to the production of the downstream product is made on the basis of a case record and specific factual situations. Whether scrap is primarily dedicated to the production of subject merchandise should not be determined by the record of another case. Unlike the record in this proceeding, in *Steel Rebar from Turkey* and *Tubular Goods from Turkey* the input suppliers supplied scrap directly to respondents.[121]
- Likewise, the decisions in *Cold-Rolled Steel from Brazil* do not apply because the record in that case does not match that of this case. Unlike the cross-owned affiliate in that case, Plantec did not supply equipment or services related to steelmaking.[122]
- This position is consistent with the determination regarding Plantec in *Cold-Rolled Steel from Korea 2017*, where Commerce did not find the equipment services provided to POSCO primarily dedicated to the actual steelmaking equipment, but rather services related to the equipment that were not primarily dedicated to the production of steel.[123]
- Nucor's assertion that Commerce distinguished between assets and services for pre-existing machinery compared to assets and services for new machinery is incorrect; Commerce made no such distinction in the *Preliminary Results*. Instead, Commerce determined that the purpose of Plantec's sales to POSCO was not primarily dedicated to the production of a higher value-added product.
- The *CVD Final Rule* states that it is not reasonable to assume that the purpose of a subsidy to the input product is to benefit the downstream product when dealing with input products that are not primarily dedicated to downstream products. Nucor uses an expanded interpretation of the attribution regulations not supported by Commerce precedent.[124]
- Regardless of Nucor's arguments regarding whether Commerce incorrectly focused in *Cold-Rolled Steel from Korea 2017* on whether Plantec produced the scrap supplied to POSCO, Commerce's conclusion would not change because Plantec did not supply scrap to POSCO

[117] *Id.* at 20-21 (citing POSCO NSA Response at Attachment 1).
[118] *Id*. at 23-24 (citing POSCO NSA Response at 3; POSCO AQR at 12).
[119] *Id.* at 24-27 (citing POSCO NSA Response at 8-11; POSCO's Letter, "POSCO's Initial Questionnaire Response," dated September 26, 2019 (POSCO IQR) at 8; and POSCO AQR at Exhibit 2).
[120] *Id.* at 27 (citing *Cold-Rolled Steel from Korea 2017* IDM at Comment 2).
[121] *See* POSCO Rebuttal Brief at 28-29 (citing *Cold-Rolled Steel from Korea 2017* IDM at Comment 2; *Rebar from Turkey Prelim* PDM at 10-11, unchanged in *Rebar from Turkey Final* IDM at "Cross-Ownership and Attribution of Subsidies").
[122] *Id.* at 30-31 (citing *Cold-Rolled Steel from Brazil* IDM at Comment 16).
[123] *Id.* at 33-34 (citing *Cold-Rolled Steel from Korea 2017* IDM at Comment 2).
[124] *Id.* at 35-37 (citing *CVD Final Rule*, 63 FR at 65401; *Cold-Rolled Steel from Korea 2017* IDM at Comment 2).

in either *Cold-Rolled Steel from Korea 2017* or the instant review, but to PDC as an intermediary, which resold the scrap to POSCO.[125]

- If Commerce wishes to examine the entity that supplied scrap to POSCO, Commerce should examine PDC and not Plantec.
- The *CVD Final Rule* states that Commerce's attribution regulations address where a subsidy is provided to an input producer whose production is dedicated almost exclusively to the production of a higher value-added product. Commerce examined whether it would be reasonable to assume that the purpose of a subsidy to the input product is to benefit the downstream product. This is a two-pronged analysis; Nucor misconstrued Commerce's interpretation of the *CVD Final Rule* when it argued Commerce incorrectly focused on whether or not Plantec was exclusively dedicated to the production of downstream product.[126]
- In *Cold-Rolled Steel from Korea 2017*, Commerce employed this two-pronged analysis. After determining that the inputs POSCO purchased themselves were not "primarily dedicated" to the production of the downstream product, Commerce analyzed Plantec's production for the second prong of its analysis under the *CVD Final Rule*. Commerce's focus on whether the sole purpose of Plantec's production was to supply inputs to POSCO was in an effort to determine whether the purpose of a subsidy to Plantec was to benefit POSCO's steel production.[127]
- The record shows that Plantec's production activities are not primarily to provide inputs to POSCO's steel production. Commerce correctly interpreted its attribution regulations in the *CVD Final Rule* to conclude that Plantec did not supply inputs that were primarily dedicated to the production of the downstream product.
- Nucor fails to give adequate context to Commerce's conclusion in *Lined Paper from Indonesia*. Commerce determined that the upstream inputs had only one purpose, as inputs, and that "subsidies at any step of the process, benefit every step of the process." Those inputs were therefore clearly a link in the overall production chain.[128]
- Conversely, in *Cold-Rolled Steel from Korea 2017*, Commerce determined that it could not conclude that Plantec's inputs "are the type of input products that are merely a link in the overall steel production chain." The material Plantec provided in both *Cold-Rolled Steel from Korea 2017* and in the instant review does not equate to the record in *Lined Paper from Indonesia*.[129]

Commerce's Position:

We continue to find that Plantec is not POSCO's cross-owned input supplier and that attributing subsidies received by Plantec to POSCO is not appropriate. Further, we disagree with Nucor's argument that Plantec meets the criteria for a cross-owned input supplier under 19 CFR 351.525(b)(6)(iv) because it purportedly supplied inputs primarily dedicated to the production of subject merchandise.[130]

[125] *Id.* at 36 (citing *Cold-Rolled Steel from Korea 2017* IDM at Comment 2).
[126] *Id.* at 37 (citing *CVD Final Rule*, 63 FR at 65401).
[127] *Id.* at 38-39 (citing *Cold-Rolled Steel from Korea 2017* IDM at Comment 2).
[128] *Id.* at 39 (citing *Lined Paper from Indonesia* IDM at Comment 3).
[129] *Id.* (citing *Cold-Rolled Steel from Korea 2017* IDM at Comment 2).
[130] *See* Nucor Case Brief at 2.

Commerce evaluated the facts on the record in accordance with Commerce's regulations, as well as the *CVD Final Rule*, which provides guidance as to whether to attribute subsides received by an input supplier to a downstream producer's products.[131] 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 Final Rule*.[132] 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. Furthermore, 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 19 CFR 351.525(b)(6)(iv), the *CVD Final Rule* 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 …
>
> …{W}e 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

[131] *See CVD Final Rule* at 63 FR 65401.
[132] *Id.* at 65402 ("{p}aragraph (b)(6)(i) states that {Commerce} will normally attribute a subsidy received by a corporation to the products produced by that corporation.").

> 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.[133]

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 determines cross-ownership on a case-by-case basis by examining the facts of each case. In this case, as discussed in the *Preliminary Results*, and consistent with the previous determination regarding Plantec in *Cold-Rolled Steel from Korea 2017*,[134] we examined both factors that could determine if Plantec was an input supplier to POSCO; whether Plantec's production was primarily dedicated to the production of downstream product, and whether the inputs provided by Plantec were inputs primarily dedicated to the production of subject merchandise.

Contrary to Nucor's assertion, we did not require Plantec's inputs to be "exclusively dedicated" to the production of subject merchandise to be considered an input supplier in the *Preliminary Results*. Rather, in deciding whether to attribute subsidies received by Plantec to POSCO, Commerce examined Plantec's business activities as reflected in information on the record of this review, followed the guidelines mentioned above, and concluded that 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 Plantec is to benefit POSCO's products. As we stated in the *Preliminary Results*, the record shows that Plantec's primary function is the "construction of industrial plant{s}."[135]

Additionally, Nucor mischaracterizes Commerce's input supplier analysis in the *Preliminary Results* when contending Commerce solely relied on whether an input producer supplies an input exclusively to a particular company and/or industry. Commerce examined the nature of the various inputs at issue to determine whether Plantec meets the criteria for a cross-owned input supplier under 19 CFR 351.525(b)(6)(iv). Commerce concluded that, like the plastic to automobile example set out in the *CVD Final Rule*,[136] inputs that 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, we disagree with Nucor that the inputs supplied in *Steel Rebar from Turkey*, *Tubular Goods from Turkey*, *Cold-Rolled Steel from Brazil*, and *Lined Paper from Indonesia* are precedents from which Commerce can make a determination on an input supplier in the instant

[133] *See CVD Final Rule*, 63 FR at 65401.
[134] *See Cold-Rolled Steel from Korea 2017* IDM at Comment 2.
[135] *See Preliminary Results* PDM at 12; *see also* POSCO AQR at Exhibit 2.
[136] *See CVD Final Rule*, 63 FR at 65401.

review.[137] The nature of the inputs and downstream products, as well as the methods of providing those products in those cases, were different from those of this case.[138] Accordingly, it would be unreasonable for Commerce to rely on these cases and find that inputs provided by Plantec were primarily dedicated to the production of downstream merchandise. Our decision here is consistent with that in *Cold-Rolled Steel from Korea 2017*, where Commerce arrived at the same conclusion for identical companies and the same inputs.[139]

Record evidence shows that Plantec provided various materials to POSCO.[140] One of the inputs in question is scrap that was generated from Plantec's production process as a by-product and sold to another POSCO input supplier, PDC, prior to being resold to POSCO.[141] Nucor contends that Plantec should be considered POSCO's cross-owned input supplier because this scrap was provided to POSCO, and that Commerce's previous decisions in *Steel Rebar from Turkey* and *Tubular Goods from Turkey* demonstrate that steel scrap is considered an input to the production of downstream steel products.[142] We disagree with Nucor that these cases are applicable to the scrap provided through PDC and the other inputs Plantec sold to POSCO. In *Steel Rebar from Turkey*, Commerce found that "affiliates … sold scrap rebar to {the respondent}."[143] While Commerce determined that "the production of scrap is primarily dedicated to the production of downstream product,"[144] Plantec generated the scrap, but neither produced nor provided the scrap to POSCO.[145] Likewise, in *Tubular Goods from Turkey*, the affiliate Commerce found to be cross-owned was the affiliate that provided the scrap to the respondent.[146] As POSCO purchased the scrap from PDC, not Plantec, we find that the scenarios in *Steel Rebar from Turkey* and *Tubular Goods from Turkey* present a specific factual situation different from the record in the instant proceeding.[147] Thus, the determinations in the cases cited by Nucor are not applicable here.

Further, the inputs that Nucor contends are steelmaking equipment and services used in the downstream production of steel are discussed in the BPI Memorandum.[148] Analogous to the plastic as an input for an automobile example in the *CVD Final Rule*, it would be unreasonable to conclude that the inputs at issue are dedicated almost exclusively to the production of downstream products and that they are merely a link in the overall production chain. We also cannot reasonably conclude that the purpose of a subsidy provided to Plantec is to benefit the production of POSCO's steel production.

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[137] *See* Nucor Case Brief at 12-25 (citing *Steel Rebar from Turkey* IDM at "Cross-Attribution and Attribution of Subsidies"; *Tubular Goods from Turkey* IDM at "Attribution of Subsidies"; *Lined Paper from Indonesia* IDM at Comment 3; *Seamless Pipe from China* IDM at Comment 21; *Cold-Rolled Steel from Brazil* IDM at Comment 16).
[138] *See* BPI Memorandum at Note 2.
[139] *See Cold-Rolled Steel from Korea 2017* IDM at Comment 2.
[140] *See* BPI Memorandum at Note 3.
[141] *See* Nucor Case Brief at 12-31.
[142] *Id.* at 13-14.
[143] *See Rebar from Turkey Prelim* PDM at 10-11.
[144] *Id.* at 11.
[145] *See* POSCO AQR at 12 and Exhibit 2.
[146] *See Tubular Goods from Turkey* IDM at "Attribution of Subsidies." ("We find that the scrap steel Tosyali Demir supplied to Toscelik Profil is primarily dedicated to production of OCTG and other downstream steel products, pursuant to 19 CFR 351.525(b)(6)(iv).")
[147] *See* BPI Memorandum at Note 4.
[148] *Id.* at Note 5.

As stated above, 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. Because the nature of inputs and downstream products in *Lined Paper from Indonesia* or *Seamless Pipe from China* are different from those in this case, Commerce cannot reasonably rely on those cases as precedents to find inputs provided by Plantec in this case to be primarily dedicated.

In *Lined Paper from Indonesia*, 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."[149] 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}."[150] Citing the *CVD Final Rule*, 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}."[151] In that proceeding, 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). In that proceeding Commerce's finding was, thus, consistent with the *CVD Final Rule*, which addresses 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).[152]

Similarly, in *Seamless Pipe from China*, Commerce found that "coke and coking coal are inputs to the production of steel rounds, which is primarily dedicated to the production of {subject merchandise}."[153] 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, we cannot reasonably conclude that the materials provided by Plantec,[154] including by-product scrap, are inputs dedicated almost exclusively to the production of downstream steel products and that these are the type of input products that are merely a link in the overall steel production chain.

Record evidence also shows that Plantec provided certain services to POSCO.[155] The services provided by 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.[156] The fact pattern here is also distinct from *Cold-Rolled Steel from Brazil* with respect to the information on the record

[149] *See Lined Paper from Indonesia* IDM at Comment 3.
[150] *Id.*
[151] *Id.*; *see also CVD Final Rule* at 63 FR 65401.
[152] *See CVD Final Rule*, 63 FR at 65401.
[153] *See Lined Paper from Indonesia* IDM at Comment 3.
[154] *See* BPI Memorandum at Note 6.
[155] *See* POSCO AQR at Exhibit 2; *see also* POSCO NSA Response at 10-11.
[156] *See* BPI Memorandum at Note 7.

related to steelmaking equipment.[157] In *Cold-Rolled Steel from Brazil*, a cross-owned input supplier provided steel mill parts, steel mill equipment, and services to maintain and refurbish steel production equipment.[158] Commerce found that "given …{the input supplier's} provision of equipment … it is appropriate to attribute to … the subsidies received by {the input supplier}."[159] As such, in *Cold-Rolled Steel from 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 *Cold-Rolled Steel from Brazil*. Here, record evidence does not demonstrate that Plantec provided steelmaking machinery or equipment; it only provided services *related* to such equipment to POSCO.[160]

Therefore, consistent with our regulations, we find that Plantec is not POSCO's input supplier because record evidence establishes that the types of materials and services that Plantec supplied to POSCO during the POR are not primarily dedicated to the production of the downstream product. Furthermore, we cannot conclude from the information provided that the purpose of a subsidy provided to Plantec is to benefit the production of POSCO's steel product.

Comment 3: Whether Commerce Should Countervail Benefits Provided to Plantec through Its Debt Restructuring Program

Nucor's Case Brief:[161]

- Commerce should find that POSCO received countervailable benefits through Plantec's debt workout program. Commerce has previously countervailed identical debt restructuring programs in recent Korea CVD investigations. Plantec's debt restructuring program is dominated by GOK financial institutions, and Plantec is uncreditworthy according to Commerce's standards in previous proceedings.[162]
- Commerce countervailed a similar debt workout program under the Corporate Restructuring Promotion Act in *CORE from Korea*. The record is similar, with a combination of GOK and private banks providing new and refinanced loans to a Korean steel company.[163]
- Plantec suffered losses in every quarter after its merger with Sungjin Geotech until it applied for a debt workout program, with 722.7 billion Korean Won (KRW) in total liabilities at the end of 2015. The KDB lowered Plantec's credit rating to a C.[164]
- The workout program provided a financial contribution, delaying Plantec's debt repayment for four years until 2019, and converting variable interest rate loans to a low fixed rate. Plantec would not have been able to procure without government intervention.[165]
- Nucor placed adequate information on the record suggesting Plantec met the criteria for a creditworthiness allegation, including the fact that POSCO and POSCO affiliates issued long-term bonds in the period leading up to Plantec's debt workout program at interest rates

[157] *See Cold-Rolled Steel from Brazil* IDM at Comment 16.
[158] *Id.*
[159] *Id.*
[160] *See* Nucor NSA Response at 9-11.
[161] *See* Nucor Case Brief at 22-25.
[162] *See* Nucor Case Brief at 12 (citing POSCO AQR at Exhibit 2; POSCO NSA Response at 10).
[163] *Id.* at 22 (citing *CORE from Korea* IDM at Comment 4).
[164] *Id.* (citing NSA Submission at 3).
[165] *Id.* at 23 (citing NSA Submission at 3).

higher than the rates established through Plantec's debt workout program. Even in the event Commerce found Plantec creditworthy, the debt workout program nevertheless conferred a benefit to Plantec.[166]
- Despite maintaining that it was examining the subsidy, Commerce did not issue questions to POSCO about the debt workout program or any questionnaires to Plantec. Commerce should request information to find Plantec was not creditworthy, when the terms of the workout program were established, and collect information from Plantec to calculate benefits conferred through the debt restructuring program using the methodology for uncreditworthy companies.

POSCO's Rebuttal Brief:[167]
- Commerce did not have a basis upon which to examine subsidies received by Plantec and, therefore, investigation into Plantec's debt workout program was not relevant.
- The only basis upon which subsidies received by Plantec would be relevant to proceedings is if Plantec were determined both cross-owned with POSCO and met attribution requirements for cross-owned companies. Commerce determined that Plantec did not meet the criteria for a cross-owned input supplier.[168]

Commerce's Position: We disagree with Nucor that Commerce should find that POSCO received countervailable benefits from Plantec's debt workout program. Given our determination that Plantec is not POSCO's cross-owned input supplier under 19 CFR 351.525(b)(6)(iv), the issues of, and the comments regarding, whether Plantec received countervailable benefits through its corporate restructuring program and whether Plantec was uncreditworthy, are moot. Accordingly, we are not attributing to POSCO subsidies purportedly provided to Plantec in this review.

Comment 4: Whether the GOK's Purchase of Electricity for MTAR Is Countervailable

A. Whether the Purchase of Electricity for MTAR Is Specific

GOK's Case Brief:[169]
- In *Bethlehem Steel*, the CIT provided an interpretation of "actual recipients are limited in number." The decision found 190 companies in a program not specific based on the fact that

[166] *Id.* at 24 (citing NSA Submission at 5).
[167] *See* POSCO Rebuttal Brief at 40-41.
[168] *Id.* at 40-41 (citing *MacLean-Fogg Co. v. United States*, 100 F. Supp 3d 1349, 1357-58 (CIT 2015) (affirming Commerce's decision not to attributed subsidies to companies that were not cross owned because regulations "provide that only companies that are cross-owned may have their subsidies attributed to one another"); *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410 (March 26, 2012), and accompanying IDM at "Cross-Ownership and Attribution of Subsidies" (refusing to attribute subsidies received by a company that was found to be a cross-owned affiliate but that did not satisfy the attribution requirements under 19 CFR. 351.525(b)(6)); *Cold-Rolled Steel from Korea 2017* at Comment 3 ("As {Commerce} has determined subsides received by {POSCO} Plantec are not attributable to POSCO, the issues of (1) whether {POSCO} Plantec received countervailable benefits through its corporate restructuring program and (2) whether {POSCO} Plantec was uncreditworthy are moot.").
[169] *See* GOK Case Brief at 2-4.

the benefits were distributed to a large number of companies in a variety of industries and were not limited in number.[170]

- The SAA, in the section 'Domestic Subsidies, ' states that the specificity section is designed to function as a screening mechanism for subsidies broadly available and widely used throughout the economy. Selling electricity is generally available, 2,808 entities in various industries are registered with the KPX to participate in the market and this number has been continuously increasing.[171]
- Furthermore, the SAA indicates that programs cannot be *de facto* specific if the number of users is too large or there is no evidence of dominant or disproportionate use. Thus, 2,808 entities participating in the program is too large a number to be *de facto* specific.[172]

POSCO's Case Brief:[173]

- Commerce should not find the payments POSCO received for the sale of electricity to KPX *de facto* specific because 2,808 entities are registered with the KPX and the actual recipients of the subsidy are not limited in number.
- In *Bethlehem Steel*, the CIT concluded that providing benefits to 190 customers was providing discounts to a large number of participants, and that discounts were distributed to a large number of customers, across a wide range of industries and therefore not *de facto* specific.[174]
- The CIT's determination in *Bethlehem Steel* contradicts Commerce's preliminary decision that nearly 3,000 entities registered with the KPX to sell electricity during the POR is evidence that the GOK's purchases of electricity were specific. Furthermore, Commerce failed to compare these entities to anything in order to determine that they constitute a limited number.[175]

Nucor's Rebuttal Brief:[176]

- POSCO and the GOK conflate *de facto* specificity with *de jure* specificity when claiming that this program is not specific because it is generally available and citing to *Bethlehem Steel* as evidence that 2,808 is too large a number to be limited.[177]
- The GOK misconstrues the SAA; *Carlisle Tire* only refutes that notion that Congress intended that all "bounties or grants on manufacture or production be offset by means of countervailing duties."[178]
- In *Softwood Lumber from Canada*, Commerce rejected arguments identical to those POSCO and the GOK presented, stating that access to a subsidy is a factor in the analysis of *de jure*

[170] *Id.* at 2 (citing *Bethlehem Steel Corp. v. United States*, 140 F. Supp. 2d 1354, 1354 (CIT 2001) (*Bethlehem Steel*)).
[171] *Id.* at 2-3 (citing Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (SAA) at 929).
[172] *Id.* at 4 (citing SAA at 930).
[173] *See* POSCO Case Brief at 11-12.
[174] *Id.* (citing *Bethlehem Steel*, 140 F. Supp. 2d at 1367-68).
[175] *Id.* at 12.
[176] *See* Nucor Rebuttal Brief at 3-7.
[177] *Id.* at 3-4 (citing *Bethlehem Steel*, 140 F. Supp. 2d at 1368).
[178] *Id.* at 4 (citing SAA at 259; *see also*, *Carlisle Tire & Rubber Co. v. United States*, 564 F. Supp. 834, 837 (CIT 1983) (*Carlisle Tire*)).

specificity under section 771(5A)(D)(i) of the Act and that the number of companies with "access" to the program is irrelevant under the *de facto* specificity analysis.[179]

- In *Bethlehem Steel*, Commerce found that the iron and steel industry represented one of sixteen industries and evidence that the discounts were provided to a large number of participants. POSCO and the GOK have not provided evidence for their statement that a lot of companies in various industries are participating in the electricity market.[180]
- In *Carbon-Quality CTL Plate from Korea 2017*, Commerce found that a subsidy could be limited in number when there were 3,580 recipients.[181]
- Section 771(5A)(D)(iii)(I) of the Act provides for a finding of *de facto* specificity when the actual recipients of the subsidy are limited in number on an enterprise or industry basis. Regardless of the number of enterprises, the subsidy is limited by definition to the electricity generation industry, a single industry.

Commerce's Position:

In the *Preliminary Results*, we found this program to be *de facto* specific because 2,808 entities are registered with KPX to participate in the electricity market.[182] Further, we note that of these 2,808 entities, 19 KPX members were registered as a "person with electric installations for private use that wishes to trade power in the market."[183] For these final results, we continue to find this subsidy program is *de facto* specific, pursuant to section 771(5A)(D)(iii)(I) of the Act.

Based on the above information, we disagree with the GOK and POSCO that this program is not limited in number. The SAA instructs Commerce to "apply the specificity test in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those subsidies which truly are broadly available and widely used throughout an economy."[184] The specificity test is not, however, "intended to function as a loophole through which narrowly {focused} subsidies … used by discrete segments of an economy could escape the purview of the {countervailing duty} law."[185] Pursuant to section 771(5A)(D)(iii)(I), Commerce may find specificity when the "actual recipients of the subsidy, whether considered on an enterprise or

[179] *Id.* at 6 (citing *Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51814 (November 8, 2017) (*Softwood Lumber from Canada*), and accompanying IDM at Comment 62 and Comment 83; *Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) (*Large Residential Washers from Korea*), and accompanying IDM at Comment 6 (rejecting similar "*de jure* specificity argument {that} is not relevant to the *de facto* specificity analysis conducted by the Department"); *CORE from Korea* IDM at Comment 4 ("The statutory standard is whether the 'actual recipients' of the subsidy are limited in number, not whether the general availability of the subsidy is somehow limited.").

[180] *Id.* at 6-7 (citing *Bethlehem Steel*, 140 F. Supp. 2d at 1368-1369).

[181] *Id.* at 7 (citing *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; and Rescission of Review, in Part; Calendar Year 2017,* 84 FR 15182 (April 15, 2019), and accompanying PDM at 7, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; Calendar Year 2017*, 84 FR 42893 (August 19, 2019) (collectively, *Carbon-Quality CTL Plate from Korea 2017*), and accompanying IDM)).

[182] *See Preliminary Results* PDM at 23.

[183] *See* GOK's Letter, "Response to the Third Supplemental Questionnaire," dated July 13, 2020 (GOK SQR3) at 2 and Exhibit SQR3-1.

[184] *See Large Residential Washers from Korea* IDM at Comment 8 (citing SAA at 929).

[185] *See* SAA at 930.

industry basis, are limited in number." In determining whether "a particular industry or enterprise fits within the term 'limited, ' {Commerce} does not necessarily limit its consideration to the number of enterprises, but must also focus on the makeup of the users."[186] Thus, "the make-up of the users and the number of industries or enterprises they represent are both factors in" its specificity analysis.[187]

As noted above, only 19 entities, including POSCO,[188] from the entire Korean economy are registered as a "person with electric installations for private use that wishes to trade power in the market."[189] The remainder of the 2,808 entities consisted of electricity suppliers, one power generation company, and 12 community energy system operators that trade power in the market.[190] Commerce looks at the economy as a whole in determining whether or not the number of industries or enterprises receiving a subsidy is, in fact, limited.[191] As the Federal Circuit has stated, Commerce is afforded latitude and not subject to rigid rules when determining specificity.[192] Most importantly, Commerce conducts its *de facto* specificity analysis under section 771(5A)(D)(iii) of the Act on a case-by-case basis. As the Federal Circuit stated, specificity "must be determined on a case-by-case basis taking into account all facts and circumstances of a particular case."[193]

Moreover, we find that *Bethlehem Steel* is not applicable to our analysis at issue here. We note that in *CTL Plate from Korea 1999* (litigated in *Bethlehem Steel*), Commerce based its negative *de facto* specificity determination, with regard to an electricity discount program, on an analysis of *disproportionate* and *predominant use*.[194] Therefore, we find that *Bethlehem Steel*, which addressed disproportionality and dominant use, is not applicable to our analysis of this program, where we found that the actual recipients are limited in number, in accordance with section 771(5A)(D)(iii)(I) of the Act.

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[186] *See Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2013*, 80 FR 77318 (December 14, 2015), and accompanying IDM at Section VII.I.K; *see also Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2017*, 85 FR 15112 (March 17, 2020), and accompanying IDM at Comment 3).
[187] *Id.*
[188] *See* POSCO IQR at Exhibit C-3 at 2.
[189] *See* GOK SQR3 at 2 and Exhibit SQR3-1.
[190] *Id.*
[191] *See* SAA at 930.
[192] *See Royal Thai Government v. United States,* 436 F.3d 1330, 1335 – 1336 (Fed. Cir. 2006) (*Royal Thai Gov't v. U.S.*) (citing *AK Steel Corp. v. United States*, 192 F. 3d 1367, 1385 (Fed. Cir. 1999) (*AK Steel Corp.)).*
[193] *See AK Steel Corp.*, 192 F. 3d at *1385; Royal Thai Gov't v. U.S.*, 436 F. 3d at 1335-1336 (Commerce's determinations of *de facto* specificity "are not subject to rigid rules, but rather must be determined on a case-by-case basis.").
[194] *See Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 64 FR 73176, 73192-93 (December 29, 1999), as amended, 65 FR 6587 (February 10, 2000).)

B. Whether Commerce Should Use POSCO's Electricity Purchase Price as a Benchmark

GOK's Case Brief:[195]

- The electricity price in the end-user market should not be a benchmark for the electricity price in the suppliers or wholesale market when calculating the benefit under this program.
- Under 19 CFR 351.511(a)(2), Commerce measures benefit under a tier one benchmark chosen by product similarity; quantities sold, imported, or auctioned; and other factors affecting comparability in choosing such transactions or sales.
- In the suppliers' market (wholesale market), the KPX's price setting mechanism determines the electricity price at which POSCO sells electricity to KEPCO. KEPCO's tariff rate table calculates the electricity in the end-user market. These two markets have different price setting philosophies, price setting mechanisms, and market conditions which vary significantly.
- The electricity price for POSCO's sales of electricity should be compared with the electricity prices for other companies' sales of electricity in the suppliers' market.

Nucor's Rebuttal Brief:[196]

- In multiple Commerce investigations, including this review, Commerce has found that the prices Korean steel makers pay for electricity are consistent with market principles. If Commerce continues to uphold this finding, Commerce should use the price POSCO paid for electricity as a benchmark to measure the benefit conferred.
- In *Softwood Lumber from Canada*, which had similar circumstances wherein respondents both sold electricity to and purchased electricity from the Government of Canada, Commerce found that the benchmark used to measure the benefit from an investigated program could not be from the program being investigated, as it does not capture the difference between the prices at which the government sold and purchased electricity and would make a circular comparison.[197]

Commerce's Position:

We disagree with the GOK that we used an incorrect comparison in determining POSCO's benefit under this program. As explained in the *Preliminary Results*, we based our findings for purchases of electricity for MTAR on the benefit to the recipient standard set forth in 19 CFR 351.503(b).[198] If a government provides a good to a company for a price and then purchases the same good from the company for a higher price, under the "benefit-to-the-recipient" standard that is set forth under section 771(5)(E) of the Act and the SAA, the benefit is the difference between the price at which the government purchases the good and the price at which it sells the good at market rates.[199] This benchmark best reflects the "benefit-to-the-recipient" standard that is set forth under section 771(5)(E) of the Act and the SAA, and conforms with the benefit

[195] *See* GOK Case Brief at 4-6.
[196] *See* Nucor Rebuttal Brief at 8-9.
[197] *Id.* at 8 (citing *Softwood Lumber from Canada* IDM at Comment 51).
[198] *See Certain Uncoated Groundwood Paper from Canada: Final Affirmative Countervailing Duty Determination*, 83 FR 39414 (August 9, 2018), and accompanying IDM at Comment 37.
[199] *See* SAA at 927; *see also Softwood Lumber from Canada* IDM at Comment 51.

standard codified within 19 CFR 351.503(b). Given that 19 CFR 351.512 for the purchase of a good is held in reserve, and the fact that the *CVD Final Rule* for 19 CFR 351.512 does not address or reference the unique situation before us with respect to this allegation, where a government is both the provider and purchaser of the good,[200] we find that our benefit analysis is more appropriately based upon the standard set forth under 19 CFR 351.503(b), which is in turn drawn from and consistent with section 771(5)(E) of the Act and the SAA. Therefore, we have not analyzed the benchmark sources discussed by the parties within the three-tiered hierarchy of 19 CFR 351.511(a)(2). In so doing, we note that we have reached this conclusion based on the specific facts of this administrative review (*e.g.*, an MTAR analysis in situations where the government is both a provider and a purchaser of the same good). However, in situations where the government is solely a purchaser of a good and does not engage in the provision of that same good, Commerce recognizes that a tiered analysis similar to that set forth under 19 CFR 351.511 – the regulation for the provision of a good or service – may be more appropriate.

We disagree with the GOK that the electricity price for POSCO's sales of electricity should be compared with the electricity prices for other companies' sales of electricity in the suppliers' market. As noted above, we are measuring the benefit conferred on POSCO based on the benefit-to-the-recipient standard. As articulated above, we find on this record that the best measure of the "benefit-to-the-recipient" is the difference between the price at which a government provided the good (*i.e.*, electricity) and the price at which the government purchased that same good. We find that the electricity sales price to POSCO best reflects the "benefit-to-the-recipient" standard that is set forth under section 771(5)(E) of the Act and the SAA and conforms with the standard of benefit language codified within 19 CFR 351.503(b). Therefore, we see no basis for not relying on the prices KEPCO charges POSCO for electricity as an MTAR benchmark

Comment 5: Whether the Quota Tariff Import Duty Exemptions Under Article 71 of the Customs Act Are Countervailable

A. Whether the Import Duty Exemptions Program Is Specific

GOK's Case Brief:[201]

- The quota tariff is an applied tariff rate as set forth under the Customs Act, and was applicable in the POR to 69 items in a broad range of fields in sectors such as electrolyte, chemical, automobile, textile, agriculture, fishery, livestock, machinery, energy sources, non-ferrous metal, *etc*.
- The program is not specific because the industries and companies receiving the exemptions are not limited in number.

POSCO's Case Brief:[202]

- Quota Import Duty Exemptions are not specific because they do not limit any enterprise or industry from receiving an adjusted tariff rate. There is no evidence that actual recipients of the subsidy, on an enterprise or industry basis, are limited in number.

[200] *See CVD Final Rule*, 63 FR at 65359
[201] *See* GOK Case Brief at 8.
[202] *See* POSCO Case Brief at 7-9.

- Any importer that submits customs clearance forms for goods that are covered under Article 71 of the Customs Act automatically receives the adjusted duty rate as applied. Benefits are not limited to any specific enterprise or industry.
- Likewise, Article 71 of the Customs Act does not identify any specific industries or enterprises, and any documentation needed to receive the tariff rate does not require documentation of industry.
- While tariff rates are modified under specific conditions to respond to economic changes, resulting in rate modifications to 69 products during the POR, the number of importers of these goods are not limited. Any company from any industry can import an eligible good and automatically receive the adjusted tariff rate.

Nucor's Rebuttal Brief:[203]
- POSCO and the GOK conflate *de jure* specificity with *de facto* specificity; the fact that all those who import a good on a list automatically receive a benefit does not negate that the list itself is limited.
- When asked to provide information about the companies who applied for, accrued, or received benefits under the program during the POR, the GOK responded that the information was confidential. Commerce is justified in inferring that the program is *de facto* specific because the GOK refused to provide requested information.

Commerce's Position:

In the *Preliminary Results*, we found that the actual recipients under this program are limited to certain industries or enterprises importing the eligible product categories under the program and that the subsidy is therefore *de facto* specific pursuant to section 771(5A)(D)(iii)(I) of the Act. The GOK and POSCO contend that the program is not *de facto* specific, because the program is broadly available and is not limited to particular industries or enterprises. Under section 771(5A)(D)(iii)(I) of the Act, we may find a subsidy program to be *de facto* specific if the actual recipients of a subsidy, whether on an enterprise or industry basis, are limited in number. Further, section 771(5A) of the Act states that "any reference to an enterprise or industry is a reference to a foreign enterprise or industry and includes a group of such enterprises or industries." The SAA states that "{t}he Administration intends to apply the specificity test in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy."[204] The specificity test is not, however, "intended to function as a loophole through which narrowly {focused} subsidies provided to or used by discrete segments of an economy would escape the purview of the CVD law."[205] The fact that companies in different industries received assistance under the program does not negate the fact that, during the POR, only 69 agricultural and industrial products were identified as having reduced tariffs.[206] In this instance, by limiting the tariff reductions to 69 products, the GOK is bolstering industrial competitiveness

[203] *See* Nucor Rebuttal Brief at 10-11.
[204] *See* SAA at 929. The SAA "shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act."
[205] *Id.* at 930.
[206] *See* GOK's Letter, "Response to the Second Supplemental Questionnaire," dated April 22, 2020 (GOK SQR2) at 2-4.

and/or stabilizing prices[207] for a limited number of enterprises or industries which utilize the 69 agricultural and industrial products identified by the GOK. As noted above, the specificity test is not intended to function as a loophole for subsidies provided to or used by discrete segments of an economy. Here, the GOK provides a subsidy in the form of tariff reductions on 69 agricultural and industrial products used by discrete segments of the Korean economy and, therefore, the enterprises or industries using these 69 agricultural and industrial products are limited in number.

B. Whether the GOK Provides a Financial Contribution through the Import Duty Exemptions Program

GOK's Case Brief:[208]

- Under World Trade Organization and regional trade agreements, governments have discretion to apply tariff rates unless the rate exceeds the bound tariff rate of a trade agreement. Such duties that are actually charged on imports are defined as an applied tariff rate.
- Quota Tariff Import Duties are not countervailable because there is no financial contribution from the government authority. This program allows the government to impose tariffs to flexibly respond to fluctuations in supply and demand or stabilize the domestic price of goods.
- Customs duties are increased or decreased on an annual basis for all importers of subject merchandise under the import duty exemptions. The adjusted tariff rate is the tariff rate of eligible products at the time they are imported, thus individual importers are not relieved of duties that would otherwise be owed to the authority. Thus, the program does not provide a countervailable subsidy.

POSCO's Case Brief:[209]

- The GOK provides no financial contribution section under 771(5)(B)(i) of the Act, because there is no revenue forgone. The importers are not "exempt" from any tariff, but rather they pay the rate established by the GOK in response to economic conditions.[210]
- Evidence on record shows that the quota tariff program allows the GOK to respond quickly to changing economic conditions. The tariffs are applied evenly to all importers and there is no application or approval process. Effectively, the adjusted tariff rate is the tariff rate of eligible products at the time they are imported.

Nucor's Rebuttal Brief:[211]

- The quota tariff import duty exemptions operate like all tax exemptions do and the GOK confers a financial contribution on those who import goods subject to the adjusted tariff rate that year, by collecting less of a duty than what is due under the basic tariff rate.[212]

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[207] *Id.* at 1.
[208] *See* GOK Case Brief at 6-9.
[209] *See* POSCO Case Brief at 6-10.
[210] *Id.* at 9-10.
[211] *See* Nucor Rebuttal Brief at 9-12.
[212] *Id.*at 10.

- Even if revenue is forgone by way of a legal measure, the Quota Tariff Import Duty Exemption program is the textbook type of financial contribution captured by section 771(5)(D)(ii) of the Act.

Commerce's Position:

We agree with Nucor that this program provides a financial contribution in the form of revenue forgone by the GOK. As explained in the *Preliminary Results*, Article 71 of the Customs Act allows for the establishment of quota tariffs by executive order for the purposes of responding to short-term economic changes.[213] Additionally, Article 71 explicitly provides that reductions in such tariff rates may be necessary to bolster industrial competitiveness and stabilize the prices of domestic goods.[214] By providing temporary reductions on tariffs for specific imported goods, the GOK is providing a financial contribution in the form of revenue forgone pursuant to 771(5)(D)(ii) of the Act to companies who import such goods. Moreover, evidence provided by POSCO demonstrates that both POSCO and Chemtech paid reduced import tariffs during the POR.[215] Therefore, for the final results, we continue to find the Quota Tariff Import Duty Exemptions under Article 71 of the Customs Act provides a financial contribution pursuant to 771(5)(D)(ii) of the Act.

C. Whether the Import Duty Exemptions Program Confers a Benefit

GOK's Case Brief:[216]

- There is no such concept of original import duty under the Customs Act or government practices; under Korean law or any customs practices by the Korean government, there only exists current and actual import duties applicable to imported products.
- The GOK, through remanding the law or by discretion, can modify import duties at any time for any specific tariff classification. This is an alteration to a tariff rate and not a discount or benefit.
- When the tariff rate is adjusted, the benchmark for calculating the benefit is changed. Thus, the benefit should be calculated in terms of how much the relevant companies or industries have been better off. Using an inactive tariff rate that is invalid at the time of customs clearance as the benchmark or referring to the inactive tariff rate as 'original import duty, ' is inconsistent with 19 CFR 351.510(a)(1).

Nucor's Rebuttal Brief:[217]

- The GOK claims that the program does not confer a benefit, as there is no 'original' import duty under the Customs Act or government practices. However, this does not reconcile with the GOK's response, which stated that quota tariff import duty exemptions operate by "decreasing or increasing a rate within the limit of 40 percent from the basic tariff rate."

[213] *See Preliminary Results* PDM at 26.
[214] *See* GOK SQR2 at 1.
[215] *See* POSCO IQR at 57 and Exhibits D-7 and D-8; *see also* POSCO Chemtech's Letter, "POSCO Chemtech's Initial Questionnaire Response," dated September 26, 2019 at 31.
[216] *See* GOK Case Brief at 6-9.
[217] *See* Nucor Rebuttal Brief at 9-12.

- The GOK does charge a standard import duty rate on all items, which it reduces for a limited number of items. POSCO and the GOK' s claims would result in no duty exemptions ever conferring a benefit, because the duty exemptions would be compared to themselves. Commerce previously rejected this argument in *Softwood Lumber from Canada*.[218]

Commerce's Position:

We disagree with the GOK that this program does not confer a benefit. Commerce's regulations at 19 CFR 351.510(a)(1) instruct that a benefit exists to the extent that the import charges paid by a firm as a result of the program are less than the import charges the firm would have paid absent the program. Section 771(5)(E) of the Act states that a "benefit shall normally be treated as conferred where there is a benefit to the recipient." Further, section 771(5)(E) of the Act provides the standard for determining the existence and amount of a benefit conferred through the provision of a subsidy and reflects the "benefit-to-the-recipient" standard, which "long has been a fundamental basis for identifying and measuring subsidies under U.S. CVD practice."[219]

As reported by the GOK, customs duties may be temporarily imposed at a rate of up to a 40-percent increase or decrease from the basic tariff rate pursuant to Article 71.[220] Despite the plain language of Article 71, the GOK seems to imply that the changes in the tariff rates are permanent and we should use the reduced tariff rate as the benchmark. However, as noted by the GOK, the modified tariff rate is "applied temporarily, usually for a year. In such cases, the volume applicable to the modified rate of duty may be limited where it is deemed necessary."[221] The GOK also stated "Customs duties may be imposed at the rate calculated by decreasing or increasing a rate within the limit of 40 per cent from the basic tariff rate."[222] Accordingly, the basic tariff rate is the rate a firm must pay absent this program and is the appropriate benchmark against which to compare the reduced tariff rate, not the reduced tariff rate itself. As Commerce has explained, using rates from an investigated subsidy program to measure the benefit from that same investigated program is inconsistent with the benefit-to-the-recipient standard because, first, it does not capture the difference between the basic tariff and the reduced tariff, and second, the comparison would be circular insofar as it would result in a comparison of an alleged subsidy with itself.[223] Therefore, for the final results, we continue to find that, pursuant to section 771(E) of the Act and 19 CFR 351.510(a)(1), the Quota Tariff Import Duty Exemptions under Article 71 of the Customs Act conferred a benefit to POSCO and Chemtech during the POR.[224]

[218] *Id.* at 11 (citing *Softwood Lumber from Canada* IDM at Comment 51).
[219] *See* SAA at 927.
[220] *See* the GOK's Letter, "Response to the Supplemental Questionnaire," dated February 28, 2020 at Appendix 11.
[221] *Id.*
[222] *Id.*
[223] *See Softwood Lumber from Canada* IDM at Comment 51.
[224] *See* Memorandum, "POSCO Calculations for the Final Results," dated concurrently with this memorandum (Final Calculation Memorandum).

Comment 6: Whether Commerce Should Cumulate the Benefits of POSCO's Cross-Owned Affiliates When Calculating the Benefit under RSLTA Article 78(4)

POSCO's Case Brief:[225]

- Any benefit POSCO or its affiliates received under RSLTA Article 78(4) was not measurable, *i.e.*, less than 0.005 percent of the relevant sales, and therefore this program should not have been included in the calculation of the total subsidy rate.
- In *Hot-Rolled Steel from Korea 2016* and *Cold-Rolled Steel from Korea 2016*, Commerce calculated a subsidy rate only for the entities that received a measurable benefit under the program and did not include all entities participating in the program in its calculation.[226]

Nucor's Rebuttal Brief:[227]

- Commerce has a well-established practice of treating all responding cross-owned companies as a single entity, adding the program rates for each responding cross-owned company.[228]
- The administrative reviews of *Hot-Rolled Steel from Korea 2016* and *Cold-Rolled Steel from Korea 2016* do not support POSCO's assertion and are refuted by the public preliminary calculation memoranda. Commerce calculated benefits by adding the total benefits received by POSCO and its cross-owned affiliates, then dividing the amount by the total sales denominator.[229]

Commerce's Position:

We disagree with POSCO that the benefit provided to POSCO under RSLTA Article 78(4) was not measurable, and that Commerce's methodology for calculating the benefit under the program in the *Preliminary Results* was incorrect.[230] For purposes of the *Preliminary Results*, we added the benefits received by POSCO, POSCO Chemtech, POSCO M-Tech, POSCO Nippon Steel RHF Joint Venture Co., Ltd., PDC, and POSCO Terminal, determining the cumulated benefits had a measurable benefit of 0.01 percent.[231] However, POSCO contends that because neither

[225] *See* POSCO Case Brief at 4-6.
[226] *Id.* at 5-6 (citing *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, 2016*, 83 FR 24252 (November 6, 2018) (*Hot-Rolled Steel from Korea Prelim 2016*), and accompanying PDM at 17; unchanged in final *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 2016*, 84 FR 28461 (June 19, 2019) (*Hot-Rolled Steel from Korea Final 2016*) (collectively, *Hot-Rolled Steel from Korea 2016*), and accompanying IDM at Comment 7; *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, 2016*, 83 FR 51446 (October 11, 2018) (*Cold-Rolled Steel from Korea Prelim 2016*), and accompanying PDM at 18; unchanged in final *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 2016*, 84 FR 24087 (May 24, 2019) (*Cold-Rolled Steel from Korea Final 2016*) (collectively, *Cold-Rolled Steel from Korea 2016*), and accompanying IDM at Comment 7).
[227] *See* Nucor Rebuttal Brief at 12-13.
[228] *Id.* at 12 (citing *Seamless Pipe from China* IDM at Comment 21 and Comment 24).
[229] *Id.* (citing *Hot-Rolled Steel from Korea Final 2016* IDM at Comment 7; *Cold-Rolled Steel from Korea Final 2016* IDM at Comment 7).
[230] *See Preliminary Results* PDM at 19.
[231] *Id*.

POSCO nor any cross-owned company individually received a measurable benefit under this program, Commerce should determine POSCO received no measurable benefit.

Under Commerce's regulations, where cross-ownership exists, and one or more of the relationships identified in 19 CFR 351.525(b)(6)(i) – (v) exists, Commerce will treat all cross–owned companies to which at least one of those relationships applies as one company and calculate a single rate for any countervailable subsidies identified and measured in accordance with 19 CFR 351.525(b)(6).[232] Therefore, POSCO's attributable benefit amount is the sum of the benefit amounts for POSCO and each cross-owned input supplier, which are treated as one company to calculate a single rate. This methodology additionally prevents exaggerated subsidy rates due to rounding, as Commerce determined in *Cold-Rolled Steel Flat Products from India*.[233]

Regarding the methodology for calculating the benefit of RSLTA Article 78(4) in *Hot-Rolled Steel from Korea 2016* and *Cold-Rolled Steel from Korea 2016*, we disagree with POSCO's assertion that Commerce only cumulated measurable benefits of companies and their affiliates.[234] While we noted in the decision memoranda of those cases that individual companies and affiliates did receive a benefit valued at a measurable amount under RSLTA 78(4),[235] the attribution methodologies and benefit cumulation used in *Hot-Rolled Steel from Korea 2016*[236] and *Cold-Rolled Steel from Korea 2016*[237] for this program are identical to the methodology we used in the instant review.[238] Accordingly, we made no changes to the *Preliminary Results* and continue to find that POSCO received a measurable benefit under this program during the POR.[239]

Comment 7: Whether Commerce Should Correct the Principal Value of POSCO's Benefit Amount under RSTA Article 9

POSCO's Case Brief:[240]

- Commerce used the incorrect principal amount when calculating the benefit received under RSTA Article 9 and should correct it with the amount in POSCO's 2017 tax return, which would make the countervailable benefit in this program non-measurable.

No other interested parties commented on this issue.

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[232] *See*, *e.g.*, *Lined Paper from Indonesia* IDM at Comment 2 ("{T}he benefit is received by the cross-owned companies, which the Department views as a single entity.").
[233] *See Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: Final Affirmative Determination*, 81 FR 49932 (July 29, 2016) (*Cold-Rolled Steel Flat Products from India*), and accompanying IDM at Comment 5 (wherein Commerce determined that rounding the total program rates, rather than the calculated rates of each cross-owned company, was appropriate so as to not exaggerate the countervailable subsidy rate).
[234] *See* POSCO Case Brief at 5.
[235] *See Hot-Rolled Steel from Korea Prelim 2016* PDM at 17; *see also Cold-Rolled Steel from Korea Prelim 2016* PDM at 18.
[236] *See Hot-Rolled Steel from Korea 2016* PDM at 17.
[237] *See Cold-Rolled Steel from Korea 2016* PDM at 18.
[238] *See* Memorandum, "Preliminary Calculations for POSCO," dated July 20, 2020 (Preliminary Calculation Memorandum).
[239] *See* Final Calculation Memorandum.
[240] *See* POSCO Case Brief at 3-4.

Commerce's Position:

We agree with POSCO that the amount used to calculate the benefit received under RSTA Article 9 was incorrect. POSCO contends that Commerce used an incorrect principal amount when calculating the benefit and that the correct principal amount is the outstanding balance under POSCO's Reserve for Research and Human Resources Development from POSCO's 2017 tax return multiplied by POSCO's tax rate for the POR. In reviewing the record, we re-examined our calculation of POSCO's benefit under this program by comparing the principal amount used in the Preliminary Calculation Memorandum to POSCO's 2017 tax return.[241] Based on the information on the record and the calculations performed for this program in previous segments of this proceeding,[242] we find that POSCO's calculation for the principal amount in the program is correct.[243] Thus, we agree that Commerce made an unintentional clerical error by including an incorrect principal amount in the preliminary calculation of POSCO's benefit under RSTA Article 9, and the benefit calculation was incorrect in the *Preliminary Results*. For the final results, we have adjusted the benefit calculation so that the principal amount for POSCO's RSTA Article 9 benefit calculation is equal to the value in POSCO's 2017 tax return multiplied by POSCO's 2017 tax rate.[244]

IX. Recommendation

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

☒ Agree ☐ Disagree

3/16/2021

X

Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliances

[241] *See* Preliminary Calculation Memorandum; *see also* POSCO IQR at Exhibit 16.
[242] *See* POSCO AQR at Exhibit 10.
[243] *See* POSCO Case Brief at 2-4.
[244] *See* Final Calculation Memorandum.