C-580-879
Administrative Review
POR: 01/01/2018-12/31/2018
Public Document
E&C/OVII: Team

May 24, 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 the 2018 Administrative Review of the Countervailing Duty Order on Certain Corrosion-Resistant Steel Products from the Republic of Korea

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I. SUMMARY

The Department of Commerce (Commerce) analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the countervailing duty order on certain corrosion-resistant steel products (CORE) 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 made changes to the *Preliminary Results*.[1] We recommend that you approve the positions described in the "Discussion of Comments" section of this memorandum.

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

II. LIST OF ISSUES

Comment 1: Whether Electricity for LTAR Confers a Benefit
Comment 2: Whether Commerce's Determination that Port Usage Rights Provides a Countervailable Benefit is Unsupported by Evidence and Contrary to Law
Comment 3: Whether Commerce Incorrectly Countervailed the Reduction for Sewerage Usage Fees
Comment 4: Whether the Restructuring of Dongbu's Existing Loans by GOK-Controlled Banks Provided a Financial Contribution to Dongbu

[1] *See Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2018*, 85 FR 74692 (November 23, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

Comment 5: Whether the Restructured Loans Provided to Dongbu were Specific
Comment 6: Whether Commerce Should Use the Interest Rates from Loans Provided by Commercial Banks Participating in the Creditor Bank Committee as Benchmarks
Comment 7: Whether Dongbu Is Equityworthy and the Debt-to-Equity Swaps Should be Countervailed
Comment 8: Whether Commerce Correctly Calculated the Benefit to Dongbu from KDB Short-Term Discounted Loans for Export Receivables Program
Comment 9: Whether Commerce Correctly Calculated the Benefit from Dongbu Steel's Short-Term KRW Loans During the POR

III. BACKGROUND

On November 23, 2020, Commerce published the *Preliminary Results* of this review.[2] On November 30, 2020, we issued supplemental questionnaires to the Government of Korea (GOK), and Hyundai Steel Company (Hyundai Steel) concerning the provision of port usage rights at the port of Incheon, and received timely responses.[3] On December 21, 2020, the petitioners[4] filed comments on the GOK's supplemental response.[5]

On November 23, 2020, Nippon Steel Sales Vietnam Co., Ltd. (NSSVC) and Ton Dong A Corporation (TDA) filed timely responses to the questionnaires issued to them.[6] On March 24, 2021, we re-issued the questionnaire to Hoa Sen Group (HSG) and HSG timely filed its questionnaire response.[7]

On March 2, 2020, the petitioners timely submitted a new subsidy allegation (NSA) that the low electricity prices determined by the GOK confer a countervailable subsidy to Korean CORE producers, including the mandatory respondents Hyundai Steel and Dongbu Steel Co., Ltd./Dongbu Incheon Steel Co., Ltd. (Dongbu).[8] On December 7, 2020, Commerce initiated an investigation of the NSA of the provision of electricity for less than adequate remuneration

[2] *See Preliminary Results.*
[3] *See* Commerce's Letters, "Third Supplemental Questionnaire," both dated November 30, 2020; *see also* GOK's Letter, "Third Supplemental Questionnaire Response," dated December 14, 2020 (GOK's December 14, 2020 Third Supplemental QR); and Hyundai Steel's Letter, "Hyundai Steel's Response to Third Supplemental Questionnaire," dated December 14, 2020.
[4] The petitioners are AK Steel Corporation, California Steel Industries, Inc.; Steel Dynamics Inc.; ArcelorMittal USA LLC; Nucor Corporation (Nucor); and United States Steel Corporation (U.S. Steel). *See* Petitioners' Letter, "Certain Corrosion-Resistant Steel Products from the Republic of Korea: Request for Administrative Review," dated July 31, 2018.
[5] *See* Nucor's Letter, "Corrosion-Resistant Steel Products from the Republic of Korea: Comments on the Korean Government's 3rd Supplemental Questionnaire Response," dated December 21, 2020.
[6] *See* NSSVC's Letter, "Corrosion-Resistant Steel Products from the Republic of Korea: NSSVC's Response to the Department's Administrative Review Questionnaire," dated November 24, 2020; and TDA's Letter, "Certain Corrosion-Resistant Steel Products from Korea, 1/1/2018 – 12/31/2018 Administrative Review, Case No. C-580-879: Initial Questionnaire Response," dated November 23, 2020.
[7] *See* Commerce's Letter, "Certain Corrosion-Resistant Steel Products from the Republic of Korea: Administrative Review Questionnaire," dated March 24, 2021; *see also* Memorandum, "Questionnaire Recipient Hoa Sen Group," dated March 24, 2021; and HSG's Letter, "Corrosion-Resistant Steel Products from the Republic of Korea – Response to Questionnaire," dated April 9, 2021.
[8] *See* Petitioners' Letter, "Certain Corrosion-Resistant Steel Products from the Republic of Korea: Petitioners' New Subsidy Allegation," dated March 2, 2020.

(LTAR).[9] On December 10, 2020, Commerce issued questionnaires regarding the NSA to the GOK, Hyundai Steel, and Dongbu, and received timely responses.[10] Between February 3, and April 5, 2021, we issued supplemental questionnaires to the GOK and the GOK timely responded.[11] Between January 13, and March 10, 2021, the petitioners filed comments on the GOK's questionnaire responses.[12] In addition, on April 20, 2021, the petitioners filed comments in advance of the post-preliminary determination.[13] On April 26, 2021, Commerce issued its post-preliminary determination on the provision of electricity for LTAR.[14]

On December 10, 2020, Commerce postponed the briefing schedule due to supplemental questionnaire responses that were still outstanding and in response to requests from interested parties.[15] On April 27, 2021 Commerce issued a briefing schedule,[16] and the petitioners timely filed case briefs on May 4, 2021.[17] In addition, Dongbu and Hyundai Steel also timely filed case

[9] *See* Memorandum, "Reconsideration of New Subsidy Allegation," dated December 7, 2020.
[10] *See* GOK's Letter, "Countervailing Duty Administrative Review of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Response to the New Subsidy Allegation," dated December 31, 2020 (GOK NSA IQR); Hyundai Steel's Letter, "Certain Corrosion-Resistant Steel Products from the Republic of Korea, Case No. C-580-879: Hyundai Steel's NSA Questionnaire Response," dated December 21, 2020; Dongbu's Letter, "Certain Corrosion-Resistant Steel Products from the Republic of Korea, Case No. C-580-879: Dongbu's New Subsidy Allegations Questionnaire Response," dated December 21, 2020; Hyundai Steel's Letter, "Certain Corrosion-Resistant Steel Products from the Republic of Korea, Case No. C-580-879: Clarification of the Government of Korea's New Subsidy Allegation Questionnaire Response," dated January 11, 2021; and Dongbu's Letter, "Certain Corrosion-Resistant Steel Products from the Republic of Korea, Case No.C-580-879: Clarification of the Government of Korea's New Subsidy Allegation Questionnaire Response," dated January 11, 2021.
[11] *See* GOK's Letter, "Countervailing Duty Investigation on Large Diameter Welded Pipe from the Republic of Korea: Response to the Supplemental Questionnaire on New Subsidy Allegation," dated February 17, 2021 (GOK NSAS1); GOK's Letter, "Countervailing Duty Administrative Review of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Submission of Translation," dated February 19, 2021; GOK's Letter, "Countervailing Duty Administrative Review on Certain Corrosion-Resistant Steel Products from the Republic of Korea: Response to the NSA Second Supplemental Questionnaire," dated April 2, 2021 (GOK NSAS2); and GOK's Letter, "Administrative Review of the Countervailing Duty Order on Certain Corrosion-Resistant Steel Products from the Republic of Korea: Response to NSA Third Supplemental Questionnaire," dated April 12, 2021 (GOK NSAS3).
[12] *See* U.S. Steel's Letter, "Certain Corrosion-Resistant Steel Products from the Republic of Korea: Deficiency Comments Concerning the GOK's NSA IQR and Rebuttal Factual Information," dated January 13, 2021; U.S. Steel's Letter, "Certain Corrosion-Resistant Steel Products from the Republic of Korea: U.S. Steel's Request for Amended Supplemental Questionnaire and Request for Meeting," dated February 8, 2021; U.S. Steel's Letter, "Certain Corrosion-Resistant Steel Products from the Republic of Korea: Deficiency Comments Concerning the GOK's NSA SQR," dated February 22, 2021; Nucor's Letter, "Corrosion-Resistant Steel Products from the Republic of Korea: Comments on the Korean Government's NSA Supplemental Questionnaire Response," dated March 1, 2021; U.S. Steel's Letter, "Certain Corrosion-Resistant Steel Products from the Republic of Korea: Petitioners' Consolidated Deficiency Comments and Supplemental Questions Concerning the GOK's NSA IQR and SQR," dated March 10, 2021.
[13] *See* U.S. Steel's Letter, "Certain Corrosion-Resistant Steel Products from the Republic of Korea: U.S. Steel's Comments in Advance of the Post-Preliminary Determination," dated April 20, 2021.
[14] *See* Memorandum, "Countervailing Duty Administrative Review of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Post-Preliminary Analysis Memorandum of Electricity for Less than Adequate Remuneration," dated April 26, 2021 (Post-Prelim Analysis Memo); *see also* "Calculations for Post-Preliminary Analysis Memorandum of Electricity for Less than Adequate Remuneration," dated April 26, 2021.
[15] *See* Memorandum, "Briefing Schedule Postponement," dated December 10, 2020.
[16] *See* Memorandum, "Briefing Schedule," dated April 27, 2021.
[17] *See* Petitioners' Letter, "Corrosion-Resistant Steel Products from the Republic of Korea: Case Brief of United States Steel Corporation and Nucor Corporation," dated May 5, 2021; *see also* Nucor's Letter, "Corrosion-Resistant

briefs.[18] On May 11, 2021, the petitioners, Hyundai Steel, Dongbu, and the GOK each timely filed rebuttal briefs.[19]

On May 14, 2021, at the request of the petitioners, Commerce held a public hearing in this administrative review.[20] On May 14, 2021, Commerce postponed the final results of review to May 24, 2021.[21]

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

IV. CHANGES SINCE THE *PRELIMINARY RESULTS*

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

V. SCOPE OF THE ORDER

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

VI. PERIOD OF REVIEW

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

VII. RESCISSION OF ADMINISTRATIVE REVIEW, IN PART

Since the *Preliminary Results*, NSSVC, HSG, and TDA have provided questionnaire responses, in which each stated that it had no shipments of CORE manufactured in Vietnam from Korean

Steel Products from the Republic of Korea: Nucor's Case Brief," dated May 4, 2021 (Petitioners' Case Brief re Dongbu).

[18] *See* Dongbu's Letter, "Certain Corrosion-Resistant Steel Products from the Republic of Korea, Case No.C-580-879: Dongbu's Case Brief," dated May 4, 2021 (Dongbu Case Brief); *see also* Hyundai Steel's Letter, "Certain Corrosion-Resistant Steel Products from the Republic of Korea, Case No.C-580-879: Hyundai Steel's Case Brief," dated May 4, 2021 (Hyundai Steel Case Brief).

[19] *See* Petitioners' Letter, "Certain Corrosion-Resistant Steel Products from the Republic of Korea: Nucor's Rebuttal Brief," dated May 11, 2021 (Petitioners' Rebuttal Brief re Dongbu); and, Petitioners' Letter, "Corrosion-Resistant Steel Products from the Republic of Korea: Nucor's Rebuttal Brief regarding Hyundai Steel," dated May 11, 2021 (Petitioners' Rebuttal Brief re Hyundai Steel); *see also* Hyundai Steel's Letter, "Certain Corrosion-Resistant Steel Products from the Republic of Korea, Case No.C-580-879: Hyundai Steel's Rebuttal Brief," dated May 11, 2021 (Hyundai Steel Rebuttal Brief); Dongbu's Letter, "Certain Corrosion-Resistant Steel Products from the Republic of Korea, Case No.C-580-879: Dongbu's Rebuttal Brief," dated May 11, 2021 (Dongbu Rebuttal Brief); and GOK's Letter, "Rebuttal Brief of the Government of the Republic of Korea," dated May 11, 2021 (GOK Rebuttal Brief).

[20] *See* Hearing Transcript, "In the Matter of the Administrative Review of the Countervailing Duty Order of Certain Corrosion-Resistant Steel Products from the Republic of Korea, Case No.C-580-879," dated May 21, 2021.

[21] *See* Memoranda, "Certain Corrosion-Resistant Steel Products from the Republic of Korea: Extension of Deadline for Final Results of Countervailing Duty Administrative Review," dated May 14, 2021; and "Certain Corrosion-Resistant Steel Products from the Republic of Korea: Extension of Deadline for Final Results of Countervailing Duty Administrative Review," dated March 2, 2021.

substrate. The record contains no information that calls into question a finding of no shipments. In addition, we received no comments from interested parties on this issue. Therefore, we find that NSSVC, HSG, and TDA had no shipments of subject merchandise during the POR. Therefore, we are rescinding the review with respect to NSSVC, HSG, and TDA.

VIII. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

We made no changes to the allocation period and the allocation methodology used in the *Preliminary Results*. No issues were raised by interested parties in case briefs that would lead us to reconsider our preliminary finding regarding the allocation period or the allocation methodology for the respondent companies. For a description of allocation period and the methodology used for these final results, *see* the *Preliminary Results* and accompanying Preliminary Decision Memorandum at 8-9.

B. Attribution of Subsidies

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

C. Benchmark Interest Rates

Commerce made no changes to benchmarks or discount rates used in the *Preliminary Results*. We addressed the comments raised by interested parties at Comment 6. For a description of the benchmarks and discount rates used for these final results, *see* the *Preliminary Results* and accompanying Preliminary Decision Memorandum at 10-11.

D. Creditworthiness

In accordance with 19 CFR 351.505(a)(6)(i), Commerce continues to find that Dongbu was uncreditworthy during the POR and the year(s) in which Dongbu had received restructured long-term loans from the government policy banks and restructured long-term debt held by government policy banks. Parties did not comment on this issue since the issuance of the *Preliminary Results*. For a description of our analysis used for the final results, *see* the *Preliminary Results*.[22]

E. Equityworthiness

In the *Preliminary Results*, we found that Dongbu's equity infusions were consistent with the usual investment practice of private investors, and there was no benefit from Dongbu's debt-to-

[22] *See Preliminary Results* PDM at 14-15.

equity conversions.[23] Parties have raised comments on this issue; *see* Comment 7. For the final results, we continue to find that Dongbu did not benefit from the debt-to-equity conversions. The record continues to show that private commercial banks: (1) purchased a significant percentage of the shares of the debt that were converted to equity; and (2) paid the same per share price as the government-controlled policy banks.

F. Denominators

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

IX. ANALYSIS OF PROGRAMS

A. Programs Determined to be Countervailable

1. Dongbu's Debt Restructuring

Commerce made one change to the *Preliminary Results* regarding this program, with regard to the KRW-denominated loans' benchmark. We continue to find this program to be countervailable for the final results. *See* Comments 4-8.

Dongbu: 6.83 percent *ad valorem*

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

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

Dongbu:[24] Less than 0.005 percent
Hyundai Steel: Not used

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

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

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

[23] *Id.*

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

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

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

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

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

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

Dongbu:	Not used
Hyundai Steel:	0.09 percent *ad valorem*

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

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

Dongbu:	Not used
Hyundai Steel:	0.27 percent *ad valorem*

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

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

Dongbu:[25]	Less than 0.005 percent
Hyundai Steel:	0.05 percent *ad valorem*

8. Modal Shift Program

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

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

9. Reduction for Sewerage Fees

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

[25] The calculated rate is less than 0.005 percent and, therefore, not measurable.

Comment 3.

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

10. Provision of Port Usage Rights at the Port of Incheon

Commerce made no changes to the *Preliminary Results* regarding this program. *See* Comment 2. In Comment 2, we clarify and find that a benefit was conferred under 19 CFR 351.503(b).

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

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

Hyundai Steel

1. Suncheon Harbor Port Usage Fee Exemptions
2. KEXIM Bank Import Financing
3. KEXIM Short-Term Export Credits
4. KEXIM Export Factoring
5. KEXIM Export Loan Guarantees
6. KEXIM Loan Guarantees for Domestic Facility Loans
7. KEXIM Trade Bill Rediscounting Program
8. KEXIM Overseas Investment Credit Program
9. KDB and IBK Short-Term Discounted Loans for Export Receivables
10. Loans under the Industrial Base Fund
11. K-SURE Export Credit Guarantees
12. K-SURE Short-Term Export Credit Insurance
13. Long-Terms Loans from KORES and KNOC
14. Clean Coal Subsidies
15. GOK Subsidies for "Green Technology R&D" and its Commercialization
16. Support for SME "Green Partnerships"
17. RSTA Article 10(1)(1)
18. RSTA Article 10(1)(2)
19. RSTA Article 10(1)(3)
20. RSTA Article 11
21. RSTA 104(14)
22. RSTA 94
23. RSLTA Articles 19, 31, 46, 84, 57-2, LTA 109, 112, and 137
24. Tax Reductions and Exemptions in Free Economic Zones
25. Grants and Financial Support in Free Economic Zones
26. Sharing of Working Opportunities/Employment Creating Incentives

27. R&D Grants under ITIPA
28. GOK Infrastructure Investment at Incheon North Harbor
29. Machinery & Equipment (KANIST R&D) Project
30. Grant for Purchase of Electrical Vehicle
31. Power Business Law Subsidies
32. Provision of Liquefied Natural Gas (LNG) for LTAR
33. Energy Savings Programs
    - Electricity Savings for Designated Period Program
    - Electricity Savings through the Bidding Process Program
    - Electricity Savings upon an Emergent Reduction Program
    - Electricity Savings through General Management Program
    - Management of the Electricity Load Factor Program
34. The GOK's Purchases of Electricity for MTAR
35. Incentives for Compounding and Prescription Cost Reduction
36. Incentives for Usage of Yeongil Harbor in Pohang City
37. VAT Exemptions on Imported Goods
38. Incentives for Usage of Gwangyang Port
39. Incentives for Natural Gas Facilities
40. Subsidies for Construction and Operation of Workplace Nursery
41. Subsidies for Hyundai Steel Red Angels Women's Football Club
42. Seoul Guarantee Insurance
43. Subsidies for Pohang Art Festival
44. Fast-Track Restructuring Program
45. Grants for LED Efficiency Improvement
46. Purchase of Land from Government Entities
47. Tax Credits for Electronic Returns
48. Discount of Electricity Fee for Energy Storage System
49. VAT Tax Deductions Due to Bad Debt
50. Other Transactions with Government Entities
51. Provision of Electricity for LTAR

Dongbu

1. KEXIM Bank Import Financing
2. RSTA Article 25(2): Tax Deductions for Investments in Energy Economizing Facilities
3. RSLTA Article 78: Acquisition and Property Tax Benefits to Companies Located in Industrial Complexes
4. RSTA Article 26: GOK Facilities Investment Support
5. Power Business Law Subsidies
6. Provision of Liquefied Natural Gas (LNG) for LTAR
7. Energy Savings Programs
    - Electricity Savings for Designated Period Program
    - Electricity Savings through the Bidding Process Program
    - Electricity Savings upon an Emergent Reduction Program
    - Electricity Savings through General Management Program
    - Management of the Electricity Load Factor Program

8. KEXIM Short-Term Export Credits
9. KEXIM Export Factoring
10. KEXIM Export Loan Guarantees
11. KEXIM Trade Bill Rediscounting Program
12. KEXIM Overseas Investment Credit Program
13. KDB and IBF Loans under the Industrial Base Fund
14. K-SURE Export Credit Guarantees
15. K-SURE Short-Term Export Credit Insurance
16. Long-Terms Loans from KORES and KNOC
17. Special Accounts for Energy and Resources (SAER) Loans
18. Clean Coal Subsidies
19. GOK Subsidies for "Green Technology R&D" and its Commercialization
20. Support for SME "Green Partnerships"
21. Daewoo International Corporation Debt Work Out
22. Research, Supply or Workforce Development Investment Tax Deduction for "New Growth Engines" under RSTA Article 10(1)(1)
23. Research, Supply, or Workforce Development Expense Tax Deductions for "Core Technologies" under RSTA Article 10(1)(2)
24. Tax Reduction for Research and Human Resources Development under RSTA Article 10(1)(3)
25. Tax Credit for Investment in Facilities for Research and Manpower under RSTA Article 11
26. Tax Deduction for Investment in Environmental and Safety Facilities under RSTA Article 25(3)
27. Tax Program for Third-Party Logistics Operations under RSTA Article 104(14)
28. RSLTA Articles 46, 84
29. Tax Reductions and Exemptions in Free Economic Zones
30. Exemptions and Reductions of Lease fees in Free Economic Zones
31. Grants and Financial Support in Free Economic Zones
32. Modal Shift Program
33. Sharing of Working Opportunities/Employment Creating Incentives
34. R&D Grants under Industrial Technology Innovation Promotion Act (ITIPA)
35. GOK Infrastructure Investment at Inchon North Harbor
36. Machinery & Equipment (KANIST R&D) Project
37. Grant for the Purchase of an Electric Vehicle
38. The GOK's Purchases of Electricity from Corrosion-Resistant Steel Producers for MTAR
39. Land Purchase at Asan Bay
40. Dongbu's Exemptions from Payment of Harbor Fees
41. Grants from the Korea Agency for Infrastructure Technology Advancement
42. Provision of Electricity for LTAR

X. DISCUSSION OF COMMENTS

Comment 1: Whether Electricity for LTAR Confers a Benefit

Petitioners' Case Brief re Electricity

- The prevailing market condition for electricity in Korea is established through a monopoly by the government-owned KEPCO and its six wholly owned generation facilities (GENCOs). KEPCO transmits and distributes almost all the electricity in Korea. The pricing of electricity from the GENCOs to KEPCO and KEPCO's prices to end users are not independently set by these companies. They may propose prices, but they are approved by the GOK. The petitioners argue Commerce should have taken the market condition into consideration when establishing a benchmark under 19 CFR 351.511(a)(2) and makes scant reference to this market reality in its benefit analysis and, thus, is unlawful.[26]
- Citing *POSCO CAFC*, the U.S. Court of Appeals for the Federal Circuit (CAFC) has determined the prevailing market condition for electricity in Korea demonstrates a major component of KEPCO's total cost is the acquisition of electricity through KPX from the GENCOs. As such, Commerce must understand the costs associated with generating and acquiring electricity from these wholly-owned subsidiaries. The petitioners argue Commerce did not follow this binding precedent in its benefit analysis.[27]
- Although Commerce states it did not need to evaluate the GENCOs' costs as it did not initiate on an upstream allegation, *POSCO CAFC* makes clear the GENCOs' costs should be analyzed in the context of the LTAR allegation and a determination should be made as to whether they provide adequate remuneration.[28]
- The term "adequate remuneration" is not defined in the statute, but Commerce has stated it refers to a market-based price. Moreover, in *Nucor CAFC*, the CAFC affirmed this interpretation and also linked "fair value" under section 771(18) of the Act to "market principles," stating there would be no sound basis for any other meaning under 19 CFR 351.511(a)(2)(iii). The comparison of Korean electricity prices to full or fair value can only be achieved through using a reasonable and reliable benchmark, which Commerce failed to do and, thus, its preliminary finding is contrary to law.[29]
- The GOK failed to respond fully and accurately to Commerce's questions regarding the GENCOs' cost and profitability. The record demonstrates the GOK did not cooperate to the best of its ability and only provided selected information or information it deemed relevant. Thus, adverse facts available is warranted with regard to the GENCOs' cost and profitability. The petitioners suggest a method, as AFA, to account for the GENCOs missing cost and profitability information.[30]

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[26] *See* Petitioners' Case Brief re Electricity at 6 – 9.
[27] *Id*. at 10 (citing *POSCO v. United States*, 977 F.3d 1369 (Fed. Cir. 2020) (*POSCO CAFC*)).
[28] *Id*. at 11 – 12.
[29] *Id. at 12 – 15* (citing *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Trinidad and Tobago*, 62 FR 55003, 55007 (October 22, 1997) (*Wire Rod from Trinidad and Tobago)*; *Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Softwood Lumber Products from Canada*, 66 FR 43186, 43193 (August 17, 2001); and *Nucor Corp. v. United States*, 927 F.3d 1243, 1249, 1253 – 1254 (Fed. Cir. 2019) (*Nucor CAFC*)).
[30] *Id*. at 18 – 21.

- Citing to *CTL Plate from Korea 2018*, the petitioners argue that Commerce cannot rely on the finding in this case, as it is a separate proceeding and Commerce must evaluate the information on the record of this proceeding. Moreover, Commerce cites to KEPCO's submitted Form 20-F to the U.S. Securities and Exchange Commission to support the GENCOs were profitable is misplaced as the number is on an aggregate, not individual company basis. The record information demonstrates that certain GENCOs were not profitable.[31]
- The audited reports cited by Commerce are flawed. First, the GOK only provided income statements, without identifying the GENCO, and are not part of a complete financial statement. The petitioners argue that Commerce appears to depart from its practice outlined in the antidumping context, that it would not accept data reported in financial statements unless accompanied by an auditor's report, statement of accounting practices, and the relevant notes, finding such incomplete financial statements unreliable. Second, the income statements demonstrate that certain GENCOs did incur losses. Accordingly, Commerce would need to account for this in its analysis of adequate remuneration.[32]
- For the GENCOs, Commerce's analysis is also partial and fails to address whether the GENCOs earned a reasonable rate of return to ensure future operations, consistent with its Tier 3 benchmarking analysis. As such, its analysis of the GENCOs is unsupported by substantial evidence and Commerce should address whether the GENCOs' earned a reasonable rate of return during the POR in the final results.[33]
- Commerce erroneously and unlawfully departed from its practice and did not establish a benchmark to compare to respondents' reported acquisition prices for electricity. Instead, Commerce merely observed that on a tariff-line basis, KEPCO covered its reported costs to purchase and distribute electricity on an annual basis. This was a major departure from judicially-affirmed practice and even in cases involving a Tier 3 benchmarking analysis, Commerce has established a benchmark to compare to the price actually paid by the respondents under investigation. The petitioners provide a calculated benchmark that may be compared to respondent's purchase of electricity from KEPCO.[34]

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[31] *Id*. at 22 – 26 (citing *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; Calendar Year 2018*, 85 FR 84296 (December 28, 2020), and accompanying IDM at Comment 7 (*CTL Plate from Korea 2018*); *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 70163 (November 25, 2014), and accompanying IDM at Comment 8; *Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Final Results of Antidumping Administrative Review; 2010-2011*, 77 FR 73616 (December 11, 2012), and accompanying IDM at Comment 2 and *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results of the Countervailing Duty Administrative Review*, 77 FR 21744 (April 11, 2012), and accompanying IDM at Comment 5).

[32] *Id*. at 26 – 28 (citing *Cf. Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 6132 (February 26, 2019) (*Bearings from China*), and accompanying IDM at Comment 10).

[33] *Id*. at 29 – 30.

[34] *Id.* 30 – 33 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 54566 (October 30, 2018) (*Solar Cells from China*), and accompanying IDM at Comment 10; *Supercalendered Paper from Canada: Final Results of Countervailing Duty Expedited Review*, 82 FR 18896 (April 24, 2017) (*Supercalendered Paper from Canada Expedited Review*), and accompanying IDM at Comment 26; *Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 FR

GOK Rebuttal Brief

- Commerce considered the prevailing market conditions in evaluating the Korean electricity market. The prevailing market condition is the formula as prescribed by the relevant laws and regulations. The formula takes variable and fixed costs under consideration as well as an investment return based on a merit-based system. The GOK, KEPCO and KPX responded to Commerce's requests and made its best effort to provide information. Commerce properly examined the provided data under 19 FR 351.511(a)(2)(iii).[35]
- The petitioners mischaracterize the Korean electricity market as a KEPCO monopoly and the GOK arbitrarily setting electricity rates. On the generation side, 31.7 percent of electricity is generated by private parties. Moreover, the market is dominated by a formula stipulated under laws and regulations that would not allow KEPCO or KPX arbitrarily set rates. The formula is the market pricing mechanism, which allows for cost recovery and an investment return. The electricity tariffs rates were also affirmed by the CAFC as being prices that were in accordance with market principles. Thus, whether KEPCO or the GENCOs are authorities is irrelevant to the prevailing market condition as formula is the main instrument in setting electricity prices in Korea.[36]
- Commerce took into account the *POSCO CAFC* decision regarding an examination of KPX prices by incorporating its upstream determination in *CTL Plate from Korea 2018*. For this proceeding, Commerce determined not to initiate an upstream subsidy as there was no new information submitted with the allegation since the upstream determination in 2017 administrative review of this proceeding.[37]
- The price of electricity between KEPCO and the GENCOs cannot be considered an internal price as there is no negotiation between the prices. The price is set according to the formula as stipulated by the relevant laws and regulations through KPX.[38]
- Commerce did follow 19 CFR 351.511(a)(2)(iii) to conduct a Tier 3 analysis based on market principles. Citing *Nucor CAFC*, the GOK asserts in addition to fair value, a cost analysis could also be utilized and, therefore, a benchmark is not necessary.[39]
- AFA is not warranted as it fully cooperated and answered Commerce's questions.[40]
- The GOK reiterates its position that there was no information that would lead to an initiation of an upstream allegation in the instant proceeding since last administrative review of this proceeding. Moreover, the GOK agrees with the Commerce's finding that nothing on the instant record contradicts or would have Commerce revisit its finding in *CTL Plate from Korea 2018* that the GENCOs' electricity costs were fully revered through prices upon which electricity was sold to KEPCO in 2018.[41]

60639 (October 25, 2007), and accompanying IDM at Comment 15; *Canadian Solar, Inc. v. United States*, Slip Op. 2020-23 (CIT 2020) at 19-20; and *Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 20, 2015) (*Supercalendered Paper from Canada Inv*), and accompanying IDM at Section VI.A.12).

[35] *See* GOK Rebuttal Brief at 5 – 6.

[36] *Id*. at 6 – 7 (citing *Nucor*).

[37] *Id*. at 7 – 8 (citing *POSCO CAFC*).

[38] *Id*. at 8.

[39] *Id*. at 9 (citing *Nucor*, 927 F 3d. at 1254 – 1255).

[40] *Id*. at 10 – 11.

[41] *Id*. at 12.

- *Solar Cells from China* is inapplicable, as Commerce applied a Tier 1 benchmark as AFA in that proceeding and applied a Tier 3 analysis in the instant proceeding.[42]

Dongbu Rebuttal Brief & Hyundai Steel Rebuttal Brief

- In a Tier 3 analysis, Commerce has wide latitude as to which method it applies, as affirmed in *Nucor CAFC*. Moreover, the petitioners' argument that Commerce must examine GENCOs' costs are misplaced, either based on its NSAs or the CAFC's finding in *POSCO CAFC*. In its preliminary analysis, Commerce followed *POSCO CAFC* by examining the impact of KPX's prices on KEPCO and, thus, met the statutory requirement.[43]
- The petitioners' argument that the GENCOs' analysis conducted in *CTL Plate from Korea 2018* is under a different statutory framework (*e.g.*, upstream vs LTAR) that should be applied is contradicted by its own arguments that the analysis would be the same no matter which part of the statute it is examined.[44]
- Commerce did consider the prevailing market conditions as part of its analysis under19 CFR 351.511(a)(2). Hence, the reason it did not utilize a Tier 1 or Tier 2 benchmark and conducted a Tier 3 analysis that it is typically applied when it is demonstrated the market is a regulated monopoly. This analysis has been conducted in numerous Korean countervailing duty proceedings involving electricity for LTAR and has been affirmed on appeal.[45]
- Commerce measuring adequate renumeration through a comparison of a government price to a competitive, market-based price is not supported by *Wire Rod from Trinidad and Tobago* or the CAFC's decision in *Nucor CAFC*. In *Wire Rod from Trinidad and Tobago,* the market was a regulated monopoly and a market principles analysis based on cost recovery and a reasonable rate of return was conducted. Moreover, the CAFC has not stated that just competition involves competitive pricing.[46]
- The petitioners cite to *Solar Cells from China* is misplaced as it involved the offsetting of negative benefits when compared to a benchmark in a LTAR calculation. It does not establish a requirement to determine a benchmark to measure adequate remuneration. In

[42] *Id*. at 12.

[43] *See* Dongbu Rebuttal Brief at 15 – 19; and Hyundai Steel Rebuttal Brief at 4 – 7 (citing *Notice of Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products from Canada*, 66 FR 43186, 43193 (August 17, 2001); *Wire Rod from Trinidad and Tobago*, 62 FR at 55007).

[44] *See* Dongbu Rebuttal Brief at 19 – 20; and Hyundai Steel Rebuttal Brief at 8.

[45] *See* Dongbu Rebuttal Brief at 20 – 23; and Hyundai Steel Rebuttal Brief at 8 – 12 (citing *Countervailing Duties; Final Rule*, 63 FR 65348, 65378 (November 25, 1998) (*CVD Preamble*); *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 Inv*), and accompanying IDM at 18-24; *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015), and accompanying IDM at 13-18; and *Nucor CAFC* at 1375 and *Maverick Tube Corp. v. United States*, 273 F. Supp. 3d 1293, 1309-10 (CIT 2017)).

[46] *See* Dongbu Rebuttal Brief at 24 – 27; and Hyundai Steel Rebuttal Brief at 12 – 15 (citing *Wire Rod from Trinidad and Tobago*, 62 FR at 55007; *Nucor CAFC* at 1250 and 1255; *Horne v. U.S. Department of Agriculture*, 576 U.S. 350, 368-69 (2015) (quoting *United States v. 50 Acres of Land*, 469 U.S. 24, 29 (1984); *United States v. 564.54 Acres of Land*, 441 U.S. 506, 511 (1979) (quoting *United States v. Miller*, 317 U.S. 369, 374 (1943)).

this proceeding, Commerce lawfully conducted a Tier 3 analysis that measured whether KEPCO prices were consistent with market principles.[47]

- *Supercalendered Paper from Canada Inv* also does not support the use of a benchmark in determining whether electricity in this proceeding was provided at LTAR. In that case, the respondent was outside the tariff schedule and received a rate that was unique to the company. That set of facts is not present here. Commerce made a similar finding in *Carbon & Alloy CTL Plate from Korea 2018.*[48]
- The Act and prior CAFC/U.S. Court of International Trade (CIT) rulings require Commerce to make two separate findings in applying facts available and AFA. Based on the record information, the GOK responded to Commerce's requests, cooperated to the best of its ability, and corrected deficiencies identified by Commerce. Moreover, Commerce relied on the information in its preliminary analysis. Thus, there is no support for applying FA or AFA in this instance.[49]
- The petitioners' calculation of a benchmark to compare to the respondents' electricity purchases is not supported as they do not explain why Commerce's finding that the GENCOs' pricing recovered costs and KEPCO's purchases of electricity reflect the actual cost of generating electricity is not sufficient. Moreover, the petitioners never explain why using certain amounts on an aggregate basis is warranted, total losses from certain GENCOs and KEPCO are the focus in the calculation and how the benchmark would more accurately reflect KEPCO's cost as it applies to the respondents' tariff classification, which is the appropriate level of examination.[50]

Commerce's Position: We continue to rely on our findings in the Post-Prelim Analysis Memo and determine a benefit was not conferred from KEPCO to the respondents because KEPCO's prices for electricity to the respondents were based on market principles. Further, KEPCO either fully recovered costs, or the prices for electricity resulted in a non-measurable benefit based on our Tier 3 benchmark analysis.

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[47] *See* Dongbu Rebuttal Brief at 27 – 28; and Hyundai Steel Rebuttal Brief at 15 – 17 (citing *Solar Cells from China at 45 – 46*; and *Supercalendered Paper from Canada Expedited Review* IDM at Comment 26).

[48] *See* Dongbu Rebuttal Brief at 28 – 29; and Hyundai Steel Rebuttal Brief at 17 – 18 (citing *Supercalendered Paper from Canada Inv* IDM at 32, 47 – 48; and *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Final Results and Partial Rescission of Countervailing Duty Administrative Review, 2018*, 86 FR 15184 (March 22, 2021) (*Carbon & Alloy CTL Plate from Korea 2018*), and accompanying IDM at 25).

[49] *See* Dongbu Rebuttal Brief at 30 – 34; and Hyundai Steel Rebuttal Brief at 18 – 22 (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1381 – 1382 (CAFC 2003); *Yama Ribbons & Bows Co. v. United States*, 419 F. Supp. 3d 1341, 1355 (CIT 2019); *Changzhou Trina Solar Energy Co. v. United States*, 352 F. Supp. 3d 1316, 1325 (CIT 2018); *Archer Daniels Midland Co. v. United States*, 917 F. Supp. 2d 1331, 1342 (CIT 2013); *Diamond Sawblades Mfrs. Coal. v. United States*, 986 F.3d 1351, 1357 (CAFC 2021); and *Hyundai Steel Co. v. United States*, 319 F. Supp. 3d 1327, 1335 n.3 (CIT 2018)).

[50] *See* Dongbu Rebuttal Brief at 34 – 36; and Hyundai Steel Rebuttal Brief at 22 – 24 (citing *CTL Plate from Korea 2018* IDM at Comment 7; *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), and accompanying IDM at Comment 1; *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2017*, 85 FR 15112 (March 17, 2020) (*CORE from Korea Second Admin Review*), and accompanying IDM at Comment 1; and *CORE from Korea Inv* IDM at 18-19).

Section 771(5)(E) of the Act states:

> For purposes of clause (iv), the adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation and other conditions of purchase or sale.

In evaluating whether a government provides a benefit in terms of a good or service for LTAR, Commerce applies 19 CFR 351.511(a) to determine the adequacy of remuneration.[51]

In the Post-Prelim Analysis Memo, Commerce described the Korean electricity market,[52] determined a financial contribution was provided,[53] and then proceeded to apply 19 CFR 351.511(a) to determine the adequacy of remuneration.[54] Thus, Commerce did examine the prevailing market conditions, as stated in the Act, through its adequacy of remuneration analysis as provided in 19 CFR 351.511(a)(2)(i)-(iii).[55]

With regard to the GENCOs, we are guided by the CAFC's decision in *POSCO CAFC*. The CAFC decision stated that "Commerce's failure to investigate and include KPX's generation costs in its analysis renders its final determination unsupported by substantial evidence."[56] In the Post-Prelim Analysis Memo, Commerce described KPX and the process by which electricity is sold through this market operator.[57] In this system, the electricity price contains a marginal and capacity price component and an adjusted coefficient for certain fuel type and the GENCOs.[58] We further explained that, "{t}he purpose of the adjusted coefficient is two-fold: to prevent over-payment to generators with low fuel-costs (*e.g.*, nuclear and coal); and to maintain a differential between the expected rate of return between the GENCOs and KEPCO."[59]

The petitioners refer to KEPCO's acquisition price as an internal affiliated price or transfer price.[60] As explained in the Post-Prelim Analysis Memo, there are additional generators that provide electricity to KEPCO through KPX.[61] Moreover, KPX has established a standardized pricing system that applies to all electricity generators in

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[51] *See CVD Preamble*, 63 FR at 65377 ("Under section 771(5)(E) of the Act, the adequacy of remuneration is to be determined … we are providing guidance on how we intend to apply this new standard. Accordingly, paragraph (a) outlines the conceptual approach we will follow to measure the benefit from governmental provision of goods or services.").
[52] *See* Post-Prelim Analysis Memo at 2 – 3 (section "Korean Electricity Market").
[53] *Id*. at 3 – 4 (We note Commerce stated that "KEPCO also wholly owns the six GENCOs and KPX," in its financial contribution analysis).
[54] *Id*. at 4 – 8.
[55] *Id*.
[56] *See POSCO CAFC* 977 F. 3d at 1378.
[57] *See* Post-Prelim Analysis Memo at 3 – 4 (section "Electricity Market Operator – Korea Power Exchange (KPX)").
[58] *Id*.
[59] *Id*. at 4.
[60] *See* Petitioners' Case Brief at 10 and 12.
[61] *See* Post-Prelim Analysis Memo at 2 (section "Electricity Generators").

Korea.[62] As such, KEPCO's acquisition price cannot be viewed as an internal or transfer price in the traditional sense because it is not set by either the seller or buyer. As noted above, KPX's pricing system includes fixed and variable costs and, for the GENCOs and KEPCO, ensures the expected rate of return is suitably allocated between the GENCOs and KEPCO. Finally, KEPCO is obligated to pay the GENCOs for the total cost of generating electricity, including interest on loans, even if KEPCO is not profitable.[63] Therefore, the record of this proceeding established how KEPCO's electricity acquisition price is determined and the additional factors that are considered with regard to the GENCOs in KPX's pricing system.

The petitioners' argument regarding our decision not to collect cost information for the GENCOs based on our determination not to initiate on an upstream allegation is also misplaced. As noted above, Commerce's prior evaluation of KPX's electricity prices and record information demonstrates that there is a pricing mechanism in place for KEPCO to acquire electricity that does not confer a benefit. Our reference to the upstream allegation supported the preliminary analysis that no new information has been placed on this record that would lead us to reexamine our prior finding on KPX's pricing system.[64]

Additionally, in terms of the GENCOs' specific cost information, the GOK provided information on whether KEPCO paid the GENCOs the total cost of electricity, even if in a loss position.[65] The GOK provided further clarification in a subsequent response that it reported the profit and loss of each GENCO and it included amounts irrelevant to the generating and selling of electricity.[66] In a subsequent supplemental questionnaire, the GOK stated KPX considers each GENCO's profits and losses in relation to the adjusted coefficient.[67] The GOK then submitted data in relation to profits and losses and tied certain reported amounts to the GENCOs' unconsolidated financial statements.[68] In the GOK NSAS3 at Exhibit E-31, the GOK highlighted "Net Profit" and "Profit & Loss related to Investment Stake at Affiliates, Joint Ventures & Subsidiaries" in each GENCO income statement. When considering cost recovery and rate of return in connection with generating electricity, isolating the analysis to net profit or other similar line items without including other factors is not representative of the KPX's pricing of electricity. As in *CTL Plate from Korea 2018*, there is unconsolidated financial information on the record.[69] The information demonstrates for all GENCOs that costs were recovered and there was operating profit.[70] Moreover, for the GENCOs that were not overall profitable, the income statements also show that financial costs and/or currency fluctuations were factors as opposed to the electricity operations. This was the same conclusion reached in *CTL Plate from Korea 2018*.[71] Therefore, contrary to the petitioners' assertions, Commerce fully evaluated the

[62] *Id*. at 2–3; *see also* GOK NSA IQR at 22 – 26.
[63] *See* GOK NSAS1 at 10.
[64] *See* Post-Prelim Analysis Memo at 6 – 7 ("Further, we declined to initiate an upstream subsidy alleging the provision of electricity for LTAR through KPX prices to KEPCO and then passed through to subject merchandise producers, because there was no new information provided in the allegation since *CORE from Korea 2017*").
[65] *See* GOK NSAS1 at 10 – 11.
[66] *See* GOK NSAS2 at 7 – 8.
[67] *See* GOK NSAS3 at 3.
[68] *Id*.
[69] *Id*. at Exhibit E-31.
[70] *Id*.
[71] *Id*. and *CTL Plate from Korea 2018* at 24.

role of KPX and the GENCOs in the Korean electricity market and considered the generation costs and pricing in the instant review as required by *POSCO CAFC.*

With regard to the above submitted unconsolidated information, citing to *Bearings from China,* the petitioners also argue the submitted data should not be considered as only select parts of the financials statement were submitted. First, the petitioners cite to an antidumping proceeding that addressed the use of financial statements when assigning surrogate values.[72] In that proceeding, Commerce stated in its position that the "practice is not to rely on financial statements that are missing significant elements, or which are otherwise deficient, when there are other, more complete financial statements on the record."[73] Thus, in the selection of financial statements for assigning surrogate values, Commerce has a preference of complete financial statements. However, in the instant proceeding, the GOK submitted the financial information in response to Commerce requesting that specific data be tied to the unconsolidated financial statements.[74] This is the context under which the income statement that ties to the specific reported information was submitted on the record.

The petitioners also argue that AFA should be applied to the GOK for impeding this proceeding and by not cooperating to the best of its ability. We disagree with the petitioners' assertion that there are examples on the record of the GOK's non-cooperation. Where the GOK was unable to answer, the GOK provided clarification or other information. For example, although the GOK was unable to respond to questions on generation costs or include it in Exhibit E-17, the GOK alternatively stated that KEPCO records the acquisition costs from its electricity purchases on the KPX.[75] Additionally, although the GOK did not provide subsidiary payments for KPX-adjusted prices, the GOK stated KPX will modify the adjusted coefficient.[76] The other examples cited by the petitioners also involve clarifications by the GOK on requests for data or information that explain why the question cannot be answered or the relevant data and information that pertains to Commerce's request. Thus, the GOK has cooperated to the best of its ability in answering questions regarding the electricity for LTAR program and an application of FA or AFA is not warranted.

Lastly, Commerce did not depart from its practice. Under a Tier 3 market principles analysis, Commerce will assess whether the government price is consistent with market principles.[77] In instances where the government is the sole provider of a good, Commerce will determine this through an analysis of such factors as the government's price-setting philosophy, costs (including rates of return sufficient to ensure future returns) or possible price discrimination.[78] In the Post-Prelim Analysis Memo, Commerce conducted this analysis to determine that KEPCO either fully recovered costs or resulted in a non-measurable benefit for electricity sold to the respondents.[79] As noted above, Commerce determined the KPX pricing for electricity sold to KEPCO had a price-setting mechanism. The KPX includes a differential in the adjustment

[72] *See Bearings from China* IDM at 53.
[73] *Id*.
[74] *See* GOK NSAS3 at question 5b.
[75] *See* GOK NSA IQR at 13.
[76] *See* GOK NSAS1.
[77] *See* 19 CFR 351.511(a)(2)(iii).
[78] *See CVD Preamble*, 63 FR at 65378.
[79] *See* Post-Prelim Analysis Memo at 5 – 8.

coefficient to ensure a rate of return differential with KEPCO and the GENCOs own financial data demonstrate electricity operations were profitable and recovered costs. As such, there is no change in our analysis of KEPCO. In the Post-Prelim Analysis Memo, Commerce used the electricity purchased in examining KEPCO's cost and rate of return to determine whether the industrial tariff classification recovered costs and had a rate of return sufficient to ensure future operations.[80]

The petitioners assert that market principles equate to full value or a market-based price and that Commerce should use a reasonable or reliable benchmark in measuring adequate remuneration. Although *Nucor CAFC* does tie market principles to fair value under section 771(18) of the Act, the CAFC also noted the regulated rates and the methodologies available to Commerce to measure value.[81] Here, the market principles analysis utilized in this program evaluated the price-setting mechanism in Korea as well as cost recovery. The petitioners cite to *Wire Rod from Trinidad and Tobago* is misplaced because Commerce utilized a cost analysis and only after determining that cost and a rate of return were not recovered. Only after this analysis did Commerce institute a benchmark to measure the benefit.[82] *Solar Cells from China* is also misplaced because the benchmark utilized in the case was based on AFA and did not apply 19 CFR 351.511, contrary to the situation here.[83] Moreover, the section of the proceeding cited by the petitioners involved offsetting of electricity purchases above the benchmark.[84] Finally, the petitioners cite to *Supercalendered Paper from Canada Inv* as another case where Commerce used a benchmark in a electricity for LTAR program. However, in this instance, Commerce utilized a market principles analysis on the Nova Scotia electricity market and only used a benchmark when it was established that the respondent was outside the general tariff schedule and its unique rate did not recover costs.[85] In contrast, all of the respondents in this proceeding pay rates from KEPCO's industrial tariff schedule. Therefore, Commerce will continue to use its methodology from the post-preliminary results and continue to analyze the KEPCO tariff schedule for industrial users under a market principles analysis.

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[80] *Id*. at 7 – 8.

[81] *See Nucor CAFC* at 1254 – 1255 ("In our analysis rejecting the government's broad position, we have decided that nonpreferentiality of the sort the government stresses is insufficient to meet the statutory standard of adequate remuneration, which, along with its implementing regulation, requires ensuring that the government authority's price is not too low considering what the authority is selling. That ruling is significant but limited in constraining Commerce. We readily recognize that such a standard, while excluding the government's broad preferentiality position potential, leaves a large range of potential implementation choices. One need only look outside the present statutory context to the familiar rate-regulation context to see the great variety of methodologies used over time to ensure that rates of a monopoly provider are not too low, some directly focused on value (such as ""fair value""). some on various measures of "cost" (which may reflect value). Verizon,535 U.S. at 484-86; *see generally id*. at 411-89. Commerce has considerable prima facie leeway to make a reasonable choice within the permissible range, and properly justify its choice, based on the language and policies of the countervailing duty statute as well as practicality and other relevant considerations").

[82] *See Wire Rod from Trinidad and Tobago*, 62 FR at 55007.

[83] *See Solar Cells from China* IDM at 7 ("We also relied on an adverse inference to determine the existence and the amount of the benefit; we selected as our benchmark the highest electricity rates on the record for the applicable rate and user categories.").

[84] *Id*. at Comment 10.

[85] *Supercalendered Paper from Canada Inv* IDM at 47-48.

Comment 2: Whether Commerce's Determination that Port Usage Rights Provides A Countervailable Benefit is Unsupported by Evidence and Contrary to Law

Hyundai Steel Case Brief

- Commerce's *Preliminary Results* are devoid of any discussion regarding how the GOK's provision of usage rights to Hyundai Steel for a period long enough to recover its port construction costs provides a benefit, other than vague references to prior decisions.[86]
- To the extent Commerce relies on prior determinations, it must describe how those determinations apply, and not merely cite to them.[87]
- The cases cited by Commerce to support its decision that the program is a "recurring grant program" actually reveal that these cases stand for the proposition that repayments for the construction of the port facilities are only countervailable to the extent they are excessive. and Commerce has offered no support that port usage rights provided to Hyundai Steel were excessive. In fact, Hyundai Steel was granted port usage rights for the Incheon Harbor facility for 41 years and 8 months, which is well short of even the IRS AUL period.[88]
- The GOK has explained in detail the port usage rights period, and its very structure is set up to avoid excessive reimbursements to Hyundai Steel. Accordingly, compared to prior cases this period is not excessive.[89]
- The port usage rights were provided as a payment of a debt owed by the GOK which is not a countervailable benefit. Further, Commerce has not explained under which provision of section 771(5)(E) of the Act the benefit is conferred, and under the "catch-all" provision, the CIT has understood that what the company receives should exceed what the company paid or should have paid. In this case, there is no benefit to Hyundai Steel.[90]
- The port usage rights the GOK provided are part of Hyundai Steel's just compensation, similar to the 5th Amendment of the United States that requires the government to provide just compensation prior to obtaining ownership of private property intended for public use.[91]
- In *GOSL*, the CIT found that repayment of a debt is distinct from payments through grants, loans, or equity infusions. In this case the court concluded that the reimbursement program at issue "did not constitute a gift-like transfer, but rather the interest-free repayment of a debt." The court also noted that Commerce was "not authorize{d}… to ignore clear, readily available and already-verified record evidence that a transfer of funds constituted repayment of a debt." These principles make clear that port usage rights in repayment for construction are similarly not countervailable.[92]
- In *HR Korea 2017*, Commerce characterized the essence of the program as "the GOK

[86] *See* Hyundai Steel Case Brief at 4.
[87] *Id*.
[88] *Id*. at 5-7 (citing *Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea*, 67 FR 62102 (October 3, 2002) (*CR Korea 2000*); and, *Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 72 FR 38565 (July 13, 2007) (*CTL Plate Korea 2005*), and *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2011*, 78 FR 55241 (September 10, 2013) (*CORE Korea Prelim 2011*)).
[89] *Id*. at 6-7.
[90] *Id*. at 8-10.
[91] *Id*. at 10-11.
[92] *Id*. at 12-13 (citing *Government of Sri Lanka v. United States*, 308 F. Supp. 3d 1373, 1381 (CIT 2018) (*GOSL*)).

help{ing} Hyundai Steel build a port for its own use for a very long time," without support in the record of its assertion, as is the case in this review also, ignoring the record evidence that Hyundai Steel paid huge sums and incurred all direct costs to build the port.[93]
- The GOK agreement described the formula and details for Hyundai Steel to fully recoup its costs which was 41 years and 8 months, and there was nothing excessive about the repayment of this debt and, accordingly, Commerce's finding should be reversed in the final results.[94]
- Even if Commerce erroneously countervails the fees Hyundai Steel could have, but did not, collect, then it should subtract the amount of the amortized wharf usage rights applicable to the POR 2018.[95]

Petitioners' Rebuttal Brief re Hyundai Steel
- Commerce should follow its practice and find this program countervailable as it has done in other cases.[96]
- In *HR Steel Korea 2017*, concerning the same respondent Hyundai Steel, Commerce concluded that the income was revenue forgone and a benefit was received. Similarly, in *CR Steel Korea 2018 Prelim*, Commerce countervailed both the berthing income and harbor facility usage fees, as revenue forgone by the GOK as Hyundai Steel did not pay the fees it collected from other parties.[97] Consistent with these findings, Commerce should continue to countervail the berthing income and harbor facility usage fees.[98]
- Hyundai Steel ignores the fact that it was in a position to collect fees because it acquired the right from the GOK to operate and use the port. Absent this right, Hyundai Steel would have to pay fees to the GOK. The question is whether revenue was forgone by the GOK, not whether third parties paid Hyundai Steel the revenue that the GOK did not collect from Hyundai Steel.[99]
- Regardless of whether Hyundai Steel actually collected these fees, this income constitutes revenue forgone by the GOK and, thus, should continue to be accounted for in Commerce's benefit calculations.[100]

Commerce's Position: In the *Preliminary Results*, Commerce determined that this program provided a financial contribution because the fees that the GOK gave Hyundai Steel the right to collect, which would otherwise have been collected by the GOK absent the agreement between the parties, represented revenue forgone by the GOK within the meaning of section 771(5)(D)(ii) of the Act. Specifically, the berthing income and the harbor facility usage fees are revenue forgone by the GOK because Hyundai Steel did not pay the GOK the fees it collected from other

[93] *Id*. at 14-15 (citing *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 2017*, 85 FR 64122 (October 9, 2020) (*HR Korea 2017*), and accompanying IDM at 30-31).
[94] *Id*. at 15-17.
[95] *Id*. at 17.
[96] *See* Petitioners' Rebuttal Brief re Hyundai Steel at 2-3.
[97] *Id*. at 3 (citing *HR Steel Korea 2017* IDM at 29-30; and *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2018*, 86 FR 7062 (January 26, 2021) (*CR Steel Korea 2018 Prelim*), and accompanying IDM at 31).
[98] *Id*. at 3-4.
[99] *Id*. at 6.
[100] *Id*. at 7.

third parties. Further, Commerce found the program to be specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients were limited in number,[101] and a benefit existed under section 771(5)(E) of the Act in the amount of the fees exempted that were reported by Hyundai Steel. Consistent with prior proceedings, we have treated this program as a recurring program.[102] We continue to find this program countervailable for the reasons explained below.

Hyundai Steel does not deny that the reason for receiving the right to collect fees for about 41 years was because it had incurred construction costs for building the port.[103] The record is also clear that Hyundai Steel uses the port to transport raw materials for steel production.[104] In other words, Hyundai Steel agreed to build the port. Once the port was built, Hyundai Steel used the port to transport inputs for free of charge. Further, Hyundai Steel had the right to collect port usage fees to compensate for the costs it incurred. Hyundai Steel's argument that this program is not countervailable is an argument of form over substance. Commerce has consistently countervailed these types of programs, which lower the cost of production for a company. In *Supercalendered Paper from Canada Inv*, Commerce countervailed the total amount of benefit conferred, without any offsets, under the Federal Pulp and Paper Green Transformation Program, as well as the Ontario Forest Sector Prosperity Fund program, because both programs involved the governments providing funds to respondent companies against costs incurred for capital investment.[105] In *Quartz Surface Product from Turkey*, Commerce countervailed the total amount of benefit conferred, without any offsets, under the Foreign Fair Support program, which involved the government providing reimbursements for expenses incurred related to respondent's participation in international fairs.[106]

Hyundai Steel argues that port usage rights are received as repayment of a debt from the GOK because harbors and related infrastructure must be controlled and owned by the GOK and that the GOK was simply repaying Hyundai Steel for creating the facilities over which it is required to exercise control and ownership.[107] Hyundai Steel's argument that this program does not

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[101] *See* GOK's November 4, 2020 SQR2-1 at 2; *see also Preliminary Results*; and Memorandum, "Peliminary Results Calculation for Hyundai Steel Company," dated November 17, 2020.
[102] *See Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 2017, 85 FR 64122 (October 9, 2020) (*HR Steel Korea 2017*), and accompanying IDM at Comment 6; *see also CTL Plate Korea 2005* IDM at 6-7 and Comment 1; *CORE Korea 2011 Prelim* PDM at 11, unchanged in *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*; 2011, 79 FR 5378 (January 31, 2014); and *CR Steel Korea 2000* IDM at 20 and Comment 11.
[103] *See* Hyundai Steel Case Brief at 3; *see also* Hyundai Steel's Letter, "Administrative Review on Certain Corrosion-Resistant Steel Products from the Republic of Korea: Response," dated February 6, 2020 (Hyundai Steel's February 6, 2020 Initial QR) at 42-45.
[104] *See* GOK's December 14, 2020 Third Supplemental QR at 5; *see also* Hyundai Steel's Letter, "Certain Corrosion-Resistant Steel Products from the Republic of Korea, Case No. C-580-879: Hyundai Steel's Second Supplemental Questionnaire Response," dated October 30, 2020 at 5 and Exhibit I-40.
[105] *See Supercalendered Paper from Canada: Preliminary Affirmative Countervailing Duty Determination*, 80 FR 45952 and accompanying PDM at 25; *Supercalendered Paper from Canada Inv* IDM at 26 and 28.
[106] *See Certain Quartz Surface Products from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 54841 (October 11, 2019), and accompanying PDM at 10-11.
[107] *See* Hyundai Steel Case Brief at 10-11.

confer a countervailable benefit is not supported by the record. The record is clear that the GOK is not collecting fees that it is entitled to collect,[108] and the record does not demonstrate that the main purpose of building the port was for public good or any governmental functions.[109] Instead, the record shows Hyundai Steel has the right to use the port for free for about 41 years. Once again, Hyundai Steel's argument is an argument of form over substance. We do not see a difference in substance between the program at issue and a program in which a government directly provides funding to a company to build a port for the company's benefit. In both situations, a company is able to receive assistance for building a port for its own use. Further, the record shows that the GOK agreed to provide various forms of support for the port construction.[110]

Hyundai Steel contends that the *Preliminary Results* are devoid of any discussion of how the usage rights provide a benefit. In *CTL Plate Korea 2005*,[111] we cited to the GOK Infrastructure Investment at Inchon Harbor program under which the respondent in a similar arrangement received the right to collect fees from other users for a period of 50 years. Commerce found "that the 50 year duration of the lease of the pier facility is so long that it effectively renders DSM the owner of the facility." In *CORE Korea 2011 Prelim*, we cited to the Exemption of Port Fees Under the Harbor Act program, in which the respondent was provided the right to collect fees from other users of the facility, in addition to exemptions the respondent received for a period of 70 years, which Commerce determined to be excessive. Similarly, in *CR Steel Korea 2000*, Commerce found the Exemption of Port Fees under the Harbor Act to be an excessive period. Further, in *HR Steel Korea 2017*, Commerce treated the benefits received from the berthing income and harbor facility usage fees as a recurring subsidy. Thus, we provided numerous instances of how Commerce has treated similar programs in prior proceedings, determining that the fees collected from third parties were treated as recurring subsidies. These programs are relevant to the instant case because here, too, the GOK provided free usage of the port and the right to the collection of fees for a period of 41 years and 8 months,[112] similar to the extended periods of 50 to 70 years in the above cases, which we determine to be excessive and thus provide a benefit. Further, our determination in the instant review is consistent with these prior proceedings.

Further, with regard to Hyundai Steel's argument that Commerce has not explained under which provision of section 771(5)(E) of the Act the benefit is conferred, as Hyundai Steel itself notes the examples outlined under section 771(5)(E) of the Act are not meant to be exhaustive.[113] We further clarify that the benefit received is further supported by Commerce's regulations at 19 CFR 351.503(b), which states that for other government programs, the Secretary normally will consider a benefit to be conferred where a firm pays less for its inputs (*e.g.*, money, a good, or a service) than it otherwise would pay in the absence of the government program, or receives more revenues than it otherwise would earn. Here, Hyundai Steel was able to collect berthing fees and

[108] *See* GOK's Letter, "Countervailing Duty Administrative Review on Certain Corrosion-Resistant Steel Products from the Republic of Korea: Second Supplemental Questionnaire Response," dated November 4, 2020 at 3-4.
[109] *See* Hyundai Steel's February 6, 2020 Initial QR at Exhibit I-18.
[110] *Id*. at Exhibit I-18, Article 48 to Article 54.
[111] *See CTL Plate Korea 2005* IDM at 7.
[112] *See* Hyundai Steel Case Brief at 7.
[113] *Id*. at 9.

other fees and was not required to transmit those fees to the GOK. Thus, a benefit was conferred under 19 CFR 351.503(b) under this program.

We disagree with Hyundai Steel that Commerce should compute the benefit using only income to Hyundai Steel which exceeded the cost incurred by Hyundai Steel in constructing the port of North Incheon. For the reasons we have provided in past cases, Commerce has consistently not included an offset for the cost of constructing the port in its benefit analysis. As noted in *HR Steel Korea 2017*,[114] we continue to find that the essence of this program is that the GOK helped Hyundai Steel build a port for its own use for an extended period of time. The GOK provided the benefit for this program through reimbursements as well as forgoing revenue that the GOK was otherwise entitled to collect, such as berthing fees and other user fees.[115] Consistent with past cases, no offsets to Hyundai Steel's benefit calculation for this program are warranted. Further, under section 771(6) of the Act, only under very limited circumstances, the statute allows Commerce to offset a subsidy rate.[116]

We also disagree with Hyundai Steel that *GOSL* is applicable here. The facts in *GOSL* are in contrast to the facts in this review and are distinguishable. In *GOSL*, the CIT characterized payments under the GPS program as interest-free repayment of a debt rather than "a direct transfer of funds," and it held that the payments constituted reimbursement of an interest-free debt that did not benefit the tire producer.[117] In *Tires Sri Lanka Final*,[118] we determined that the government's payments to the respondent were direct transfers of funds and countervailable in their full amount (treating the respondent's earlier payment of the "guaranteed price" to its producer as irrelevant).[119] However, the CIT found that we had erroneously assessed the reimbursements in isolation from the GPS program because the tire producer was required to provide the government an interest free loan by paying an above-market price for which it was later reimbursed. The CIT concluded that Commerce ignored record evidence that the respondent received payment corresponding exactly to the above-market portion of its payment to the small-scale farmer, paid on behalf of the government.[120]

We find that the Harbor Act program in this review is not comparable to the GPS program that the CIT analyzed in *GOSL*. In *GOSL*, the program at issue, the Rubber Guarantee Price Scheme, was implemented to support small-scale rubber farmers. The Government of Sri Lanka (GOS) stated that it used buyers of natural rubber such as respondent, Camso, to facilitate payments to these small-scale rubber farmers. The Rubber Guarantee Price Scheme was set up with the specific purposes of benefiting the small-scale farmers rather than respondent Camso. In this review, neither Hyundai Steel nor the GOK argue that the program at issue in this case was implemented for the purpose of supporting other beneficiaries. In *GOSL*, the CIT characterized the transaction at issue as resulting in a detriment, rather than a

[114] *Id*. at 30.
[115] *Id.*; *see also* Hyundai Steel's February 6, 2020 Initial QR at 45.
[116] *See* section 771(6) of the Act.
[117] *See GOSL* at 1381.
[118] *See Certain New Pneumatic Off-the-Road Tires from Sri Lanka: Final Affirmative Countervailing Duty Determination, and Final Determination of Critical Circumstances*, 82 FR 2949, 2950 (January 10, 2017) (*Tires Sri Lanka Final*), and accompanying IDM.
[119] *Id.* at Comment 4.
[120] *See GOSL*, 1380-83.

benefit, to the respondent in that case.[121] In this review, as explained above, the transaction at issue is not a detriment to Hyundai Steel. A key feature of the Guarantee Price Scheme is that the GOS *required* Camso to pay a guarantee rubber price for natural rubber when purchasing natural rubber from small farmers. Because Camso was required to buy natural rubber at a guarantee price for the benefit of the small farmers, the GOS reimbursed Camso for the difference between the guarantee price Camso paid and the average rubber price. Such a feature does not exist in the program at issue for this case. The GOK did not require Hyundai Steel to build a port at a certain cost, nor did the GOK require Hyundai Steel to build a port in order to benefit other recipients. Rather, Hyundai Steel benefitted from building the port. Therefore, Hyundai Steel's reliance on *GOSL* is inapposite and does not support its request that Commerce provide offsets to its benefit calculations.

Lastly, Hyundai Steel contends that the benefit with regard to the berthing income and harbor usage fees, should be recalculated to subtract the amount of amortization attributable to the wharf usage rights for the North Incheon Harbor. For the reasons explained above and, consistent with our practice, we have not subtracted/offset the amortized wharf usage applicable to the 2018 POR from the benefit.

Comment 3: Whether Commerce Incorrectly Countervailed the Reduction for Sewerage Usage Fees

Hyundai Steel Case Brief

- The *Preliminary Results* are based on a fundamental misunderstanding of how the program actually operated with respect to Hyundai Steel. When the facts are fully considered, it is clear that Hyundai Steel received no financial contribution or benefit from this program because it fully paid its sewerage fees based on its actual usage and thus there was no reduction or waiver by the GOK.[122]
- Sewage fees are calculated on the basis of the amount and type of the sewage water drained down the system. In cases where there are no meters to measure the amount of sewage water, billing charges are based on the clean water supplied, as it is assumed the amount of water sent through the sewerage system is the same as the amount of clean water consumed.[123]
- Hyundai Steel demonstrated that the volume of wastewater sent through the system was much lower than the volume of clean water consumed, based on which a reduced sewage usage rate was calculated and applied to Hyundai Steel. Thus, it is clear that the reduction is based on actual water and sewerage usage and directly related to the lower volume of wastewater that needs to be purified, and cannot be considered a benefit.[124]
- Hyundai Steel pays sewerage usage fees based on its proven sewerage usage volume, and does not receive reductions in the amount of sewerage fees, nor are any fees waived. Thus, there is no revenue forgone, and no benefit conferred to Hyundai Steel.[125]
- Pursuant to section 771(5)(D)(ii) of the Act, "financial contribution" means "forgoing or not

[121] *Id*. at 1382.
[122] *See* Hyundai Steel Case Brief at 18.
[123] *Id*. at 19.
[124] *Id*. at 19-21.
[125] *Id*. at 22.

collecting revenue that is otherwise due." In Hyundai Steel's case, the sewerage usage fee was based on demonstrated usage of the water system, and thus no discount was provided, and Commerce's preliminary finding is inconsistent with the statute as there are no fees that would have "otherwise" been due and no financial contribution.[126]

- There is also no benefit conferred in accordance with section 771(5)(E) of the Act, as Hyundai Steel did not owe the government any more fees than the fees that it paid.[127]
- Even if Commerce erroneously continues to treat the program as countervailable, it should find the subsidy is tied to non-subject merchandise.[128]
- The CIT has stated "as a matter of practice, Commerce determines whether a subsidy is tied by evaluating the purpose of the subsidy based on information available at the time of bestowal." The record is clear that sewerage fee reductions could only be attributed to production at the Incheon facility, while subject merchandise is produced at the Dangjin and Suncheon facilities. Commerce's attribution of sewerage fees was improper under its tying regulation, and should be reversed for the final results.[129]

Petitioners' Rebuttal Brief re Hyundai Steel

- The *Preliminary Results* are consistent with *CTL Plate from Korea 2018*, where Commerce found this program countervailable.[130]
- Commerce has recognized that Article 65(1) of the Sewerage Act, Article 36(2) of the Enforcement Decree of the Sewerage Act and Article 14(1) and Article 21(1)(7) of the Incheon ordinances do not prescribe for the situation under which Hyundai Steel qualified for its sewerage reduction fee, or the amount of reduction received by Hyundai Steel; rather, the fee reduction received by Hyundai Steel was significantly higher than the rate adjustments specified in the ordinance and the GOK provisions do not explicitly provide that entities could claim a reduction in their overall water bill based on the amount of sewage water discharged.[131]
- While Hyundai Steel claims there are special reasons for its reduction, none of the adjustment criteria listed in Article 21 apply to Hyundai Steel. As such, Commerce should continue to find that this program represented a financial contribution in the form of revenue forgone.[132]
- With regard to Hyundai Steel's contention that Commerce is attributing benefits to a facility that does not produce subject merchandise, Hyundai Steel incorrectly interprets and misunderstands Commerce's regulation. Pursuant to 19 CFR 351.525(b)(5)(i), if a subsidy is tied to the production or sale of a particular product, Commerce will attribute the subsidy to only that product. That is, the subsidy attribution "depends upon the type of subsidy and

[126] *Id*. at 23-24.
[127] *Id*. at 24-25.
[128] *Id*. at 25.
[129] *Id*. at 25-27 (citing *Jindal Poly Films Ltd. of India v. United States*, 439 F. Supp. 3d 1354, 1360 (CIT 2020) (*Jindal Poly Films Ltd.*)).
[130] *See* Petitioners' Rebuttal Brief re Hyundai Steel at 7-8.
[131] *Id*. at 9.
[132] *Id*. at 10.

whether it is tied to a particular market or product," and not to whether the subsidy in question was used by the respondent to produce subject or non-subject merchandise.[133]

- In *Jindal Poly Films Ltd*., the CIT explained that the government license providing the benefit did not restrict the merchandise to which an exporter could apply the credit, even though the respondent could identify which credits were used for subject and non-subject merchandise, stating "Commerce's practice is not to post hoc 'trace the use of subsidies' through records."[134]
- Likewise, this program is not tied to a particular product as the user of the program only needs to show that the amount of sewage water sent down the public sewerage system is less than the amount of clean water consumed. Commerce did not err in the *Preliminary Results* and should continue to allocate the benefit to subject and non-subject merchandise.[135]

Commerce's Position: For the reasons described below, we continue to find this program countervailable. In the *Preliminary Results*, we determined that the reduction in sewerage fees resulted in a financial contribution from the GOK to Hyundai Steel in the form of revenue forgone, as described in section 771(5)(D)(ii) of the Act, and the benefit conferred was in accordance with section 771(5)(E) of the Act.[136]

The record shows that households and businesses may under certain conditions receive a reduction in their overall water bill as prescribed in Article 21(1)7 of Regulation on Sewerage Usage Incheon Metropolitan City and Article 9 of Enforcement Regulation on Sewerage Usage Incheon Metropolitan City.[137] Users are eligible for a reduced water bill under these provisions if they could demonstrate that the amount of sewage water that is discharged into the public sewerage system is less than the amount of clean water consumed from the public water supply system, or if the user installs a "gray water system." A "gray water system" refers to an individual or regional level system which processes unclean water for recycling purpose without discharging unclean water into the public sewerage system.[138] The GOK further explained that the execution of this program is delegated to regional level governments. In this instance, the Incheon Metropolitan City was the regional level government charged with administering the public sewerage system utilized by Hyundai Steel during the POR.[139]

In its initial questionnaire response, Hyundai Steel stated that its Incheon Plant received reductions from monthly fees incurred for usage of a sewerage system for purification of sewage from Incheon City because it reduced the volume of wastewater that requires sewage treatment by a purification facility operated by Incheon City.[140] Hyundai Steel noted that its application for reduction for sewerage usage fees also included underlying research demonstrating its

[133] *Id*. at 11.
[134] *Id*.
[135] *Id*. at 12.
[136] *See Preliminary Results* IDM at 23.
[137] *See* GOK's Letter, "Administrative Review on Certain Corrosion-Resistant Steel Products from the Republic of Korea: Response," dated February 6, 2020 (GOK's February 6, 2020 Initial QR) at 206; *see also* Hyundai Steel's February 6, 2020 Initial QR at Exhibit I-36.
[138] *See* GOK's February 6, 2020 Initial QR at 203.
[139] *Id*. at 204.
[140] *See* Hyundai Steel's February 6, 2020 Initial QR at 54.

reduced water usage rate.[141] Further, Hyundai Steel provided the GOK's approval of its application for reduction of sewerage fees.[142]

In *CTL Plate from Korea 2018*, Commerce found that:

> "Contrary to the claims by the GOK, Article 65(1) of the Sewerage Act, Article 36(2) of the Enforcement Decree of the same Act, Article 14(1) and Article 21(1)(7) of the Incheon Metropolitan City Ordinance on Sewerage System Usages, and Article 9 of the Enforcement Decree of the same Ordinance do not prescribe for the situation under which Hyundai Steel qualified for its sewerage fee reduction, or the amount of the reduction received by Hyundai Steel. The relevant legal provision describing the basis for any such fee reductions, Article 21 ("Reduction and Exemption, *etc*.") of the Incheon Metropolitan City Ordinance on Sewerage System Usages, provides for fee reductions on the basis of other criteria and conditions. Article 21, or any other legal provisions cited by the GOK, do not explicitly provide that entities may claim a reduction in their overall water bill with regard to the amount of sewage water discharged. Hyundai Steel did not qualify for a reduction in its sewerage fee on the basis of any of the criteria listed in the Incheon Metropolitan City Ordinance. Additionally, the amount of the fee reduction that Hyundai Steel received on its overall water bill significantly exceeds the rate adjustments that are specified in the ordinance, with the exception of certain special conditions, such as being located in a disaster area. For these reasons, we determine that the basis under which Hyundai Steel received a sewerage fee reduction during the POR is an arrangement unique to the respondent and not otherwise contemplated under the provisions of Korean law on our record. We thus continue to find that the reduction in Hyundai Steel's sewerage fee under the program constitutes revenue forgone and that a benefit was conferred in accordance with sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Because record evidence indicates that the basis for which Hyundai Steel qualified for a reduction in sewerage fees was not granted to any other companies; we determine that this program is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act."[143]

The instant review pertains to the same program, the same respondent, *i.e.*, Hyundai Steel, and the identical period of review, as in *CTL Plate from Korea 2018*. Indeed, the record evidence pertaining to this program is the same in this case as in *CTL Plate from Korea 2018*. As in *CTL Plate Korea 2018*, Hyundai Steel did not qualify for a reduction in its sewerage fee on the basis of any criteria listed in the Incheon Metropolitan City Ordinance. Additionally, the amount of the fee reduction that Hyundai Steel received on its overall water bill significantly exceeds the rate adjustments that are specified in the ordinance, with the exception of certain special conditions, such as being located in a disaster area.[144] Therefore, based on these facts we continue to find this program countervailable and disagree with Hyundai Steel that the *Preliminary Results* are based on a fundamental misunderstanding because the reductions in

[141] *Id*. at Exhibit I-37.
[142] *Id*. at Exhibit I-36.
[143] *See CTL Plate from Korea 2018* IDM at Comment 6.
[144] *See* GOK's February 6, 2020 Initial QR at Exhibit SEWER-1 ("Sewerage Usage Fee Adjustment Criteria") at Article 14.

sewerage fees Hyundai Steel received are not according to the criteria listed in the Incheon Metropolitan City Ordinance.

Further, Hyundai Steel contends that it demonstrated that the volume of wastewater sent through the system was much lower than the volume of clean water consumed based on which a reduced sewage rate was calculated and applied to Hyundai Steel. However, as noted above, the amount of the fee reduction that Hyundai Steel received on its overall water bill significantly exceeds the rate adjustments that are specified in the ordinance, with the exception of certain special conditions not applicable here, such as being located in a disaster area.[145]

Hyundai Steel claims that there was no revenue forgone and no benefit conferred. As noted in *CTL Plate from Korea 2018*, Article 21 ("Reduction and Exemption, *etc*."), the legal provisions of the Incheon Metropolitan City Ordinance on Sewerage System Usages, do not explicitly provide that entities may claim a reduction in their overall water bill with regard to the amount of sewage water discharged. We thus continue to find that the reduction in Hyundai Steel's sewerage fee under the program constitutes revenue forgone and that a benefit was conferred in accordance with sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively.

With respect to Hyundai Steel's argument that this subsidy is tied to non-subject merchandise, we note that pursuant to 19 CFR 525(b)(5)(i), if a subsidy is tied to the production or sale of a particular product, Commerce will attribute the subsidy to only that product. To determine whether a subsidy is "tied," Commerce's focus is on "the purpose of the subsidy based on information available at the time of bestowal" (*i.e.*, when the terms for the provision are set), and not on how a firm has actually used the subsidy.[146] Thus, under our tying practice, a subsidy is tied to particular products or operations only if the bestowal documents (*e.g.*, the application, contract or approval) explicitly indicate that an intended link to the particular products or operations was known to the government authority and so acknowledged prior to, or concurrent with, conferral of the subsidy.[147] In the instant review, the application and approval documents do not show the reduction Hyundai Steel received was linked to the production of a particular product.[148] Moreover, Hyundai Steel reported in its initial questionnaire response that the reduction in sewerage fees is not tied to any particular product.[149] For these reasons, we continue to allocate the benefit from this program to Hyundai Steel's total sales during the POR.

Comment 4: Whether the Restructuring of Dongbu's Existing Loans by GOK-controlled Banks Provided a Financial Contribution and Benefit to Dongbu

Dongbu Case Brief

- Commerce errored in countervailing bonds and loans ("existing financing") that were issued prior to the Voluntary Restructuring in July 2014. The existing financing was provided based on ordinary commercial consideration. Dongbu's creditors also acted in a commercially reasonable manner in agreeing to restructure the existing financing and this

[145] *Id*.
[146] *See CVD Preamble*, 63 FR at 65403.
[147] *Id*. at 65402.
[148] *See* GOK's February 6, 2020 Initial QR at Exhibit SEWER;-4 *see also* Hyundai Steel's February 6, 2020 Initial QR at Exhibit I-38.
[149] *See* Hyundai Steel's February 6, 2020 Initial QR at Exhibit I-37 at 2.

decision was consistent with the goal of seeking to minimize their losses and maximize their recovery.[150]

- The restructuring of existing financing by Dongbu's creditors in 2014 provided neither a new financial contribution nor a benefit to Dongbu. The fact that the terms of the existing financing were modified in the context of the Voluntary Restructuring does not result in a new financial contribution. Moreover, the original loans from both GOK and private banks were provided on ordinary commercial terms.[151]

Petitioners' Rebuttal Brief re Dongbu

- Commerce's established practice is to treat revisions to the terms of existing loans as new financial contributions. Consistent with its practice, Commerce should continue to find that the restructuring of existing loans in Dongbu's debt restructuring program constitute new loans and thus new financial contributions.[152]
- Consistent with its determinations in the original investigation and in each subsequent administrative review, Commerce correctly preliminarily determined that Dongbu was not creditworthy during the POR.[153] Commerce's rules provide a methodology that must be used to calculate the benefit for uncreditworthy companies. Commerce may not use comparable commercial loans to determine the benefit, even if such loans existed.[154]
- Limited participation by commercial banks in a restructuring program dominated by government policy banks in no way supports a determination that the government policy banks' financial contributions did not confer a benefit.[155]

Commerce's Position: We note that Dongbu made identical arguments concerning this issue in the underlying investigation and prior administrative reviews.[156] For these final results, Commerce determines that parties presented no new information that would lead to a change from the *Preliminary Results* and we continue to conclude that the loans made by GOK-controlled banks through this program are countervailable. Dongbu's argument that the original financing was arranged on commercial terms is not relevant, as we are examining the restructuring of "existing financing" as new loans containing new terms.[157]

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[150] *See* Dongbu Case Brief at 1-2.
[151] *Id*. at 4-5.
[152] *See* Petitioners' Rebuttal Brief re Dongbu at 4.
[153] *Id.* at 1.
[154] *Id*. at 2.
[155] *Id*. at 8.
[156] *See CORE from Korea Inv* at "Debt Restructuring Program"; *see also Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, Rescission of Review, In Part, and Intent to Rescind, In Part; 2015-16*, 83 FR 39671 (August 10, 2018), and accompanying PDM, unchanged in *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2015–2016*, 84 FR 11749 (March 28, 2019); *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, and Rescission of Review, in Part; 2017*, 84 FR 48107 (September 12, 2019), and accompanying PDM, unchanged in *CORE from Korea Second Admin Review* IDM.
[157] *See CORE from Korea Inv* at Comment 5; *see also Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 FR 60639 (October 17, 2007) (*CFS Paper*), and accompanying IDM at 38; and *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003) (*DRAM from Korea*), and accompanying IDM at 20-21.

As an initial matter, we continue to find that the GOK-controlled policy banks (*i.e.*, the KDB, Korea Export-Import Bank (KEXIM), Woori Bank (Woori), Industrial Bank of Korea (IBK) and Korea Financial Corporation (KoFC)) are authorities within the meaning of section 771(5)(B) of the Act.[158] We note that the new terms of the loans provided by the GOK-controlled banks did not just include the extension of repayment terms and early settlement, but also included a reduction of the interest rates charged by the banks.[159] With respect to benefit, the *Preamble* states that "when a firm receives a financial package including loans **from both commercial banks and from the government**, we intend to examine the package closely to determine whether the commercial bank loans should in fact be viewed as "commercial" for benchmark purposes. In particular, we look to whether there any special features of the package that would lead to the commercial lender to offer lower, more favorable terms than would be offered absent the government/commercial package" (emphasis added).[160] We continue to find that the benefit exists where the government-controlled policy banks provided lower interests to the restructured loans than a private commercial bank that is outside of the creditor committee would offer. For further analysis on benefit, please also see Comment 6 below.

Thus, following our regulation and the *Preamble*, Commerce examined the record evidence concerning the debt restructuring. Consistent with past segments of this proceeding, we continue to find that these restructured loans are new financial contributions as these loans involved new terms including interest rate reduction.[161] Also consistent with past proceedings, we continue to find that under this debt restructuring these six authorities provided a financial contribution to Dongbu, as defined under section 771(5)(D)(i) of the Act.[162]

Comment 5: Whether the Restructured Loans Provided to Dongbu were Specific

Dongbu Case Brief

- The voluntary restructuring operates in a similar manner as formal bankruptcy proceedings, and it is well settled that Commerce does not treat concessions made by creditors in the context of a formal bankruptcy as specific and countervailable.[163]
- Dongbu's choice of going through a voluntary restructuring, as opposed to a formal bankruptcy or corporate workout procedure, was not motivated or influenced by the GOK, but was based on commercial considerations and the recommendations of an independent auditor. There was no GOK program that was specific to Dongbu or to the steel industry.[164]
- The voluntary restructuring is generally available to a wide array of debtors from all industries.[165]
- Commerce's interpretation of section 771(5A)(D)(iii)(I) of the Act is much too broad and results in any voluntary restructuring being found to be specific because the number of

[158] *See CORE from Korea Inv*; *CORE from Korea First Admin Review*; and *CORE from Korea Second Admin Review*.
[159] *Id*.
[160] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65364 (November 25, 1998) (*Preamble*).
[161] *See CORE from Korea Inv* IDM at Comment 5; *CFS Paper* IDM at 38; and *DRAM from Korea* IDM at 20-21.
[162] *See CORE from Korea Inv*; *CORE from Korea First Admin Review*; and *CORE from Korea Second Admin Review*.
[163] *See* Dongbu Case Brief at 14.
[164] *Id*. at 17.
[165] *Id*.

distressed companies that would be availing themselves of any of the three types of corporate restructuring in Korea is necessarily going to be limited in number.[166] The purpose of the specificity requirement is "to differentiate between those subsidies that distort trade by aiding a specific company or industry, and those that benefit society generally... and thus minimally distort trade, if at all."[167]

- Absent evidence that the manner in which a voluntary restructuring was carried out was done in a way to provide specific recipients with access to its benefits, there is no reasonable basis for treating concessions made by creditors in the context of a bankruptcy proceeding differently than when such concessions are made in the context of a voluntary restructuring.[168]

Petitioners' Rebuttal Brief re Dongbu

- Commerce has consistently found, the debt restructuring program is *de facto* specific because the actual recipients of subsidies under the program are limited in number, the same is true in this review as well.[169]
- Dongbu's comparisons to Commerce's analyses of bankruptcy proceedings are inapplicable because the debt restructuring program is not and does not resemble a formal bankruptcy proceeding.[170]

Commerce's Position: We note that Dongbu has made identical arguments for this issue in the underlying investigation and prior administrative reviews.[171] Commerce does not revisit a specificity determination made in an earlier segment of the same proceeding for a subsidy program, absent new evidence being presented in the current administrative review.[172] Because no new evidence was presented in this administrative review to cause Commerce to revisit the specificity finding, Commerce continued to find Dongbu's restructuring was *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

Further, the CIT affirmed Commerce's specificity finding for this program in *Nucor Corp. v. United States*, which was litigation stemming from the first administrative review.[173] Dongbu has presented no new evidence or reason why we should depart from this finding. Nonetheless, we repeat our original basis for specificity below.

As we stated in the original investigation, Dongbu was one of a very limited number of companies that went through such a government-assisted restructuring program.[174] This debt restructuring program remains specific to Dongbu as the actual recipients of financing pursuant to restructurings by creditors' councils are limited in number, making this subsidy specific within

[166] *Id*. at 18.
[167] *Id*. at 20.
[168] *Id*. at 22.
[169] *See* Petitioners' Rebuttal Brief re Dongbu at 2.
[170] *Id*.
[171] *See CORE from Korea Inv*; *CORE from Korea First Admin Review*; and *CORE from Korea Second Admin Review*.
[172] *See Magnola Metallurgy, Inc. v. United States*, 508 F. 3d 1349 (Fed. Cir. 2007).
[173] *See Nucor Corp. v. United States*, 494 F. Supp. 3d 1377 (CIT 2021).
[174] *See CORE from Korea Inv* IDM at Comment 4.

the meaning of section 771(5A)(D)(iii)(I) of the Act.[175] Dongbu's debt restructurings could not be compared to a bankruptcy proceeding, as Dongbu did not operate in a similar manner as a bankruptcy proceeding, nor did Dongbu go through a formal bankruptcy proceeding over the debt restructuring and corporate debt workout. The restructuring of Dongbu's debt was not overseen by an independent party.[176] Instead, Dongbu's debt restructuring was controlled by the Creditor Bank Committee, which in turn was controlled by GOK policy banks such as the KDB. The CIT also affirmed that Dongbu's restructuring was a specific subsidy that did not operate as a bankruptcy proceeding.[177] We continue to find that because the actual recipients of financing pursuant to restructurings by creditors' councils are limited in number, this subsidy is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.[178]

Comment 6: Whether Commerce Should Use the Interest Rates from Loans provided by the Commercial Banks Participating in the Creditor Bank Committee as Benchmarks

Dongbu Case Brief

- The GOK and private banks agreed to restructure these existing loans on the same material terms.[179]
- Citing to World Trade Organization's (WTO's) Panel report in *Korea-Measures Affecting Trade in Commercial Vessels*, Commerce should examine the financing in the context of the financial distress that Dongbu was going through and whether the existing creditors were acting in a commercially reasonable manner.[180]
- To facilitate the Voluntary Restructuring, Dongbu and its creditors hired an independent auditor, PricewaterhouseCoopers (PWC), who recommended the terms of Dongbu's Voluntary Restructuring, which the Creditors' council adopted. As part of its report, PWC concluded that the going-concern value of Dongbu was greater than the liquidation value and thus it made commercial sense for the creditors to participate in the Voluntary Restructuring in order to try and maximize their recovery on the existing financing. All the creditors – GOK banks and private banks alike – agreed to restructure the existing financing on the same terms.[181]
- Commerce erroneously disregarded Dongbu Steel's loans from private creditors as "comparable commercial loans" for purposes of a benchmark under 19 CFR 351.505(c)(2) on the grounds that these loans were made by banks that were part of the Creditor Bank Committee that was controlled by the GOK-controlled banks. However, there is nothing in

[175] *Id*.
[176] *See Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2010*, 78 FR 19210, 19212 (March 29, 2013) (Commerce distinguished between a bankruptcy proceeding, which Commerce characterized as "essentially a liquidation process" and other types of "debt workouts" in Korean CVD proceedings that "involved out-of-court corporate restructuring agreements implemented by a body of creditors dominated by government-owned or controlled entities.").
[177] *See Nucor Corp.*, 494 F. Supp. 3d at 1383.
[178] *See CORE from Korea Inv*; *CORE from Korea First Admin Review*; and *CORE from Korea Second Admin Review*.
[179] *See* Dongbu Case Brief at 5.
[180] *Id*.
[181] *Id*. at 7.

the statute or regulations to prevent loans from private banks from meeting the "comparable commercial loans" standard for use as a benchmark.[182]

- As in *CFS Paper*, there is no basis to exclude the loans that Dongbu received from private creditor banks as comparable commercial loans.[183] There is no lawful basis for Commerce's rejection of the interest rates from these private loans as benchmarks. These loans constitute comparable commercial loans that Dongbu actually received from private banks and should be used as the benchmark for measuring any benefit in the final results.[184]

Petitioners' Rebuttal Brief re Dongbu

- Commerce should find that all restructured loans, including those provided by commercial banks, are countervailable financial contributions, at the very least, it should reject the argument that the loans from non-government banks on the government controlled creditors' committee may serve as comparable commercial loans for benchmarking purposes.[185]

Commerce's Position: We note that Dongbu made identical arguments for this issue in the underlying investigation and prior administrative reviews.[186] In the underlying investigation and the two prior administrative reviews, we did not use restructured loans provided by private banks on the Credit Banker Committee as benchmarks. The CIT in *Nucor Corp.* affirmed our determination not to use the restructured loans provided by private banks as benchmarks in the first administrative review.[187] In this review, Dongbu has presented no new evidence that would lead us to reconsider these findings.

The record demonstrates that Dongbu did not obtain any new long-term loans from conventional commercial sources in 2018, other than the restructured loans from Dongbu's existing government and commercial banks. Similar to our findings in the underlying investigation and the two previous administrative reviews, we have not used restructured loans provided by commercial banks on the Creditor Bank Committee either as benchmarks or as dispositive evidence of creditworthiness, as we found that these private banks' decisions and interest rates were influenced by the GOK-controlled banks, and that these private loans do not reflect credit that would have been available to Dongbu in the marketplace.[188] Furthermore, 19 CFR 351.505(a)(3)(iii) states that when an uncreditworthy firm receives government-provided long-term loans, Commerce normally will calculate the interest rate by using an uncreditworthy benchmark. This regulation is applicable here, as Commerce continues to find Dongbu to be uncreditworthy during the POR, pursuant to 19 CFR 351.505(a)(4). Commerce's regulation does not say that Commerce will calculate the benefit for an uncreditworthy company by using comparable commercial loans. Therefore, Commerce used an uncreditworthiness benchmark with an added risk premium, in accordance with 19 CFR 351.505(a)(3)(iii), to measure Dongbu's countervailable long-term debts/loans during the POR.

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[182] *Id*.
[183] *Id*. at 13 (citing *CFS Paper*).
[184] *Id*. at 14.
[185] *See* Petitioners' Rebuttal Brief re Dongbu at 11.
[186] *See CORE from Korea Inv*; *CORE from Korea First Admin Review*; and *CORE from Korea Second Admin Review*.
[187] *See Nucor Corp.*, 494 F. Supp. 3d at 1381-82.
[188] *Id*.

Because Dongbu was uncreditworthy, we disagree that it was commercially reasonable for Dongbu's creditors to restructure their loans with the company in 2014. We find that Dongbu's reliance on 19 CFR 351.505(a)(3)(i) which states "in determining if a loan is one that the recipient 'could actually obtain on the market' it 'normally will rely on the actual experience of the firm in question' is misplaced. The regulation actually begins with "{i}n selecting a comparable loan …" Thus, by its own terms, the regulation does not apply to an uncreditworthy company, for which we are not selecting a comparable loan but rather using the methodology in 19 CFR 351.505(a)(3)(iii) to determine the benefit.

Even if Dongbu were creditworthy, its loans from private banks could not be used as benchmarks. These loans were part of the financial package offered by the KDB, provided for under the government's debt restructuring program, and thus unsuitable for benchmark purposes. These loans from the alleged private banks to Dongbu cannot constitute "comparable commercial loans" under 19 CFR 351.505(a)(2) due to the substantial government influence and the fact that they were part of a government program

Furthermore, Dongbu's reliance on *Korea-Measures Affecting Trade in Commercial Vessels*[189] to hold that Commerce must determine whether the terms of the restructured loans provided by commercial banks were "commercially reasonable" before disregarding them as potential benchmarks is misplaced. The WTO report cited did not involve the United States. Even if the United States were a party to that dispute, findings of the WTO are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements. As is clear from the discretionary nature of this scheme, Commerce did not intend for WTO reports to trump automatically replace or override the exercise of Commerce's discretion in applying the statute. Moreover, it is the Act and Commerce's regulations that have direct legal effect under U.S. law, not the WTO Agreements or WTO reports.

The facts on the record of this review differ from the facts in *CFS Paper*. In *CFS Paper*, Commerce did not find the evidence of GOK influence over the decision-making ability of the Korean respondent's Creditors Council at issue.[190] Here, we found Dongbu's Creditor Banks Committee was dominated by GOK-controlled policy banks, which are authorities under section 771(5)(B) of the Act. There is no basis on this record to find that the GOK-controlled and private banks on the Creditor Bank Committee acted in a "commercially reasonable" manner (*i.e.*, seeking to maximize interest income) on the restructured loans without comparing the terms of the renegotiated loans to those of a similar loan provided by a commercial bank.[191] Moreover, the PWC report on the record of this review is identical to that on the record of the underlying investigation and prior administrative reviews.[192] After reviewing the PWC report we found the restructuring of Dongbu's existing loans provided a financial contribution and benefit to Dongbu. While the PWC report might have evaluated the assets of Dongbu at the time of restructuring, the final terms of the loans were not reflected in the PWC report. Thus, we cannot

[189] *See Dongbu's Case Brief* (citing Panel Report, *Korea-Measures Affecting Trade in Commercial Vessels*, WTO Doc. WT/DS273/R (adopted April 11, 2005) (*Korea-Measures Affecting Trade in Commercial Vessels*)).
[190] *See CFS Paper* IDM at 43.
[191] *See CORE from Korea Inv*; *CORE from Korea First Admin Review*; and *CORE from Korea Second Admin Review*.
[192] *Id.*

determine the terms of restructured loans offered by private banks on the Creditor Bank Committee are commercially reasonable simply based on the fact that an outside auditor was involved in the restructuring process.

Comment 7: Whether Dongbu Is Equityworthy and the Debt-to-Equity Swaps should be Countervailed

Petitioners' Case Brief re Dongbu

- In the Preliminary Results, Commerce improperly treated the participation of nongovernment-owned banks in Dongbu's debt-to-equity swaps to mean that actual private investor prices are available as benchmarks.[193]
- Commerce's determination that the private banks' equity infusions were consistent with "usual investment practice" cannot be reconciled with its conclusion that their restructured loans were not "comparable commercial loans."[194] Commerce's treatment of Dongbu's debt-to-equity swaps is arbitrary in light of Commerce's treatment of private banks in the context of Dongbu's restructured loans. Commerce should treat the participation of non-government banks in the same manner for both loans and equity infusions provided in the context of Dongbu's debt restructuring program.[195]
- Citing *Refrigerators from Korea*, the petitioners argue that in that case Commerce decided that it could not rely on the participation of non-government creditors' committee members to benchmark debt-to-equity swaps.[196]
- Even if Commerce determines that the non-government banks represent actual private investors for the purpose of the debt-to-equity swaps, their investments were insignificant and should not be used as a benchmark.[197]
- Dongbu has not cooperated to the best of its ability because it has either failed to provide, or failed to keep and maintain, the records necessary to substantiate its claims regarding a subsidy program under review. It has withheld information regarding the draft PWC reports that it has cited to establish the reliability of PWC's review process. Commerce should apply adverse inferences because Dongbu failed to cooperate to the best of its ability.[198]
- There was nothing in Dongbu's financial performance that would lead a private investor to expect a reasonable rate of return in a reasonable period of time, if at all. Dongbu was thus unequityworthy.[199]
- Because Dongbu was unequityworthy at the time of each respective debt-to-equity swap, each of them should be countervailed in the amount of the equity infusion pursuant to the Commerce's rules.[200]

[193] *See* Petitioners' Case Brief at 2.
[194] *Id*. at 4.
[195] *Id*. at 6.
[196] *Id*.
[197] *Id*. at 7.
[198] *Id*. at 13.
[199] *Id*. at 19.
[200] *Id*.

Dongbu Rebuttal Brief

- The private creditors were not entrusted or directed by the government to provide a financial contribution to Dongbu.[201]
- Contrary to Nucor's argument, Commerce's determination that government controlled financial institutions had control over the creditors committee by virtue of their majority voting rights alone does not constitute the type of affirmative evidence of entrustment or direction that is required.[202]
- The same type of analysis, which directly supported the Commerce's decision not to treat the restructured loans from private banks as providing an indirect financial contribution, should apply equally with respect to the debt-to-equity swaps at issue in this review.[203]
- Commerce correctly determined that the debt-to-equity swaps provided no countervailable benefit to Dongbu. Commerce's regulations are clear that only if no private investor prices are available as a benchmark will it examines whether the respondent was equityworthy at the time of the government provided equity infusion.[204]
- Because both private and government financial institutions participated on the same terms, and the private investor participation was significant, Commerce used the private investor prices as the benchmark and concluded that the debt-to-equity swaps were consistent with the usual investment practice of private investors and thus provided no benefit as per 19 CFR 351.507(a).[205]
- The statute and regulations dealing with the provision of loans and equity are completely different and there is no legal basis for why Commerce should treat them the same. The petitioners have provided no legal support for why Commerce should treat its analysis of these two completely different types of benefits under two separate statutory and regulatory provisions**,** in the same manner.[206]
- The private creditors' percentage of *debt* that was swapped for equity was demonstrably larger than their percentage of restructured loans. Commerce thus has a strong factual basis for treating the private creditor participation in the debt-to-equity swaps as constituting "significant private sector participation" for purposes of 19 CFR 351.507(a)(2)(iii).[207]
- In *Refrigerators from Korea*, fewer than half of the private investors had voted for the debt-to-equity swaps, whereas in this case there is no evidence that any private investors voted against the debt-to-equity swaps.

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

[201] *See* Dongbu Rebuttal Brief at 5.
[202] *Id*. at 6.
[203] *Id*.
[204] *Id*. at 7.
[205] *Id*. at 9.
[206] *Id*. at 10-11.
[207] *Id*. at 12.

Woori, IBK, and KoFC),[208] and private commercial banks (*i.e.*, the Nonghyup Bank, Shihan Bank, Hana Bank, Korea Exchange Bank).[209] In addition, information on the instant record indicates that private commercial banks: (1) participated in the three equity infusions at issue;[210] (2) paid the same per share price as the government-controlled policy banks;[211] and (3) purchased a significant percentage of the shares of debt that were converted to equity.[212] Because of the private commercial banks actively participated and paid the same price as government banks, we find that Dongbu's equity infusions are consistent with usual investment practice of private investors.

Facts on the record of this review differ from the facts in *Refrigerators from Korea*.[213] In *Refrigerators from Korea*, less than half of the private creditors voted in favor of the debt-to-equity conversion, while in this case, all private investors agreed with the debt-to-equity swap rates and participated in the three separate debt-to-equity swaps.[214] Furthermore, the private investors accounted for a significant percentage of the shares and much higher than the private investors' shares in *Refrigerators from Korea*.[215] Therefore, we continue to find there is no benefit from Dongbu's debt-to-equity conversions, and we are not countervailing the amount of the equity infusion that Dongbu received. Commerce also finds that an adverse inference is not warranted here, because Dongbu has responded to Commerce's questionnaires and did not fail to provide requested information.

We also note that the facts on the instant review differ from the facts in *Cold-Rolled Steel from Korea*,[216] which is an ongoing administrative review that covers the same POR. While we are not making an unequityworthiness finding and continue to find the equity infusions provided no benefit to Dongbu for the instant administrative review, we may re-examine this issue for the next administrative review if new record evidence requires such an examination.

Comment 8: Whether Commerce Correctly Calculated the Benefit to Dongbu from KDB Short-Term Discounted Loans for Export Receivables Program

Dongbu Case Brief

- In the final results and in accordance with 19 CFR 351.525(b)(4)-(5), Commerce should revise its preliminary calculations to include only the benefits from Dongbu's KDB D/A loans on exports of subject merchandise to the United States during the POR.[217]

The petitioners did not comment on this issue.

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[208] *See Preliminary Results* PDM at 14-15.
[209] *Id*.
[210] *Id*.
[211] *Id*.
[212] *Id*.
[213] *See Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410 (March 16, 2012) (*Refrigerators from Korea*), and accompanying IDM at 111-14.
[214] *See Preliminary Results* PDM at 14-15.
[215] *Id*.
[216] *See Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2018*, 86 FR 7063 (January 26, 2021), and accompanying PDM.
[217] *See* Dongbu Case Brief at 24.

Commerce's Position: We agree with Dongbu that the benefit should not include non-subject merchandise and exports to countries other than the United States.[218] For these final results, we have limited the benefit calculation to the exports of subject merchandise to the United States only.[219]

Comment 9: Whether Commerce Correctly Calculated the Benefit from Dongbu Steel's Short-Term KRW Loans During the POR

Dongbu Case Brief

- With respect to Dongbu's restructured short-term loans from GOK controlled banks during the POR, Commerce selected the wrong benchmark for the calculation of KRW denominated loans.[220]
- In accordance with 19 CFR 351.505(a)(3)(ii), Commerce should correct the benchmark used in its Preliminary Results Calculation Memo and use a national average short-term KRW benchmark when calculating the benefit from Dongbu Steel's restructured short-term KRW loans from government controlled banks.[221]

Petitioners' Rebuttal Brief re Dongbu

- Commerce's rules provide that, in selecting "comparable commercial loans" for benchmark purposes, Commerce "normally will use a loan taken out by the firm from a commercial lending institution or a debt instrument issued by the firm in a commercial market."[222]
- The short-term loans that Dongbu reported are the most accurate and representative source of a short-term interest rate benchmark here, as they are comparable in terms of both structure and maturity, and they are company-specific and therefore represent Dongbu's actual experience during the POR.[223]

Commerce's Position: We agree with Dongbu. Section 351.505(a)(1) for Commerce's regulations defines a loan benefit exists "to the extent that the amount of a firm pays on the government-provided loan is less than the amount the firm would pay on a comparable commercial loan(s) that the firm could actually obtain on the market." Section 351.505(a)(2) further states that "{i}n selecting a loan that is "comparable" to the government-provided loan, the Secretary normally will place primary emphasis on similarities in the structure of the loans (*e.g.*, fixed interest rate v. variable interest rate), the maturity of the loans (*e.g.*, short-term v. long-term), and *the currency in which the loans are denominated*." Finally, where the firm has no comparable commercial loans, 19 CFR 351.505(a)(3)(ii) states that "{i}f the firm did not take out any comparable commercial loans during the period referred to in paragraph (a)(2)(iii) or (a)(2)(iv) of this section, the Secretary may use a national average interest rate for comparable commercial loans."

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[218] *See CORE from Korea Second Admin Review* at Comment 12.
[219] *See* Memorandum, "Calculation for the Final Results: Dongbu Steel Co., Ltd./Dongbu Incheon Steel Co., Ltd.," dated concurrently with this memorandum (Dongbu Final Calculation Memorandum).
[220] *See* Dongbu Case Brief at 25.
[221] *Id.* at 26.
[222] *See* Petitioners' Rebuttal Brief re Dongbu at 16.
[223] *Id.* at 17.

Here, Dongbu did not have KRW-denominated short-term loans from private commercial banks during the POR. Therefore, consistent with CFR 351.505(a)(1) and 19 CFR 351.505(a)(3)(ii) and our past practice,[224] we are using data from the International Monetary Fund's (IMF) International Financial Statistics 2018 as a benchmark to measure the benefit received from Dongbu's short-term KRW-denominated loans for Dongbu's restructured loan program.[225]

XI. 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

5/24/2021

X 

Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance,

[224] *See, e.g., Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 63168 (September 14, 2016), and accompanying PDM at 15, unchanged in *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).
[225] *See* Dongbu Final Calculation Memorandum.

Attachment

Scope of the Order

The products covered by this order are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel – or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc*.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

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

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

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

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or

- 0.30 percent of zirconium

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

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels and high strength low alloy ("HSLA") steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

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

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the in-scope corrosion resistant steel.

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

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

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

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

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