



C-580-910  
Investigation  
**Public Document**  
E&C/OVI: MYS/NRH

June 25, 2021

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

**FROM:** Dana Mermelstein  
Director, Office VI  
Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Affirmative  
Determination in the Countervailing Duty Investigation of  
Seamless Carbon and Alloy Steel Standard, Line, and Pressure  
Pipe from the Republic of Korea

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## I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of seamless carbon and alloy steel standard, line, and pressure pipe (seamless pipe) from the Republic of Korea (Korea), as provided in section 705 of the Tariff Act of 1930, as amended (the Act).

The petitioner in this case is Vallourec Star, LP (the petitioner). The mandatory respondent subject to this investigation is ILJIN Steel Corporation (ILJIN). After analyzing the comments submitted by interested parties, we have made certain changes to the *Preliminary Determination*.<sup>1</sup> We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of issues in this investigation for which we received comments from interested parties.

- Comment 1: Whether the Provision of Electricity for Less Than Adequate Remuneration Is Countervailable
- Comment 2: Whether the Korea Development Bank is an “Authority”
- Comment 3: Whether Commerce Should Determine that the Korea Development Bank General Operating Financing Loans Are Specific on the Basis of Adverse Facts Available
- Comment 4: Whether Tax Benefits Under Restriction of Special Taxation Act Article 10(1)(3) Are *De Facto* Specific

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<sup>1</sup> See *Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 85 FR 80024 (December 11, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).



Comment 5: Whether Tax Benefits Under Restriction of Special Taxation Act Article 26 Are Regionally Specific

## II. BACKGROUND

### A. Case History

On December 11, 2020, Commerce published the *Preliminary Determination* in the *Federal Register*.<sup>2</sup> In the *Preliminary Determination*, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we aligned the deadline of the final determination of this countervailing duty (CVD) investigation with that of the final determination of the companion antidumping duty (AD) investigation of seamless pipe from Korea.<sup>3</sup> On December 16, 2020, the government of Korea (GOK) requested that Commerce issue an additional supplemental questionnaire to the GOK regarding the provision of electricity for less than adequate remuneration (LTAR).<sup>4</sup>

On January 5, 2021, the petitioner requested to participate in any hearing that may be held by Commerce, but did not itself request a hearing.<sup>5</sup> On January 8, 2021, ILJIN requested a hearing.<sup>6</sup> On February 10, 2021, Commerce postponed the deadline of the final determination of the companion AD investigation of seamless pipe from Korea to June 25, 2021, and revised the scope of the investigation as it appeared in the *Initiation Notice*.<sup>7</sup>

Between January 29, 2021, and April 9, 2021, Commerce issued supplemental questionnaires to the GOK requesting additional information pertaining to certain subsidy programs examined by Commerce in the *Preliminary Determination*.<sup>8</sup> Between February 8, 2021, and April 16, 2021,

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<sup>2</sup> See *Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 85 FR 80024 (December 11, 2020) (*Preliminary Determination*), and accompanying PDM.

<sup>3</sup> See *Preliminary Determination* at “Alignment”; see also Petitioner’s Letter, “Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Korea and Russia: Request to Align Final Determinations,” dated October 15, 2020.

<sup>4</sup> See GOK’s Letter, “Countervailing Duty Investigation of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Request for Supplemental Questionnaire,” dated December 16, 2020.

<sup>5</sup> See Petitioner’s Letter, “Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Russia and Korea: Request to Attend Hearings,” dated January 5, 2021.

<sup>6</sup> See ILJIN’s Letter, “Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Request for Public Hearing,” dated January 8, 2021.

<sup>7</sup> See *Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 86 FR 8887 (February 10, 2021), and accompanying Memorandum, “Antidumping and Countervailing Duty Investigations of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, the Republic of Korea, the Russian Federation, and Ukraine: Preliminary Scope Decision Memorandum,” dated January 13, 2021 (Preliminary Scope Decision Memorandum); see also *Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea and the Russian Federation: Initiation of Countervailing Duty Investigations*, 85 FR 47170 (August 4, 2020) (*Initiation Notice*).

<sup>8</sup> See Commerce’s Letters, “Countervailing Duty Investigation of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Fifth Request for Additional Information,” dated January 29, 2021; “Countervailing Duty Investigation of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Sixth Request for Additional Information,” dated February 22, 2021; “Countervailing Duty Investigation of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea:

the GOK timely submitted their respective responses to Commerce’s supplemental questionnaires.<sup>9</sup> Separately, on March 9, 2021, Commerce issued a questionnaire in lieu of verification to ILJIN,<sup>10</sup> to which ILJIN timely responded on March 16, 2021.<sup>11</sup>

On April 27, 2021 and May 4, 2021, interested parties submitted case and rebuttal briefs, respectively.<sup>12</sup> On May 27, 2021, ILJIN withdrew its request for a hearing.<sup>13</sup>

## **B. Period of Investigation**

The period of investigation (POI) is January 1, 2019, through December 31, 2019.

## **III. SCOPE COMMENTS**

In the *Preliminary Determination*, we stated that interested parties submitted comments on the scope of the CVD investigations and companion AD investigations of seamless pipe, and that Commerce would issue its preliminary decision regarding the scope of the CVD and AD investigations in the preliminary determinations of the companion AD investigations.<sup>14</sup> On

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Seventh Request for Additional Information,” dated March 23, 2021; and “Countervailing Duty Investigation of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Eighth Request for Additional Information,” dated April 9, 2021.

<sup>9</sup> See GOK’s Letters, “Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Countervailing Duty Response to the Fifth Request for Additional Information Regarding the Government of the Republic of Korea’s Response to the August 14, 2020 Initial Questionnaire,” dated February 8, 2021 (GOK 5SQR); “Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Countervailing Duty Response to the Sixth Request for Additional Information Regarding the Government of the Republic of Korea’s Response to the August 14, 2020 Initial Questionnaire,” dated March 2, 2021 (GOK 6SQR); “Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Response to the Seventh Request for Additional Information,” dated April 2, 2021 (GOK 7SQR); and “Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Eighth Request for Additional Information,” dated April 16, 2021 (GOK 8SQR).

<sup>10</sup> See Commerce’s Letter, “Countervailing Duty Investigation of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: In Lieu of On-Site Verification Questionnaire,” dated March 9, 2021.

<sup>11</sup> See ILJIN’s Letter, “Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: In Lieu of On-Site Verification Questionnaire Response,” dated March 16, 2021.

<sup>12</sup> See Petitioner’s Letter, “Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Case Brief of Petitioner Vallourec Star LP,” dated April 27, 2021 (Petitioner Case Brief); see also GOK’s Letter, “Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: GOK Case Brief,” dated April 27, 2021 (GOK Case Brief); ILJIN’s Letter, “Countervailing Duty Investigation of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: ILJIN Steel Case Brief,” dated April 27, 2021 (ILJIN Case Brief); Petitioner’s Letter, “Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Korea: Rebuttal Brief,” dated May 4, 2021 (Petitioner Rebuttal Brief); GOK’s Letter, “Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Response to Petitioner’s Case Brief,” dated May 4, 2021 (GOK Rebuttal Brief); and ILJIN’s Letter, “Countervailing Duty Investigation of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: ILJIN Steel Rebuttal Brief,” dated May 4, 2021 (ILJIN Rebuttal Brief).

<sup>13</sup> See ILJIN’s Letter, “Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Withdrawal of Hearing Request,” dated May 27, 2021.

<sup>14</sup> See *Preliminary Determination* PDM at 5. Note that interested parties submitted comments on the scope of the CVD investigations and companion antidumping duty (AD) investigations with respect to Korea, Russia, Ukraine,

January 13, 2021, Commerce issued the Preliminary Scope Decision Memorandum in which it modified the scope language as it appeared in the *Preliminary Determination* to clarify certain exclusions from the scope of this and the companion AD investigations.<sup>15</sup>

We received no comments from interested parties following the issuance of the Preliminary Scope Decision Memorandum. Thus, the scope of the investigation, as contained in the Preliminary Scope Decision Memorandum, remains unchanged.

#### **IV. SCOPE OF THE INVESTIGATION**

The merchandise covered by this investigation is seamless pipe. For a complete description of the scope of this investigation, *see* this memorandum's accompanying *Federal Register* notice at Appendix I.

#### **V. SUBSIDIES VALUATION**

##### **A. Allocation Period**

No interested parties submitted comments in their case briefs regarding the allocation period or the allocation methodology. We made no changes to the allocation period (15 years) and the allocation methodology used in the *Preliminary Determination*.<sup>16</sup>

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

No interested parties submitted comments in their case briefs regarding the attribution of subsidies. We made no changes to the attribution of subsidies described in the *Preliminary Determination*.<sup>17</sup>

##### **C. Denominators**

No interested parties submitted comments in their case briefs regarding the denominators used to calculate the subsidy rates. We made no changes to the denominators used in our calculations performed for the *Preliminary Determination*.<sup>18</sup>

##### **D. Loan Benchmarks and Discount Rates**

No interested parties submitted comments in their case briefs regarding the loan benchmarks or discount rates. We made no changes to the loan benchmarks or discount rates used in the *Preliminary Determination*.<sup>19</sup>

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and the Czech Republic. The Czech Republic was incorrectly omitted from the "Scope Comments" section of the *Preliminary Determination* PDM.

<sup>15</sup> See Preliminary Scope Decision Memorandum.

<sup>16</sup> See *Preliminary Determination* PDM at 11.

<sup>17</sup> *Id.* at 11-13.

<sup>18</sup> See *Preliminary Determination* PDM at 15.

<sup>19</sup> See *Preliminary Determination* PDM at 13-15.

## **VI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES**

We relied on facts otherwise available, including the application of an adverse inference for certain findings in the *Preliminary Determination*.<sup>20</sup> Interested parties submitted comments in their case and rebuttal briefs regarding our use of facts available (FA) and adverse facts available (AFA). For this final determination, we revised our use of FA and AFA, as applied in the *Preliminary Determination*, regarding the calculation of the benefit for the provision of electricity for LTAR program. Those revisions are discussed in detail below. We made no additional changes to our decision to use AFA, as applied in the *Preliminary Determination*,<sup>21</sup> concerning other findings. For further discussion, *see* Comments 1 and 3.

### **A. Application of AFA: GOK – Whether the Provision of Electricity Is Specific**

In the *Preliminary Determination*, we found that the GOK failed to cooperate by not acting to the best of its ability to comply with our request for information with respect to specificity for the provision of electricity for LTAR. Consequently, we found that an adverse inference was warranted in the application of FA pursuant to section 776(b) of the Act.<sup>22</sup> In drawing an adverse inference, we preliminarily found that the GOK's provision of electricity was specific within the meaning of section 771(5A)(D)(iii) of the Act. Interested parties submitted comments in their case and rebuttal briefs as to whether the provision of electricity for LTAR program is specific based on AFA, and our findings from the *Preliminary Determination* remain unchanged. For further discussion, *see* Comment 1.

### **B. Application of FA: GOK – Calculation of the Benefit for the Provision of Electricity**

In the *Preliminary Determination*, we found that the GOK did not provide complete information with respect to benefit for its provision of electricity for LTAR. Consequently, we preliminarily found that the application of FA was warranted, pursuant to section 776(a) of the Act.<sup>23</sup> As FA, we preliminarily found that the Korea Electric Power Corporation (KEPCO) did not recover its costs under a Tier 3 benchmark analysis, based on the best available record evidence. Interested parties submitted comments in their case and rebuttal briefs as to whether the benefit under the provision of electricity for LTAR program should be based on FA. For the final determination, upon review of additional information provided by the GOK since the *Preliminary Determination*, we determined that it is not appropriate to rely on FA for the determination of benefit for this final determination. For further discussion, *see* Comment 1.

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<sup>20</sup> *Id.* at 6-11.

<sup>21</sup> *Id.* at 8-9 (“Application of AFA: GOK – Whether the Provision of Electricity is Specific”) and 10-11 (“Application of AFA: GOK – Whether the Korea Development Bank (KDB) General Operating Financing Loans are Specific”).

<sup>22</sup> *See Preliminary Determination PDM* at 8-9.

<sup>23</sup> *Id.* at 9-10.



### C. Application of AFA: GOK – Whether the Korea Development Bank General Operating Financing Loans Are Specific

In the *Preliminary Determination*, we found that the GOK failed to cooperate by not acting to the best of its ability to comply with our request for information with respect to specificity of the General Operating Financing Loans provided by the Korean Development Bank (KDB). Consequently, we found that an adverse inference was warranted in the application of FA, pursuant to section 776(b) of the Act.<sup>24</sup> In drawing an adverse inference, we preliminarily found that the KDB General Operating Financing Loans were specific within the meaning of section 771(5A)(D)(iii) of the Act. Interested parties submitted comments in their case and rebuttal briefs as to whether the KDB General Operating Financing Loans are specific based on AFA, and our findings from the *Preliminary Determination* remain unchanged. For further discussion, see Comment 3.

## VII. ANALYSIS OF PROGRAMS

We made no changes to our *Preliminary Determination* with respect to the methodology used to calculate the subsidy rates for the following programs, except where noted below. For descriptions, analyses, and calculation methodologies for these programs, see the *Preliminary Determination*, the ILJIN Preliminary Calculation Memorandum, and the ILJIN Final Calculation Memorandum.<sup>25</sup> Except where noted below, no interested parties submitted comments regarding these programs in their case briefs. The final program rates are as indicated below for each program and respondent.

### A. Programs Determined To Be Countervailable

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

We continue to find this program to be countervailable, and made no changes to the subsidy rate calculated under this program.<sup>26</sup> For further discussion, see Comment 4, below. The net countervailable subsidy rate for ILJIN is 0.05 percent *ad valorem*.<sup>27</sup>

#### 2. Restriction of Special Taxation Act Article 26: GOK Facilities Investment Support

We continue to find this program to be countervailable, and made no changes to the subsidy rate calculated under this program.<sup>28</sup> For further discussion, see Comment 5, below. The net

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<sup>24</sup> *Id.* at 10-11.

<sup>25</sup> See Memorandum, “Countervailing Duty Investigation of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: ILJIN Preliminary Calculation Memorandum,” dated December 7, 2020 (ILJIN Preliminary Calculation Memorandum); see also Memorandum, “Countervailing Duty Investigation of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: ILJIN Final Calculation Memorandum,” dated concurrently with this memorandum (ILJIN Preliminary Calculation Memorandum) (ILJIN Final Calculation Memorandum).

<sup>26</sup> See *Preliminary Determination* PDM at 20.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 21.

countervailable subsidy rate for ILJIN is 0.08 percent *ad valorem*.<sup>29</sup>

3. Restriction of Special Local Taxation Act Article 78: Acquisition and Property Tax Benefits to Companies in Industrial Complexes

We continue to find this program to be countervailable, and we made no changes to the subsidy rate calculated under this program.<sup>30</sup> The net countervailable subsidy rate for ILJIN is 0.01 percent *ad valorem*.<sup>31</sup>

4. Industrial Grants Pursuant to the Industrial Technology Innovation Promotion Act

We continue to find this program to be countervailable, and we made no changes to the subsidy rate calculated under this program.<sup>32</sup> The net countervailable subsidy rate for ILJIN is 0.58 percent *ad valorem*.<sup>33</sup>

5. Korea Export-Import Bank Export Growth Loan program

We continue to find this program to be countervailable, and we made no changes to the subsidy rate calculated under this program.<sup>34</sup> The net countervailable subsidy rate for ILJIN is 0.04 percent *ad valorem*.<sup>35</sup>

6. Korea Development Bank General Operating Financing Loans

We continue to find this program to be countervailable, and made no changes to the subsidy rate calculated under this program.<sup>36</sup> For further discussion, *see* Comments 2 and 3, below. The net countervailable subsidy rate for ILJIN is 0.21 percent *ad valorem*.<sup>37</sup>

7. Support for Development of Advanced Automotive Technologies

We continue to find this program to be countervailable, and we made no changes to the subsidy rate calculated under this program.<sup>38</sup> The net countervailable subsidy rate for ILJIN is 0.07 percent *ad valorem*.<sup>39</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 21-22.

<sup>31</sup> *Id.* at 22.

<sup>32</sup> *Id.* at 22-24.

<sup>33</sup> *Id.* at 24.

<sup>34</sup> *Id.* at 24-25.

<sup>35</sup> *Id.* at 25.

<sup>36</sup> *Id.* at 25-27.

<sup>37</sup> *Id.* at 27.

<sup>38</sup> *Id.* at 27-28.

<sup>39</sup> *Id.* at 28.

## 8. Incentives for Relocation to Regions Outside of Seoul Metropolitan Area

We continue to find this program to be countervailable, and we made no changes to the subsidy rate calculated under this program.<sup>40</sup> The net countervailable subsidy rate for ILJIN is 0.61 percent *ad valorem*.<sup>41</sup>

## 9. Imsil Agricultural and Industrial Complex Infrastructure Expansion Project

We continue to find this program to be countervailable, and we made no changes to the subsidy rate calculated under this program.<sup>42</sup> The net countervailable subsidy rate for ILJIN is 0.13 percent *ad valorem*.<sup>43</sup>

# B. Programs Determined to Be Not Countervailable

## 1. Provision of Electricity for Less Than Adequate Remuneration

In the *Preliminary Determination*, our Tier 3 analysis focused on KEPCO's 2019 annual cost data because the GOK did not provide the underlying cost data or rate of return information sufficient to examine whether KEPCO recovered its costs and generated a rate of return for the industrial classification.<sup>44</sup> Since the *Preliminary Determination*, the GOK has provided the requested cost data and other information that warrants a further evaluation of our preliminary finding.

For KEPCO, the company purchases electricity from power generators through the Korea Power Exchange (KPX).<sup>45</sup> The power generators are represented by six wholly-owned KEPCO subsidiaries and independent power producers.<sup>46</sup> KPX was established under the Electricity Business Law and is responsible for setting the price of electricity, handling the electricity trading and collecting relevant data for the electricity market in Korea.<sup>47</sup>

The electricity market works on a cost-based pool system. The system has two main components: the marginal (representing the variable costs) and the capacity (representing the fixed costs) prices.<sup>48</sup> For the marginal price, electricity is sold on an hourly basis. One day prior to trading, KPX will forecast the next day's hourly demand and projected supply based on the electricity generators' submitted bids for any given hour. Under the merit order system, the

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<sup>40</sup> *Id.* at 28-30.

<sup>41</sup> *Id.* at 30.

<sup>42</sup> *Id.* at 30-32.

<sup>43</sup> *Id.* at 32.

<sup>44</sup> *Id.* at 19.

<sup>45</sup> See GOK's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Countervailing Duty Response to Section II of the Initial Questionnaire," dated October 5, 2020 (GOK IQR) at 7; see also GOK's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Countervailing Duty Response to the Request for Additional Information Regarding the Government of the Republic of Korea's Response to the August 14, 2020 Initial Questionnaire," dated November 17, 2020 (GOK 1SQR) at 9.

<sup>46</sup> See GOK IQR at 6.

<sup>47</sup> *Id.* at Exhibit E-2, page 35.

<sup>48</sup> *Id.* at Exhibit E-2, pages 35 – 37.



lowest bid will be accepted and will continue until the supply for the given hour is met.<sup>49</sup> The price of the last bid will be the system marginal price and will be used to purchase all of the accepted electricity bids. The electricity generators who exceed the system marginal price will not receive purchase orders to supply electricity for the hour.<sup>50</sup> For nuclear, coal-power and KEPCO's wholly owned generation companies (GENCOs), an adjusted coefficient is also included in their KPX price for electricity.<sup>51</sup> The 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.<sup>52</sup> The capacity price's purpose is to compensate the generation companies' fixed costs of constructing generation facilities, provide incentives for construction of new generation units and maintain reliability of the nationwide electricity transmission network.<sup>53</sup> The capacity price is set based on a standardized generation unit, but also factors in the year the generation unit started operations and the capacity reserve factor.<sup>54</sup>

As noted above, KEPCO is required to purchase its electricity through KPX.<sup>55</sup> These purchases of electricity are reflected in the company's operating costs and expenses.<sup>56</sup> However, in recent U.S. Court of Appeals for the Federal Circuit (CAFC) decisions, the extent that KPX prices recovered costs has been reviewed and, in one instance, remanded.<sup>57</sup> In recent administrative reviews, Commerce has examined KPX, in the context of an upstream subsidy allegation, to determine whether KPX's prices of the GENCOs' electricity to KEPCO is a provision of electricity for LTAR.<sup>58</sup> Commerce evaluated the marginal and capacity price and the adjusted coefficient under a Tier 3 analysis and found there was no benefit.<sup>59</sup> For this investigation, the GOK submitted financial data for the six wholly-owned KEPCO generators and the information demonstrates that each of the KEPCO wholly-owned generators recovered costs (including a rate of return) during the POI.<sup>60</sup> Thus, there is no information on this record that would have us revisit our prior findings regarding the KPX pricing to KEPCO.

When KEPCO submits its cost and sales data to the Ministry of Trade, Industry, and Energy (MOTIE), it reflects the operating costs and return on investment through the following steps:

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<sup>49</sup> *Id.* at Exhibit E-2, page 36.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at Exhibit E-2, page 37.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 7.

<sup>56</sup> See GOK 1SQR at 9.

<sup>57</sup> See *Nucor Corp. v United States* 927 F.3d 1243, 1259 - 60 (Fed. Cir. 2019) (*Nucor*) and *POSCO v. United States*, 977 F.3d 1369, 1378 (Fed. Cir. 2020) (*POSCO*).

<sup>58</sup> See *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*; 2017, 85 FR 15112 (March 17, 2020), and accompanying IDM (*CORE from Korea 2017 Final*) at Comment 1; see also *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 (*CRS from Korea 2017 Final*); and *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 Final*).

<sup>59</sup> *Id.*

<sup>60</sup> See GOK 7SQR at Exhibit SQR7E-6.

- Step 1. Calculate the aggregate amount of the cost, which includes a reasonable amount of the investment return;
- Step 2. Distribute the aggregate amount of the cost into four categories: generation, transmission, distribution and sales of electricity;
- Step 3. Divide the distribution cost into three categories: high voltage (over 22.9 kV), low voltage (less than 22.9 kV) and the customer management cost (CMC);
- Step 4. Divide the sales cost into two categories: the customer management fee and other costs;
- Step 5. Distribute each cost into fixed charge and variable charge;
- Step 6. Divide the cost into each class considering the load level, the electricity consumption pattern, and the amount of the electricity consumed;
- Step 7. Distribute the cost according to the number of customers for each classes; and
- Step 8. Aggregate the cost for each electricity class:  $\Sigma \text{ cost for each class (cost for the generation, transmission, distribution, sales of each class)} \div \text{sales volume for each class}$ .<sup>61</sup>

The submitted cost data are also audited through KEPCO's financial statements each year.<sup>62</sup> For 2019, the GOK submitted KEPCO's audit of its 2019 financial statements and tied the audited numbers to the 2019 cost data the GOK submitted in Exhibit SQR5E-1.<sup>63</sup>

For return on capital (rate of return), the GOK provided the relevant regulation and formula calculation and tied each of the reported numbers in the formula to its financials or source documentation.<sup>64</sup> As noted in the steps above, the rate of return is inclusive of the costs reported to MOTIE.<sup>65</sup> We examined the above process and we were able to trace the costs and the rate of return to KEPCO's submitted cost data through to its recovered costs for each tariff classification as stated in GOK IQR at 13 – 14 and GOK 5SQR at Exhibit 5SQRE-1.

Based on this analysis, we are able to confirm that KEPCO recovered its cost and received a rate of return for tariff rates assigned to ILJIN in the industrial classification and, therefore, we find that a benefit does not exist for this program in this investigation. For further discussion, *see* Comment 1, below.

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<sup>61</sup> See GOK IQR at 13.

<sup>62</sup> *Id.* at 6.

<sup>63</sup> See GOK 5SQR at Exhibit SQR5E-1, GOK 6SQR at 2, GOK 7SQR at 1 – 4, and GOK 8SQR at 1 – 4.

<sup>64</sup> See GOK 6SQR at 4 – 7, GOK 7SQR at 3 – 7 and GOK 8SQR at 4 – 5.

<sup>65</sup> See GOK IQR at 13.

### C. Programs Determined to Be Tied to Non-Subject Merchandise

#### 1. Jeonbuk Technopark Promotion of Participation in Overseas Exhibition

In the *Preliminary Determination*, we determined that ILJIN received a grant under this program to support its exports to India and, because this program provides benefits that are tied to sales to a market other than the United States, India, that it does not benefit subject merchandise.<sup>66</sup> Our finding from the *Preliminary Determination* with respect to this program remains unchanged for this final determination.

### D. Programs Determined to be Not Used or Not to Have Conferred Measurable Benefits During the Period of Investigation

We made no changes to the *Preliminary Determination* with regard to programs determined to be not used or not to have conferred a measurable benefit.<sup>67</sup> For a list of the subsidy programs that were not used or were found not to have conferred a measurable benefit, *see* the Appendix attached to this memorandum.

## VIII. ANALYSIS OF COMMENTS

### Comment 1: Whether the Provision of Electricity for Less Than Adequate Remuneration Is Countervailable

#### *The Petitioner's Case Brief*

- KEPCO has been losing money for years and, notwithstanding the growing losses, KEPCO's tariff schedule has not been updated since 2013.<sup>68</sup> Commerce observed that KEPCO did not recover its costs during the POI.<sup>69</sup> Thus, the prices established by the GOK for electricity are inconsistent with market principles.<sup>70</sup>
- Commerce based part of its preliminary determination on AFA because the GOK had not yet provided cost data for the POI. However, Commerce need not undertake additional analyses because the record had already established that the GOK's rate setting mechanisms are not based on market principles, as evidenced by the fact that KEPCO has lost money for years and the GOK has not adjusted rates to address this issue.<sup>71</sup>
- In *Wind Towers from Indonesia Final Determination*, where the electric utility also did not recover its costs, Commerce rejected the respondent's request to analyze the existence of a benefit in reference to specific tariff classes.<sup>72</sup>

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<sup>66</sup> See *Preliminary Determination* PDM at 32.

<sup>67</sup> *Id.* at 32-33 and Appendix.

<sup>68</sup> See Petitioner Case Brief at 3-4.

<sup>69</sup> *Id.* at 3-4.

<sup>70</sup> *Id.* at 3-4.

<sup>71</sup> *Id.* at 4.

<sup>72</sup> *Id.* (citing *Utility Scale Wind Towers from Indonesia: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 85 FR 40241 (July 6, 2020) (*Wind Towers from Indonesia Final Determination*), and accompanying IDM at Comment 3).

- Moreover, examining benefit based on individual tariff classifications risks resurrecting the “preferentiality” standard that was replaced by the “adequate remuneration” standard in the Uruguay Round Agreement Act.<sup>73</sup> Under current law, what matters is whether KEPCO receives enough in remuneration to cover the costs of the electricity it sells ,plus a reasonable profit, not whether the GOK discriminates among tariff classifications.<sup>74</sup>
- Commerce should continue to countervail the program and should calculate the benefit with reference to the overall increase necessary to cover costs, including an appropriate rate of return for all tariff classes, not individual tariff classifications.<sup>75</sup>

### *The GOK’s Case Brief*

- The GOK’s role in the Korean electricity market is as a regulator only.<sup>76</sup> KEPCO is a private entity, independent of, and not within the control of, the GOK. KEPCO’s shares are traded at the Korea Exchange and its {American Depositary Receipts} at the New York Stock Exchange without any restriction.<sup>77</sup> As of December 2019, 48.9% of KEPCO’s shares were owned by individuals, including foreign shareholders.<sup>78</sup> KEPCO makes all critical decisions through its board of directors.<sup>79</sup> In this regard, the GOK does not exert control over KEPCO, nor does KEPCO possess, exercise, or is vested with any governmental authorities. For these reasons, there is not sufficient evidence on the record to determine KEPCO is an authority under section 771(5)(B) of the Act and Commerce must reverse its finding that the GOK provides a financial contribution through KEPCO.<sup>80</sup>
- The GOK was unable to provide the amount and percentage of electricity provided to the steel industry and to the largest ten industries consuming electricity during the POI, because KEPCO did not manage its customer database by industry classification.<sup>81</sup> The GOK was also unable to provide the industry classification for each of the 100 industrial users reported for the same reason.<sup>82</sup>
- The GOK acted to the best of its ability to coordinate with KEPCO and provide the relevant information in response to Commerce’s initial and supplemental questionnaires.<sup>83</sup> Moreover, the GOK coordinated with KEPCO to prepare information on electricity consumption by industry {classification} after the *Preliminary Determination* for the purpose of responding to Commerce’s requests and Commerce is invited to consider referring to this information in another proceeding.<sup>84</sup> Thus, Commerce should not apply AFA, as section 776(b) of the Act is not met.<sup>85</sup>

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<sup>73</sup> *Id.* at 4-5.

<sup>74</sup> *Id.* at 5.

<sup>75</sup> *Id.*

<sup>76</sup> *See* GOK Case Brief at 6.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *See* GOK Case Brief at 7.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 3.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 3-4.

<sup>84</sup> *Id.* at 4.

<sup>85</sup> *Id.* at 3-4 and 9.

- The GOK reiterates that KEPCO's provision of electricity to the Korean steel industry is not specific, because electricity in Korea is distributed throughout Korea regardless of industries, and any individual or company may use electricity.<sup>86</sup> The actual consumers of electricity are not limited in number, any enterprise can use electricity on demand, and there is no authority in Korea that exercises discretion in deciding whether to grant the use of electricity.<sup>87</sup>
- The GOK was not able to provide information and data regarding costs associated with the generation, distribution, and sale of electricity in Korea, because the finalized cost data did not exist at the time of Commerce's requests prior to the *Preliminary Determination*. However, the GOK provided the requested cost data when they became available after the *Preliminary Determination*.<sup>88</sup>
- With the requested cost information now on the record, the application of FA is no longer warranted under section 776(a) of the Act. Commerce should reverse its decision to apply FA to the calculation of the benefit for the provision of electricity for LTAR.<sup>89</sup>
- Commerce has previously evaluated and determined that the electricity tariff schedules in Korea were set according to market principles.<sup>90</sup> Commerce preliminarily determined this in the current investigation, as well, and the GOK agrees with Commerce in this regard.<sup>91</sup> Now that the necessary cost data are on the record, it is clear that KEPCO's industrial tariffs are based on market principles during the POI and that no benefit was conferred to the respondent company or the steel industry in Korea by the provision of electricity for LTAR during the POI.<sup>92</sup>

#### *ILJIN's Case Brief*

- The record demonstrates that ILJIN was treated no differently than other industrial users of electricity that purchased comparable amounts of electricity because the rates ILJIN paid were from the tariff schedule applicable to all similarly situated industrial users.<sup>93</sup> Commerce should find that the alleged standard pricing mechanism provides for non-preferential electricity pricing during the POI.<sup>94</sup>
- In previous proceedings which evaluated KEPCO's electricity tariff pricing, Commerce correctly determined that KEPCO's tariff schedule was set according to market principles.<sup>95</sup> No information on the record contradicts Commerce's prior findings that the GOK had a pricing methodology that accounted for costs and return on investment.<sup>96</sup>
- After the *Preliminary Determination*, the GOK provided detailed cost recovery information on a tariff-specific basis which demonstrated that KEPCO more than fully recovered its costs during the POI for the electricity tariff rates applicable to ILJIN's production facilities.<sup>97</sup> The

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<sup>86</sup> *Id.* at 9.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 4.

<sup>89</sup> *Id.* at 5.

<sup>90</sup> *Id.* at 8.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 8-9.

<sup>93</sup> See ILJIN Case Brief at 7-8.

<sup>94</sup> *Id.* at 8.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 9-10 and 12.

record also demonstrates that KEPCO generated a reasonable rate of return to ensure its future operations.<sup>98</sup>

- The GOK also provided the finalized 2019 fair rate of return figures, specifically for KEPCO's electricity-related operations, showing KEPCO's pricing is set in accordance with market principles under Commerce's cost recovery standard.<sup>99</sup> In *CTL Plate from Korea 2018 Final*, Commerce did not call for its Tier 3 analysis "to be a strict comparison of rates of returns or to require an entity absolutely to maximize its returns; rather the regulations state that such rate of return ought to be 'sufficient to ensure future operations.'"<sup>100</sup>
- In *Cold-Rolled Steel from Korea*, Commerce concluded that the standard pricing mechanism was set consistent with market principles where the record reflected that KEPCO covered its cost for the industry tariff applicable to respondents.<sup>101</sup> No information on this record supports a contrary determination in the current investigation.<sup>102</sup>
- In prior proceedings, Commerce examined the same allegations and determined that KPX's electricity pricing to KEPCO was based on market principles.<sup>103</sup> Consistent with Commerce's recent determinations in evaluating the adequacy of remuneration from KEPCO's six wholly owned GENCOs to KEPCO, the record shows that KPX has a price-setting mechanism in place that results in recovered costs during the POI and a continued rate of return for electricity generators.<sup>104</sup>
- The GOK stated that KPX ensures that electricity generators cover their costs through electricity pricing to KEPCO by requiring GENCOs to submit variable and fixed cost information, which collectively form the initial basis for the price that KPX sets for sales of electricity generated in Korea to KEPCO.<sup>105</sup>
- The GOK submitted information demonstrating that the KPX implemented changes to electricity prices paid by KEPCO for electricity generated by GENCOs to allow GENCOs to recover costs even where the initial pricing mechanism would not allow electricity generators to fully recover costs.<sup>106</sup> In addition, the GOK's regulations show that KEPCO would be required to cover the costs of electricity generation by the GENCOs, even if KEPCO were in a loss position.<sup>107</sup> All record evidence in the investigation supports the conclusion that the KPX's prices, through the price-setting mechanism and cost, are set consistent with market principles.<sup>108</sup>
- In the *Preliminary Determination*, Commerce used KEPCO's not-yet-finalized 2019 annual cost and fair rate of return data to derive an adjustment factor for the purpose of calculating

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<sup>98</sup> *Id.* at 12.

<sup>99</sup> *Id.* at 11.

<sup>100</sup> *Id.* (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) (*CTL Plate from Korea 2018 Final*), and accompanying IDM at Comment 7).

<sup>101</sup> *Id.* at 12 (citing *Cold-Rolled Steel from Korea*, and accompanying IDM at Comment 2).

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 13 (citing *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2017*, 85 FR 15112 (March 17, 2020), and accompanying IDM (*CORE from Korea 2017 Final*) at Comment 1; and *CTL Plate from Korea 2018 Final* IDM at Comment 7).

<sup>104</sup> *Id.* (citing *CORE from Korea 2017 Final* IDM at Comment 1; and *CTL Plate from Korea 2018 Final* IDM at Comment 7).

<sup>105</sup> *Id.* at 13-14.

<sup>106</sup> *Id.* at 14-15.

<sup>107</sup> *Id.* at 14.

<sup>108</sup> *Id.* at 16.



benchmark electricity rates necessary for KEPCO to recover its costs plus a fair rate of return.<sup>109</sup> However, the finalized cost recovery data submitted by the GOK after the *Preliminary Determination* demonstrate that KEPCO more than recovered its costs and GENCOs also recovered costs under the electricity tariff rates applicable to Iljin.<sup>110</sup> Commerce's preliminary benchmark is, therefore, inappropriate for the final determination.<sup>111</sup>

- Commerce must adjust its electricity benchmark to use the reported cost recovery ratio specific to the applicable electricity tariff rate as it did in *Cold-Rolled Steel from Korea*, not the not-yet-finalized company-wide cost recovery ratio used in the *Preliminary Determination*.<sup>112</sup>
- The fair rate of return Commerce derived for the *Preliminary Determination* is a company-wide rate, which reflects non-operating income and expenses unrelated to electricity.<sup>113</sup> The GOK has since submitted rate of return data that is specific to costs related to electricity operations which better reflects KEPCO's actual rate of return.<sup>114</sup> Commerce must use this latest fair rate of return data reported by the GOK to derive a Tier 3 benchmark price against which to measure ILJIN's electricity purchases.<sup>115</sup>
- If Commerce continues to use the same methodology to adjust KEPCO's reported electricity tariffs, which it should not, the most reliable data currently on the record shows that no upward adjustment to electricity prices is warranted.<sup>116</sup>

#### *The Petitioner's Rebuttal Brief*

- The GOK's argument that KEPCO is not an "authority" is inconsistent with numerous prior findings and should continue to be rejected.<sup>117</sup>
- The GOK did not provide information necessary to determine whether the provision of electricity for LTAR was specific despite having the ability to do so. Thus, Commerce should continue to find that this program is specific based on AFA.<sup>118</sup>
- The failure to update the tariff schedule as KEPCO suffers increasing losses indicate that the tariff schedule was no longer consistent with market principles during the POI.<sup>119</sup> As Commerce observed, KEPCO did not cover its costs during the POI.<sup>120</sup>
- Both the GOK and ILJIN argue that Commerce should calculate the benefit for the electricity program with respect to only those tariff classes used by ILJIN.<sup>121</sup> However, analyzing this program on the basis of individual tariff categories would reduce the benefit analysis to

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<sup>109</sup> *Id.* at 16.

<sup>110</sup> *Id.* at 17.

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

<sup>112</sup> *Id.* at 17-18 (citing *Cold-Rolled Steel from Korea* IDM at Comment 2).

<sup>113</sup> *Id.* at 18.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* at 18-19.

<sup>117</sup> See Petitioner Rebuttal at 2.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* at 3.

<sup>120</sup> *Id.* (citing *Preliminary Determination* PDM at 19).

<sup>121</sup> *Id.*

determining whether some tariff categories were treated better than others.<sup>122</sup>

- The analysis preferred by the respondents would be inconsistent with Commerce’s treatment of the same issue in *Wind Towers from Indonesia*. In that case, Commerce was confronted with the same facts, including a utility that did not cover its costs, and rejected arguments to calculate the benefit on the basis of particular tariff classes, instead basing the calculation on the utility’s overall performance.<sup>123</sup> Commerce should continue that approach here.<sup>124</sup>

#### *The GOK’s Rebuttal Brief*

- The petitioner’s allegation that the electricity tariff rate in Korea is “established by the GOK” is not true, because the GOK’s role in the Korean electricity market is as a regulator only and the GOK does not exert any control over the price setting mechanism regarding electricity tariff rates.<sup>125</sup> Accordingly, the petitioner’s allegation that the GOK establishes prices against market principles so as to bestow a benefit to users of electricity is also misplaced.<sup>126</sup>
- The petitioner asserts that KEPCO’s tariff schedule has not been updated since 2013 notwithstanding growing losses and that KEPCO has lost money for years.<sup>127</sup> However, KEPCO considers various factors when adjusting tariff rates and will not adjust tariff rates on the basis of short-term surpluses or deficits alone.<sup>128</sup> The fact that KEPCO did not immediately adjust its electricity tariff rates after recording an operating loss in one year cannot establish that the tariff rates are set inconsistently with market principles.<sup>129</sup>
- The petitioner’s statement that KEPCO “lost money for years” is inaccurate. KEPCO reported operating profits continuously for five years since 2013 and again in 2020.<sup>130</sup> KEPCO recorded an operating loss only in 2018 and 2019; however, KEPCO recovered all of its costs for supplying electricity to industrial users.<sup>131</sup>
- The petitioner suggests that Commerce encountered “similar facts” in *Wind Towers from Indonesia* and, on this basis, argues that Commerce need not examine costs for individual tariff classes in this investigation.<sup>132</sup> However, it is not true that Commerce did not examine cost recovery for individual tariff classes in that investigation.<sup>133</sup> In that case, Commerce’s tier three benchmark analysis that the electric utility was not recovering costs was based on the fact that the electric utility was not recovering “costs in supplying electricity to industrial users during the POI.”<sup>134</sup>

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<sup>122</sup> *Id.* (citing *Nucor Corp v. United States*, 927 F.3d 1243 (Fed. Cir. 2019) (*Nucor Corp v. United States*) and *POSCO v. United States*, 977 F.3d 1369 (Fed. Cir. 2020) (*POSCO v. United States*)).

<sup>123</sup> *Id.* at 1 and 3-4.

<sup>124</sup> *Id.* at 4.

<sup>125</sup> See GOK Rebuttal Brief at 1-2.

<sup>126</sup> *Id.* at 2.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 3.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* (citing *Utility Scale Wind Towers from Indonesia: Preliminary Affirmative Countervailing Duty Determination and alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 68109 (December 13, 2019) (*Wind Towers from Indonesia Preliminary Determination*), and accompanying PDM at 16-21).

- Commerce should continue to analyze the existence of benefit in reference to individual tariff classes and thereby find that no benefit had been conferred to the respondent companies in this investigation with regard to provision of electricity.<sup>135</sup>
- Contrary to the petitioner’s argument, electricity prices that KEPCO charges to consumers are set in accordance with market principles by a formula under the relevant laws and regulations.<sup>136</sup> Commerce has already determined in prior proceedings that KEPCO’s price setting mechanism is in accordance with market principles.<sup>137</sup> In those proceedings, Commerce has accurately conducted the Tier 3 analysis and fully analyzed all factors that are considered in calculating the prices in the wholesale and retail sales electricity market in Korea.<sup>138</sup>
- KPX calculates the wholesale electricity prices applicable to GENCOs by applying a pricing mechanism that is in accordance with market principles.<sup>139</sup> In addition, the retail electricity price is determined pursuant to the price-setting mechanism stipulated in the relevant laws and regulations and Commerce has already found such a price-setting methodology to be consistent with market principles.<sup>140</sup>
- The fact that the electric utility did not fully recover its cost in a certain year does not automatically lead to the conclusion that electricity has been provided for LTAR.<sup>141</sup> In prior proceedings, Commerce has found that “poor financial performance by a government-owned company in a particular year does not necessarily indicate that an input was being provided for LTAR.”<sup>142</sup>

#### *ILJIN’s Rebuttal Brief*

- Commerce should find that the provision of electricity for LTAR program is not countervailable, because the electricity pricing mechanisms in Korea are set consistent with market principles by: (a) KEPCO to electricity consumers; and (b) KPX to KEPCO.<sup>143</sup>

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<sup>135</sup> *Id.* at 3-4.

<sup>136</sup> *Id.* at 4.

<sup>137</sup> *Id.* (citing *Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 82 FR 16341 (April 4, 2017), and accompanying IDM (*Carbon and Alloy Steel CTL Plate from Korea*) at 28-33; *Hot-Rolled Steel from Korea*, and accompanying IDM at 44-49; *Cold-Rolled Steel from Korea*, and accompanying IDM at 45-50; *CORE from Korea 2017 Final*, and accompanying IDM at 9-18; *Welded Line Pipe From the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015), and accompanying IDM (*Welded Line Pipe from Korea*) at 13-18; and Memorandum, “Second Administrative Review of Countervailing Duty Order on Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Decision Memorandum on New Subsidy Allegations,” dated April 1, 2020 (*Carbon and Alloy Steel CTL Plate from Korea 2018 NSA Memorandum*) at 8).

<sup>138</sup> *Id.* (citing *Carbon and Alloy Steel CTL Plate from Korea*, *Hot-Rolled Steel from Korea*, *Cold-Rolled Steel from Korea Final*, *CORE from Korea 2017 Final*, *Welded Line Pipe from Korea*; and *Carbon and Alloy Steel CTL Plate from Korea 2018 NSA Memorandum*).

<sup>139</sup> *Id.* at 5.

<sup>140</sup> *Id.* (citing *Carbon and Alloy Steel CTL Plate from Korea*, *Hot-Rolled Steel from Korea*, *Cold-Rolled Steel from Korea Final*, *CORE from Korea 2017 Final*, *Welded Line Pipe from Korea*; and *Carbon and Alloy Steel CTL Plate from 2018 Korea NSA Memorandum*).

<sup>141</sup> *Id.*

<sup>142</sup> *Id.* (citing *Carbon and Alloy Steel CTL Plate from Korea 2018 NSA Memorandum* at 8).

<sup>143</sup> See ILJIN Rebuttal Brief at 2.

Thus, ILJIN received no benefit related to this program during the POI.<sup>144</sup>

- The petitioner's case brief focuses solely on evidence from the original petition, and it ignores the record evidence submitted by the GOK after the *Preliminary Determination*. The record shows that KEPCO's electricity prices are set in accordance with market principles based on Commerce's Tier 3 analysis.<sup>145</sup> In its case brief, ILJIN discussed that KEPCO's standard pricing mechanism is uniformly applied to ILJIN and other industrial users; the mechanism requires KEPCO and GENCOs recover their costs; and KEPCO and KPX recovered costs and generated a reasonable return on investment during the POI.<sup>146</sup>
- The petitioner focuses on KEPCO's overall net profitability, not the profitability of its electricity-related operations, based on the information from the petition.<sup>147</sup> However, the premise of the petitioner's argument that KEPCO's growing operating losses establish that it did not recover its costs during the POI is unsupported by the record evidence cited.<sup>148</sup>
- The petitioner mischaracterizes Commerce's determination in *Wind Towers from Indonesia*, which addresses whether to exclude from its benefit calculation direct payments that allegedly benefited only certain tariff classes, not whether to analyze only cost recovery data across all tariff classes to the exclusion of tariff-specific cost recovery data in evaluating whether electricity pricing in that country was set in accordance with market principles.<sup>149</sup>
- The petitioner's dependence on Commerce's determination in *Wind Towers from Indonesia* for the notion that Commerce should not undertake an examination of tariff specific cost recovery data in its Tier 3 benchmark analysis is misplaced because, in that case, Commerce concluded that Indonesian electricity pricing was not based on market principles after finding that the Indonesia electricity provider did not recover its costs; the Government of Indonesia directly transferred a subsidy to the sole electricity provider to account for a shortfall in revenue; and the stated objective of the sole electricity provider was to offer low electricity tariff rates to support the competitiveness of Indonesian businesses.<sup>150</sup>
- Unlike *Wind Towers from Indonesia*, the record of this investigation demonstrates that KEPCO more than fully recovered its costs during the POI for the electricity tariff rates applicable to ILJIN and earned a rate of return sufficient to ensure future operations.<sup>151</sup> The record also lacks information that there was a direct payment from the GOK to KEPCO.<sup>152</sup>
- The petitioner's argument that Commerce should ignore the tariff-specific cost recovery data submitted by the GOK in response to Commerce's requests for such information is contrary to Commerce's well-established practice in all recent cases evaluating the provision of electricity for LTAR program in Korea.<sup>153</sup>

**Commerce's Position:** Under 19 CFR 351.511(a)(2)(iii), Commerce will measure the adequacy of remuneration by assessing whether the government price is consistent with market principles.

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<sup>144</sup> *Id.*

<sup>145</sup> *Id.* at 4.

<sup>146</sup> *Id.* at 4-5 (citing ILJIN Case Brief at 8-16).

<sup>147</sup> *Id.* at 5.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 2, 6-7, and 9 (citing *Wind Towers from Indonesia* IDM at 45 and *Wind Towers from Indonesia Preliminary Determination* PDM at 19).

<sup>150</sup> *Id.* at 7-8 (citing *Wind Towers from Indonesia* IDM at 45).

<sup>151</sup> *Id.* at 8 (citing GOK 5SQR at Exhibit SQR5E-1).

<sup>152</sup> *Id.* at 9.

<sup>153</sup> *Id.* at 10.

The *CVD Preamble* provides further guidance by stating:

Where the government is the sole provider of a good or service, and there are no world prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government's price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination. We are not putting these in any hierarchy, and we may rely on one or more factors in any particular case.<sup>154</sup>

In the *Preliminary Determination*, we cited the underlying laws in Korea for reporting annual cost data, the process for adjusting tariffs and the requirement that each classification be set to recover cost and provide a reasonable rate of return.<sup>155</sup> Moreover, Article 14 of the Notification states the tariff rates can be adjusted after considering customers' economic circumstances and other societal factors.<sup>156</sup> Thus, within Korea, the electricity laws and regulations set up a pricing mechanism under which cost recovery is one of the primary factors that impact pricing decisions and the extent that KEPCO receives adequate remuneration for its electricity sales. This is further evidenced by the detailed steps laid out by the GOK on how KEPCO accounts for its operating costs and the 2019 submitted cost data that results in a cost based on tariff classification.<sup>157</sup> Finally, we note that when KEPCO last updated its tariff rates in November 2013, there was no blanket increase/decrease, but a range of increases based on each tariff classification.<sup>158</sup>

Citing to *Nucor* and *POSCO*, the petitioner argues that Commerce should not apply a preferentiality standard or compare classifications to determine whether a benefit exists. However, this argument is based on an incorrect assertion. Here, Commerce is examining the actual rates paid by ILJIN and determining the extent that KEPCO recovers its cost and receives a rate of return. In performing this analysis, an integral step is to examine the price setting mechanism, if applicable, and how it is applied across the tariff schedule. This is not a preferentiality or discrimination analysis, but is necessary to understand the methodology or methodologies upon which the tariff schedule is developed. For example, although a price setting mechanism may distribute costs across the various tariff schedules, the actual tariff rates of certain classifications may lead to one or more classifications subsidizing other classifications that do not recover costs or a rate of return. Moreover, if certain end users meet standards that would place them within a tariff classification based on usage, kilowatt demand, voltage or some other criteria and they are allowed to obtain or use a tariff rate outside the assigned classification, this fact must also be examined in the context of the price setting mechanism and/or cost recovery of each classification. Thus, this is not a preferentiality or comparison analysis, but a necessary step in understanding the tariff rates applicable to respondents and how they operate in

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<sup>154</sup> See *Countervailing Duties; Final Rule*, 63 FR 65348, 65378 (November 25, 1998) (*CVD Preamble*).

<sup>155</sup> See *Preliminary Determination* at 19.

<sup>156</sup> *Id.* at footnote 120; see GOK IQR at 19 ("Since it is generally accepted in Korea that customers of the residential, educational and agricultural tariff classes are economically disadvantaged, the recovery rate of these classes are relatively low compared to that of other classes.")

<sup>157</sup> See GOK IQR at 13 – 14; see also GOK 5SQR at Exhibit SQR5E-1

<sup>158</sup> See GOK IQR at 20 (Residential 2.7%, General 5.8%, Educational 0%, Industrial 6.4%, Street Lights 5.4%, Agricultural 3.0%, and Midnight Power 5.4%); see also GOK IQR at Exhibit E-8.



the context of the electricity market, as well as in analyzing any applicable price setting mechanism and cost recovery (including a rate of return).<sup>159</sup>

To counter our examination of cost recovery/rate of return on a tariff classification basis, the petitioner cites to *Wind Towers from Indonesia*. In that proceeding, the government confirmed that the electricity company did not recover costs and thus the government transferred a subsidy on a monthly basis to cover the electricity company's revenue shortfalls.<sup>160</sup> Moreover, government objectives included offering low electricity rates and supporting the competitiveness of Indonesian businesses.<sup>161</sup> Finally, the respondent was part of an industrial user class that did benefit from the subsidy.<sup>162</sup> The facts of that case are inapposite to this investigation. As noted above, the government transferred a monthly subsidy to cover revenue shortfall and had an objective of providing low electricity rates. As such, our ability to determine the extent to which each user class rate was based on actual costs or a price setting mechanism is hindered by the government's objective and subsidization of electricity revenue. Given these facts, in that case, we were correct to state that we would not attempt to trace these transfers to the respondent's specific user class. In contrast, in this investigation, KEPCO's actual costs are on the record; the cost information shows that there are no government transfers to cover revenue shortfalls and this allows us to determine how the costs were allocated to each tariff classification.<sup>163</sup>

The petitioner also cites to information from the Petition and the *Preliminary Determination* to demonstrate KEPCO was unprofitable and suffered losses during the POI. Although the petitioner cites to information that was part of the *Initiation* and our *Preliminary Determination*, it has yet to provide information that counters KEPCO's submitted cost data based on tariff classifications or to explain why their proposed method of analysis is preferable on a company-wide, as opposed to a tariff classification, basis. In *Wind Towers from Malaysia*, the government failed to provide cost data for a similar allegation and we found electricity to provide a benefit, despite the fact the electricity company was profitable.<sup>164</sup> As stated in *Wind Towers from Malaysia*, "the existence of a pass-through methodology, in the absence of the cost and rate of return information that Commerce requested, cannot establish that industrial electricity prices were set in accordance with market principles under 19 CFR 351.5{11}(a)(2)(iii)."<sup>165</sup> Thus, we continue to find it appropriate to evaluate the electricity based on the submitted cost data based on a tariff classification level and find no benefit.

Interested parties also made various arguments related to financial contribution and specificity. As we find no benefit for the provision of electricity for LTAR allegation in this final

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<sup>159</sup> See *Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63,535 (Oct. 20, 2015) and accompanying IDM at 43 – 48 (The "above-the-line" rates followed the price setting mechanism that had a cost-to service model that recovered costs and a rate of return, while the "below-the-line" did not recover all costs and return on investment. Moreover, "the "above-the-line" rates covered their own costs and unrecovered system costs consisting of both the unrecovered fixed costs from "below-the-line" rates ... .")

<sup>160</sup> See *Wind Towers from Indonesia* IDM at 45.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> See section "Provision of Electricity for Less Than Adequate Remuneration" above.

<sup>164</sup> See *Utility Scale Wind Towers From Malaysia: Final Affirmative Countervailing Duty Determination*, 86 FR 30593 (June 9, 2021), and accompanying IDM (*Wind Towers from Malaysia*) at Comment 3.

<sup>165</sup> *Id.* at 36 – 37.



determination, we need not address these the comments. However, our preliminary AFA finding on *de facto* specificity noted that the GOK failed to provide certain program usage information that it provided for the same allegation in prior investigations and may be considered in future cases.<sup>166</sup>

## **Comment 2: Whether the Korea Development Bank is an “Authority”**

### *The GOK’s Case Brief*

- Although the GOK is the 100 percent shareholder of KDB, KDB is a separately incorporated financial institution that provides financial services to both the Korean and global markets.<sup>167</sup> The GOK does not provide any funding in relation to the loans that KDB provides to its customers.<sup>168</sup> Further, the GOK does not exert any control over KDB, nor does KDB possess, exercise, or is vested with any governmental authorities in relation to this program.<sup>169</sup> Therefore, Commerce must not determine that KDB is an “authority” within the meaning of section 771(5)(B) of the Act.<sup>170</sup>

### *The Petitioner’s Rebuttal Brief*

- Commerce should continue to find KDB, which is wholly owned by the GOK and was established by statute in order to pursue the government’s policy goals, to be an authority based on the record evidence.<sup>171</sup>

**Commerce’s Position:** Under U.S. CVD law, a subsidy exists when an authority provides a financial contribution, such as a loan, to a person and a benefit is thereby conferred.<sup>172</sup> Section 771(5)(B) of the Act further defines an “authority” as a government of a country or any public entity within the territory of the country. During the POI, KDB was a government-owned entity, through 100 percent ownership by the GOK.<sup>173</sup> As stated in the *Preamble* to Commerce’s regulations, “. . .we intend to continue our longstanding practice of treating most government-owned corporations as the government itself.”<sup>174</sup>

Information submitted to the U.S. Securities and Exchange Commission (SEC) by KDB and the

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<sup>166</sup> See *Preliminary Determination* IDM at 8 -9; see also *Certain Walk-Behind Lawn Mowers and Parts Thereof From the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 86 FR 27379 (May 20, 2021), and accompanying IDM at Comment 1. (“However, in prior CVD proceedings, we found that the GOC was able to obtain the information requested independently from the companies involved, and that statements from company respondents, rather than from the GOC, were not sufficient.”)

<sup>167</sup> See GOK Case Brief at 12.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> See Petitioner Rebuttal at 5 (citing *Preliminary Determination* PDM at 26).

<sup>172</sup> See section 771(5)(B) of the Act.

<sup>173</sup> See *Preliminary Determination* PDM at 26 (citing GOK’s Letter, “Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Countervailing Duty Response to the Request for Additional Information Regarding the Government of the Republic of Korea’s Response to the August 14, 2020 Initial Questionnaire,” dated November 17, 2020 (GOK ISQR) at 151).

<sup>174</sup> See *Countervailing Duties; Final Rule*, 63 FR 65348, 65402 (November 28, 1998) (*Preamble*).

GOK on May 11, 2020 (*i.e.*, the Registration Statement), further supports the determination that KDB is an authority under the Act. Within the KDB Registration Statement filed with the SEC, KDB explained that it was established as a government-owned financial institution pursuant to The Korea Development Bank Act, as amended (KDB Act).<sup>175</sup> In addition, the KDB Registration Statement shows that the GOK directly holds 100 percent of its paid-in capital and provides direct financial support for KDB’s financing activities.<sup>176</sup> The KDB Registration Statement further states that “we have been the leading bank in the Republic {of Korea} in providing long-term financing for projects designed to assist the nation’s economic growth and development” and that its primary purpose is to “contribute to the sound development of the financial industry and the national economy by supplying and managing funds necessary for the development and promotion of industries, expansion of social infrastructure, development of regions, stabilization of the financial markets and facilitation of sustainable growth.”<sup>177</sup> According to the KDB Registration Statement, KDB “do{es} not seek to maximize profits” because KDB “serve{s} the public policy objectives of the Government.”<sup>178</sup> The KDB Registration Statement also explains that the “Government has the power to elect or dismiss {KDB’s} Chairman and Chief Executive Officer, members of {the} Board of Directors and Auditor.”<sup>179</sup> Further, based on the KDB Registration Statement, Article 32 of the KDB Act “provides that ‘the annual net losses of the Korea Development Bank shall be offset each year by the reserve, and if the reserve be insufficient, the deficit shall be replenished by the Government.’”<sup>180</sup> Finally, the KDB Registration Statement states that “the Government is generally responsible for {KDB’s} operations and is legally obligated to replenish any deficit that arises if {KDB’s} reserve, consisting of {KDB’s} surplus and capital items, is insufficient to cover {KDB’s} annual net losses.”<sup>181</sup>

As discussed above, the Registration Statement filed with the SEC explicitly states that “since we serve the public policy objectives of the Government, we do not seek to maximize profits.”<sup>182</sup> As such, the record evidence above indicates that KDB, which is wholly owned by the GOK, is a policy bank that plays an affirmative role in implementing government industrial policies through the provision of financing to industries and enterprises. Based on this information and our past findings,<sup>183</sup> we continue to determine that KDB is an authority under section 771(5)(B) of the Act. Thus, in this final determination, we continue to find that a financial contribution was provided by KDB in the form of direct transfer of funds through loans under sections 771(5)(B)(i) and 771(5)(D)(i) of the Act.

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<sup>175</sup> See GOK’s Letter, “Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Countervailing Duty Response to Section II of the Initial Questionnaire,” dated October 5, 2020 (GOK IQR) at Exhibit KDB-18 (“The Korea Development Bank” at 3).

<sup>176</sup> *Id.*

<sup>177</sup> *Id.* at Exhibit KDB-18 (“The Korea Development Bank” at 6).

<sup>178</sup> *Id.*

<sup>179</sup> *Id.* at Exhibit KDB-18 (“The Korea Development Bank” at 3).

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> See *Preliminary Determination* PDM at 26 (citing GOK IQR at Exhibit KDB-18 (“The Korea Development Bank” at 6)).

<sup>183</sup> See, e.g., *CORE from Korea 2018 Final IDM* at 6; see also *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003), and accompanying IDM at 16. Review; 2018

### **Comment 3: Whether Commerce Should Determine that the Korea Development Bank General Operating Financing Loans Are Specific on the Basis of Adverse Facts Available**

#### *The GOK's Case Brief*

- The GOK acted to the best of its ability to cooperate with Commerce by coordinating with KDB to prepare the relevant information. However, the requested information was not available at the time of Commerce's requests.<sup>184</sup> Under these circumstances, Commerce cannot lawfully apply AFA because the statutory requirement under section 776(b) of the Act is not met.<sup>185</sup>
- Commerce should reverse its decision to apply AFA to the specificity of this program and can consider referring to the information that the GOK submitted in other proceedings.<sup>186</sup> Following the *Preliminary Determination*, the GOK coordinated with KDB to prepare the requested information for the purpose of responding to Commerce's request.<sup>187</sup> The GOK's recent responses in other proceedings contain further information on the specificity of the KDB General Operating Financing Loans.<sup>188</sup> If so requested, the GOK will submit the same information in this proceeding.<sup>189</sup>
- In accordance with the opinion of the United States Court of International Trade (CIT) and the Statement of Administrative Action on the Agreement on Subsidies and Countervailing Measures (SAA), Commerce should not determine the KDB General Operating Financing Loans to be *de facto* specific as they are broadly available and widely used throughout the economy.<sup>190</sup> Thus, Commerce must reverse its finding that this program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.<sup>191</sup>

#### *ILJIN's Case Brief*

- The KDB Registration Statement filed with the SEC demonstrates that KDB made general operation loans to a broad range of industry/economic sectors on a large scale, that the actual industries receiving such lending were not limited in number, and that no industry or enterprise is a predominant user of, or receives a disproportionately large amount of, such subsidy.<sup>192</sup> Thus, Commerce should conclude that the KDB General Operating Financing Loans program is not *de facto* specific and therefore not countervailable.<sup>193</sup>

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<sup>184</sup> See GOK Case Brief at 5.

<sup>185</sup> *Id.*

<sup>186</sup> *Id.* at 12.

<sup>187</sup> *Id.* at 5-6.

<sup>188</sup> *Id.* at 6 and 12.

<sup>189</sup> *Id.* at 6.

<sup>190</sup> *Id.* at 12.

<sup>191</sup> *Id.*

<sup>192</sup> See ILJIN Case Brief at 3, 20, and 22-25 (citing GOK IQR at Exhibit KDB-18 (pages 17-18)).

<sup>193</sup> *Id.*

- Before applying AFA, Commerce must find that necessary information is not on the record.<sup>194</sup> If the necessary facts to make a determination are on the record, Commerce is not permitted to ignore these facts and apply AFA.<sup>195</sup>
- In the *Preliminary Determination*, Commerce focused on the GOK's response that KDB no longer compiles information regarding the total number of companies that were approved for assistance under each lending program KDB offers as the basis for applying AFA to specificity.<sup>196</sup> However, the KDB Registration Statement filed with the SEC shows the actual industry and enterprise usage information for Commerce to evaluate the *de facto* specificity factors under the statute.<sup>197</sup> Commerce, therefore, has no factual or legal basis to apply AFA.<sup>198</sup>
- Because the GOK stated that KDB does not have any discretion that goes beyond the eligibility criteria laid out in the law and its internal regulations for this program, this program is not *de facto* specific under section 771(5A)(D)(iii)(IV) of the Act.<sup>199</sup>

### *The Petitioner's Rebuttal Brief*

- The GOK and ILJIN argue that Commerce should not use AFA to find this program to be specific. However, the GOK did not provide Commerce with information necessary to determine whether the program was *de facto* specific and thus Commerce should continue to find this program to be specific as AFA.<sup>200</sup>
- Although ILJIN suggests alternative information on which Commerce could purportedly analyze specificity, this information does not allow an analysis of the number of companies participating in this program nor does it provide information for lending under this program.<sup>201</sup> In addition, the ability of KDB to report overall loan values by sector indicates that KDB should be able to report the number of participants in a particular program.<sup>202</sup>
- Commerce's use of AFA to find certain loans from KDB to be *de facto* specific is justified because the GOK failed to provide the requested information regarding the number of participants in the alleged program.<sup>203</sup>

**Commerce's Position:** For this final determination, we continue to find, as AFA, that the KDB General Operating Financing Loans program is *de facto* specific under section 771(5A)(D)(iii) of the Act. Because the record shows that the KDB program at issue does not appear to be an

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<sup>194</sup> *Id.* at 21 and 22.

<sup>195</sup> *Id.* (citing *Changzhou Trina Solar Energy Co., Ltd. v. United States*, 917 F. Supp. 3d 1316, 1325 (CIT 2018) (*Trina Solar*) and *Archer Daniels Midland Co. v. United States*, 917 F. Supp. 2d 1331, 1342 (CIT 2013) (*Archer Daniels Midland*)).

<sup>196</sup> *Id.* at 22.

<sup>197</sup> *Id.* at 22-23 (citing GOK IQR at Exhibit KDB-18 (pages 17-18)).

<sup>198</sup> *Id.* at 23.

<sup>199</sup> *Id.* at 25.

<sup>200</sup> See Petitioner Rebuttal Brief at 4-5.

<sup>201</sup> *Id.* at 5.

<sup>202</sup> *Id.*

<sup>203</sup> See Petitioner Rebuttal Brief at 4.

export or import substitution subsidy or otherwise appear to be *de jure* specific,<sup>204</sup> Commerce must examine whether this program is *de facto* specific.

In the Initial CVD Questionnaire, we requested that the GOK answer all questions in the Standard Questions Appendix for “Other Subsidies” by coordinating with the respondent company.<sup>205</sup> The Standard Questions Appendix of the Initial CVD Questionnaire includes questions for information that we rely on for our *de facto* specificity analysis (*e.g.*, the amounts of assistance approved for all companies and each mandatory respondent company under the program; the total amount of assistance approved for each of the largest 50 recipients under this program as well as the industry designation for each of these recipients; the total number of companies that were approved for assistance; the total number of companies operating or established in the corresponding jurisdiction; the total number of corporate/business income tax filers within the corresponding jurisdiction; a complete listing of the industries that operate in the corresponding jurisdiction; the total amount of assistance approved for the industry in which the mandatory respondent companies operate, as well as the totals for every other industry in which companies were approved for assistance under the program; and the total number of companies that applied for, but were denied, assistance under the program).<sup>206</sup> Because ILJIN reported receiving loans under the KDB General Operating Financing Loans program,<sup>207</sup> the GOK provided a response to the Standard Questions Appendix contained in the Initial CVD Questionnaire.<sup>208</sup> However, in doing so, the GOK provided information pertaining to all KDB loans ILJIN reported without providing separate responses to the Standard Questions Appendix for each program.<sup>209</sup> Additionally, the GOK did not provide the total amount of assistance approved for all companies under each program.<sup>210</sup> It also did not provide the total number of companies that were approved for assistance under each program; the total amount of assistance approved for the industry in which the mandatory companies operate, as well as the totals for every other industry in which companies were approved for assistance under each program; and the total number of companies that applied for, but were denied, assistance under each program. Instead, the GOK stated that KDB either does not compile the requested information or no longer compiles it.<sup>211</sup>

Because the GOK did not provide a separate response for the KDB General Operating Financing Loans and the requested information is necessary to perform our *de facto* specificity analysis, we then requested that the GOK identify each KDB loan program ILJIN reportedly used during the

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<sup>204</sup> See *Preliminary Determination* PDM at 10 (citing GOK 1SQR at Appendix 12 and Exhibit SQR1KDB-1; GOK IQR at Exhibits KDB-11 and KDB-12; and GOK's Letter, “Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Countervailing Duty Response to the Second Request for Additional Information Regarding the Government of the Republic of Korea's Response to the August 14, 2020 Initial Questionnaire,” dated November 17, 2020 (GOK 2SQR) at 16).

<sup>205</sup> See Commerce's Letter, “Investigation of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Countervailing Duty Questionnaire,” dated August 14, 2020 (Initial CVD Questionnaire) at Section II (page 20).

<sup>206</sup> *Id.* at Section II (“Standard Questions Appendix” at 24-25)

<sup>207</sup> See *Preliminary Determination* PDM at 25.

<sup>208</sup> See GOK IQR at Appendix 34.

<sup>209</sup> *Id.*

<sup>210</sup> *Id.* at Appendix 34 (page 364).

<sup>211</sup> *Id.* at Appendix 34 (pages 364-366).



POI and provide separate Standard Question Appendix responses for each KDB loan program.<sup>212</sup> The GOK did provide separate Standard Questions Appendix responses for the three KDB loan programs ILJIN reported using (*i.e.*, KDB Long-Term Facility Capital Loans, KDB General Operating Financing Loans, and KDB Banker's Usance).<sup>213</sup> However, concerning the KDB General Operating Financing Loans, the GOK did not provide a complete Standard Questions Appendix response. The GOK did not provide the information for the total amount of assistance approved for all companies; the total amount of assistance approved for each of the largest 50 recipients as well as the industry designation for each of these recipients; and the total number of companies that were approved for assistance; instead, the GOK stated that "KDB does not keep track of this information."<sup>214</sup> The GOK also did not provide the total amount of assistance approved for the industry in which the mandatory respondent company operates, or the total for every other industry in which companies were approved for assistance; and the total number of companies that applied for, but were denied, assistance under this program. The GOK merely stated that "KDB does not compile information ...."<sup>215</sup>

Because the necessary information to perform our *de facto* analysis was missing, we *again* asked for the total number of companies that were approved for assistance under each KDB program, including the KDB General Operating Financing Loans.<sup>216</sup> We also requested the GOK provide the total number of companies approved for assistance under *all of the KDB's programs* (emphasis added).<sup>217</sup> In response, the GOK continued to state that the "KDB no longer compiles information on the total number of companies that were approved for assistance under each program that ILJIN reported, nor under *all of the KDB's programs*" (emphasis added).<sup>218</sup> As such, the record is clear that, despite Commerce's repeated requests, the GOK continued to fail to provide the requested information to determine the existence of *de facto* specificity of this program prior to the *Preliminary Determination*. Accordingly, in the *Preliminary Determination*, we found that necessary information was not available on the record and that the GOK withheld information that was requested of it and significantly impeded this proceeding, pursuant to sections 776(a)(1) and 776(a)(2)(A) and (C) of the Act. Further, we also preliminarily found that the GOK failed to cooperate by not acting to the best of its ability to comply with our requests for information.<sup>219</sup>

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<sup>212</sup> See Commerce's Letter, "Countervailing Duty Investigation of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Request for Additional Information Regarding the Government of the Republic of Korea's Response to the August 14, 2020 Initial Questionnaire," dated November 3, 2020 at Question 23.

<sup>213</sup> See GOK 1SQR at Appendices 11-13.

<sup>214</sup> *Id.* at 156.

<sup>215</sup> *Id.* at 157.

<sup>216</sup> See Commerce's Letter, "Countervailing Duty Investigation of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Second Request for Additional Information Regarding the Government of the Republic of Korea's Response to the August 14, 2020 Initial Questionnaire," dated November 6, 2020 at Question 33.

<sup>217</sup> *Id.*

<sup>218</sup> See GOK's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Countervailing Duty Response to the Second Request for Additional Information Regarding the Government of the Republic of Korea's Response to the August 14, 2020 Initial Questionnaire," dated November 17, 2020 (GOK 2SQR) at 18.

<sup>219</sup> See *Preliminary Determination* PDM at 10-11.



In its case brief, when arguing that Commerce should reverse the AFA finding regarding specificity of this program, the GOK states that “at the time of the GOK’s response to the Department’s *Initial Questionnaire* and *Second Supplemental Questionnaire*, the GOK was not able to provide the requested information as it was not available.”<sup>220</sup> Additionally, the GOK states that, following the *Preliminary Determination*, the GOK “coordinated with KDB in preparing the requested information for the purpose of responding to the Department’s request.”<sup>221</sup> The GOK further states that it submitted the requested information in its recent responses in other proceedings.<sup>222</sup> We find the GOK’s argument and reasoning unpersuasive. Prior to the *Preliminary Determination*, the GOK neither provided adequate notice to Commerce of the difficulties with regard to providing the requested information nor suggested alternative forms in which the GOK was able to submit the information.<sup>223</sup> Also, the GOK did not provide any notice regarding when the requested information would be available for submission to Commerce; it merely stated that KDB does not keep track of this information or does not compile the requested information, despite Commerce’s repeated requests, as detailed above.

Beyond this, the GOK’s argument that Commerce could rely on information submitted on the record of other, separate proceedings is unavailing and inappropriate. Each proceeding stands on its own and, thus, Commerce must evaluate the evidence on that particular record.<sup>224</sup> Thus, we cannot consider information that is not on the record of this investigation in reaching our final determination. Commerce is required by statute to consider information only on the record of the relevant segment of the proceeding.

Additionally, the record contains the KDB Registration Statement filed with the SEC, covering the POI.<sup>225</sup> This document shows KDB’s outstanding “Equipment and Working Capital Loans by Industry Sector,” “{Twenty} Largest Borrowers by Industry Sector,” and “New Loans by Industry Sector” by loan value.<sup>226</sup> The ability of KDB to report overall loan values by industry sector with the SEC, as well as the GOK’s submission of the specificity information regarding this program to the record of another proceeding, together indicate the GOK’s capability to provide the requested information. Although this record demonstrates, based on information included in the KDB Registration Statement and the GOK’s reference to information provided to Commerce in another proceeding, that KDB is able to compile the requested information, the GOK did not provide any alternatives to the requested information, including the total number of companies that were approved for assistance under *all of the KDB’s programs* (emphasis added), as discussed above.<sup>227</sup> The CIT and the CAFC have stated that the burden of creating an

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<sup>220</sup> See GOK Case Brief at 5.

<sup>221</sup> *Id.* at 5-6.

<sup>222</sup> *Id.* at 6.

<sup>223</sup> See section 782(c)(1) of the Act.

<sup>224</sup> See, e.g., *Folding Metal Tables and Chairs from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, and Revocation of the Order in Part*, 76 FR 66036 (October 25, 2011). While this practice discusses each segment as standing on its own, we find this practice equally applicable to each proceeding; see also *U.S. Steel Corp. v. United States*, 637 F. Supp. 2d 1199, 1218 (CIT 2009).

<sup>225</sup> See GOK IQR at Exhibit KDB-18 (pages 17-18).

<sup>226</sup> *Id.*

<sup>227</sup> See GOK 2SQR at 18.

accurate and complete record lies with the respondents, not with Commerce.<sup>228</sup>

The GOK asserts that, in accordance with the opinion of the CIT and the relevant sections of the SAA, Commerce must not determine this program to be *de facto* specific, because it is broadly available and widely used throughout the economy.<sup>229</sup> We disagree. The GOK did not provide the requested information that would demonstrate that this program is broadly available and widely used throughout the economy. Thus, due to the GOK's failure to provide the requested information, the information necessary to determine the existence or nonexistence of *de facto* specificity remains missing from the record.

Separately, ILJIN argues that the KDB Registration Statement filed with the SEC includes the information necessary for Commerce to evaluate *de facto* specificity related to the KDB General Operating Financing Loan program during the POI.<sup>230</sup> Thus, ILJIN claims, Commerce had no factual or legal basis to apply facts available, AFA or otherwise," pertaining to this program.<sup>231</sup> We disagree. The KDB Registration Statement filed with the SEC contains information regarding KDB's equipment capital and working capital loans.<sup>232</sup> As noted above, the GOK provided separate Standard Questions Appendix responses for the three KDB loan programs ILJIN reported using (*i.e.*, KDB Long-Term Facility Capital Loans, KDB General Operating Financing Loans, and KDB Banker's Usance).<sup>233</sup> According to the GOK, KDB Long-Term Facility Capital Loans are for purchasing and renovating buildings and *equipment* for loan applicant companies (emphasis added); KDB Banker's Usance is a type of KDB's various short-term *working capital* loans (emphasis added); and KDB General Operating Financing Loans are for financing *working capital* (emphasis added).<sup>234</sup> The reporting regarding the equipment capital and working capital loans in the KDB Registration Statement appears to be inclusive of all three KDB loan programs mentioned above, and the KDB General Operating Financing Loans were not explicitly or separately referenced in the KDB Registration Statement.<sup>235</sup> The KDB Registration Statement thus does not provide the information related to each of the three loan programs, on an individual basis, that Commerce requires in order to determine the existence of *de facto* specificity for each of the separate loan programs. Thus, the information in the KDB Registration Statement cannot be used for our *de facto* analysis regarding the KDB General Operating Financing Loans program as that program is not referenced in the KDB Registration Statement. Further, even if Commerce were to rely on the information in the KDB Registration Statement, this document does not contain the number of users of this program, or any lending program referenced for the year in which the mandatory respondent was approved for assistance, as well as each of the preceding three years, as we requested. Therefore, information necessary for an analysis of *de facto* specificity is still missing from the record.

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<sup>228</sup> See, e.g., *QVD Food Co., v. United States*, 658 F. 3d 1318 (Fed. Cir. 2011) at 1324 ("{T}he burden of creating an adequate record lies with {interested parties} and not with Commerce,"); see also *Societe Nouvelle de Roulements v. United States*, 910 F. Supp. 689 (CIT 1995) at 694 ("Respondents 'must submit accurate data' and 'cannot expect Commerce, with its limited resources, to serve as a surrogate to guarantee the correctness of submission.'").

<sup>229</sup> See GOK Case Brief at 12.

<sup>230</sup> See ILJIN Case Brief at 22-23.

<sup>231</sup> *Id.* at 23.

<sup>232</sup> See GOK IQR at Exhibit KDB-18 (pages 17-18).

<sup>233</sup> See GOK ISQR at Appendices 11-13.

<sup>234</sup> *Id.* at 130, 148, and 165.

<sup>235</sup> See GOK IQR at Exhibit KDB-18 (pages 17-18).

While ILJIN asserted that the information provided from the KDB Registration Statement filed with the SEC was sufficient for our *de facto* analysis, it is for Commerce, not a respondent, to determine the information that is necessary in order for Commerce to conduct a complete analysis.<sup>236</sup> For the reasons described above, we find that the GOK failed to provide information necessary for us to analyze whether the KDB General Operating Financing Loan program is *de facto* specific. Consequently, we continue to determine, as AFA, that the KDB General Operating Financing Loan program is specific within the meaning of section 771(5A)(D)(iii) of the Act.

#### **Comment 4: Whether Tax Benefits Under Restriction of Special Taxation Act Article 10(1)(3) Are *De Facto* Specific**

##### *The GOK's Case Brief*

- This program is not *de facto* specific because the CIT has stated that discounts provided under another program (*i.e.*, the Voluntary Curtailment Adjustment program) Commerce examined in a different proceeding were distributed to a large number of customers, across a wide range of industries, and this finding was based on information provided by the GOK that 190 customers received benefits.<sup>237</sup> The CIT ruled that this information constitutes substantial evidence supporting Commerce's conclusion that the discounts were provided to a large number of participants.<sup>238</sup>
- In another instance, with respect to a tax program which allowed a deduction of 200 percent of training expenses from taxable income, the CIT expressly held the opinion that the tax laws are not subsidies to the taxpayer if their terms are generally available.<sup>239</sup>
- The SAA further provides that the specificity test should be applied "in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those subsidies which truly are broadly available and widely used throughout an economy."<sup>240</sup> Tax programs under the Restriction of Special Taxation Act (RSTA) are not limited to any specific company or industry and are broadly available and widely used throughout the economy.<sup>241</sup>
- Commerce must not deem this program to be specific within the meaning of section 771(5A)(D)(iii)(I) merely on the basis that the number of tax benefits claimed is limited when compared with the number of total corporate tax returns.<sup>242</sup>

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<sup>236</sup> See *ABB Inc. v. United States*, 355 F. Supp. 3d 1206, 1222 ("Commerce prepares its questionnaires to elicit information that it deems necessary to conduct a review, and the respondent bears the burden to respond with all of the requested information and create an adequate record.")

<sup>237</sup> See GOK Case Brief at 9-10 (citing *Bethlehem Steel Corporation v. United States*, 140 F. Supp. 2d 1354 (CIT 2001)).

<sup>238</sup> *Id.* at 10.

<sup>239</sup> *Id.* (citing *Bethlehem Steel Corporation v. United States*, 590 F. Supp. 1237 (CIT 1984)).

<sup>240</sup> See GOK Case Brief at 10.

<sup>241</sup> *Id.* at 11.

<sup>242</sup> *Id.*

### *The Petitioner's Rebuttal Brief*

- The statute is clear that a program is *de facto* specific if actual recipients of the subsidy are limited in number.<sup>243</sup> Commerce should continue to find RSTA Article 10(1)(3) specific based on the small number of participants.<sup>244</sup>

**Commerce's Position:** Regarding the GOK's argument concerning the *de facto* specificity determination made with respect to RSTA Article 10(1)(3), section 771(5A)(D)(iii)(I) of the Act states that a subsidy is specific as a matter of fact if the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number. Further, section 771(5A) of the Act states that "any reference to an enterprise or industry is a reference to a foreign enterprise or industry and includes a group of such enterprises or industries." The SAA states that "{t}he Administration intends to apply the specificity test in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy."<sup>245</sup> Therefore, in light of the SAA, the specificity provision in section 771(5A)(D)(iii)(I) of the Act is intended to capture those subsidies that are not broadly available *and widely used* throughout an economy. In order to determine whether these RSTA tax reductions are broadly available and widely used throughout an economy as contemplated by the SAA, we examined the nominal number of recipients of these RSTA tax reductions, other than those determined to be either regionally-specific or *de jure* specific. Based on this information and the methodology described in detail below, we conducted a *de facto* specificity analysis.

The RSTA Article 10(1)(3) tax reduction (*i.e.*, a reduction of taxes payable) at issue in this investigation consists of tax savings that are nominally available to all types of businesses and corporations in Korea.<sup>246</sup> Thus, it is appropriate to include all corporate tax filers in our analysis of *de facto* specificity. In order to determine whether the RSTA Article 10(1)(3) tax reduction is broadly available and widely used throughout an economy as contemplated by the SAA, we examined the number of recipients of these RSTA tax reductions and compared the actual number of users of these RSTA tax reductions to the total number of corporate tax returns.<sup>247</sup>

Under section 771(5A)(D)(iii)(I) of the Act, we may find a subsidy program *de facto* specific if the actual recipients of a subsidy, whether on an enterprise or industry basis, are limited in number. Therefore, the analysis of whether a program is *de facto* specific based on a limited number of subsidy recipients is one that must be conducted by a review of the actual recipients of the program. The statute does not mandate any specific methodology in conducting a *de facto* specificity analysis, and Commerce has discretion to apply any reasonable methodology in making a *de facto* determination in light of the facts and circumstances of each particular case. As stated above, we compared the number of actual recipients to the total number of corporate

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<sup>243</sup> See Petitioner Rebuttal Brief at 5-6.

<sup>244</sup> *Id.* at 6.

<sup>245</sup> See SAA at 929. The SAA "shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act..." 19 U.S.C. §1352(d).

<sup>246</sup> See *Preliminary Determination* PDM at 20.

<sup>247</sup> *Id.*; see also GOK IQR at 182, wherein the GOK indicates that of the 740,215 corporate tax returns were filed in 2018, only 232 received benefits under this tax credit program, or 0.03 percent of all corporate tax filers at Exhibit TAX-1, Table 8-1-1.

tax filers (*i.e.*, total potential users) to determine whether the number of recipients is limited within the meaning of section 771(5A)(D)(iii)(I) of the Act. Based on this analysis and consistent with Commerce’s past findings regarding RSTA tax programs,<sup>248</sup> we find that this program benefitted only a limited number of users and, therefore, it is *de facto* specific.

The Voluntary Curtailment Adjustment Program in the *CTL Plate from Korea Investigation*<sup>249</sup> and the Employee Training Program in *Steel from South Africa*,<sup>250</sup> both cited by the GOK, are not applicable to this case. The SAA makes clear that when Commerce applies the *de facto* test, “the weight accorded to particular factors will vary from case to case.”<sup>251</sup> The courts have long recognized that Commerce’s *de facto* specificity analysis is fact-intensive and case-specific.<sup>252</sup> Congress could have established a rigid formula or bright-line test to determine specificity, but it chose not to, given the fact-intensive nature of the inquiry, and the broad variety of circumstances under which subsidy programs operate. The analysis pertaining to the Voluntary Curtailment Adjustment Program in the *CTL Plate from Korea Investigation* and the Employee Training Program in *Steel from South Africa Investigation* are based on the facts on those records involving different programs. We cannot rely on the analyses in those determinations to determine whether a program under investigation in this case is *de facto* specific. Rather, according to the facts on this record, we determine that this program is *de facto* specific because the recipients are limited in number.<sup>253</sup>

#### **Comment 5: Whether Tax Benefits Under Restriction of Special Taxation Act Article 26 Are Regionally Specific**

##### *The GOK’s Case Brief*

- The tax program under RSTA Article 26 is not regionally specific because the purpose of the program is to encourage investments into Korea regardless of its region, and the GOK does not limit tax benefits to enterprises located within designated geographical regions, but provides benefits for the purpose of avoiding the overcrowding of the Seoul Metropolitan Area.<sup>254</sup> In this respect, tax benefits under RSTA Article 26 are not specific within the meaning of section 771(5A)(D)(iv) of the Act.<sup>255</sup>

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<sup>248</sup> See, e.g., *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) (*Hot-Rolled Steel from Korea 2017 Final*), and accompanying IDM at Comment 3; see also *Cold-Rolled Steel from Korea* IDM at Comment 13.

<sup>249</sup> See *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 64 FR 73176, 73186 (December 29, 1999) (*CTL Plate from Korea Investigation*).

<sup>250</sup> See *Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders; Certain Steel Products from South Africa*, 47 FR 39379, 39380 (September 7, 1982) (*Steel from South Africa*) at “II. Programs Determined Not To Be Bounties or Grants to Manufacturers, Producers, or Exporters of Certain Steel Products; D. Employee Training Programs.”

<sup>251</sup> See SAA at 931.

<sup>252</sup> See, e.g., *Geneva Steel v. United States*, 914 F. Supp. 563, 598 (CIT 1996) (*Geneva Steel*) (citing *PPG Industries, Inc. v. United States*, 928 F.2d 1568, 1577 (Fed. Cir. 1991) (*PPG I*), discussing *Cabot Corp. v. United States*, 620 F. Supp. 722, 732 (CIT 1985) (“A finding of *de facto* specificity requires a case by case analysis to determine whether there has been a bestowal upon a specific class.”) (internal quotations omitted))).

<sup>253</sup> See GOK IQR at 182 and Exhibit TAX-1, Table 8-1-1; see also *Preliminary Determination* PDM at 20.

<sup>254</sup> See GOK Case Brief at 11-12

<sup>255</sup> *Id.* at 12.



- The GOK also notes that the number of companies that received tax benefits under this program indicate that the program was broadly available and widely used throughout the economy.<sup>256</sup>

*The Petitioner's Rebuttal Brief*

- The GOK's argument that tax benefits under RSTA Article 26 are not regionally specific is based on the purported purpose of the provision, which was intended to encourage investments into Korea regardless of region.<sup>257</sup> The GOK does not, however, address the reality that the RSTA Article 26 "limits this program to enterprises or industries within a designated geographical region within the jurisdiction of the authority providing the subsidy."<sup>258</sup> The GOK's argument runs counter to the clear language of the statute.<sup>259</sup>

**Commerce's Position:** With respect to the rationale advanced by the GOK to support its contention that the RSTA Article 26 is not regionally specific, we disagree. Consistent with *Refrigerators from Korea*<sup>260</sup> and *Washers from Korea*,<sup>261</sup> we continue to find that this program is regionally specific under section 771(5A)(D)(iv) of the Act. The CIT sustained our findings on this issue in the *Washers from Korea* investigation.<sup>262</sup>

In its case brief, the GOK argues that this program is not regionally specific, because the purpose of RSTA Article 26 is to encourage investments into Korea regardless of its region, and the GOK does not limit tax benefits to enterprises located within designated geographical regions, but provides benefits for the purpose of avoiding the overcrowding of the Seoul Metropolitan Area.<sup>263</sup> However, the language within RSTA Article 26 clearly states that a national entity is entitled to the deduction "{w}here a national makes an investment prescribed by Presidential Decree (excluding... investing in the over-concentration control region of the Seoul Metropolitan area)." Thus, it is clear from the text of RSTA Article 26 that, in excluding tax filers located in the Seoul Metropolitan Area from eligibility for benefits under this program, the benefits provided under RSTA Article 26 are limited to a designated geographical region.<sup>264</sup> That designated region is all parts of the Korean territory outside of the control region of the Seoul Metropolitan Area. In addition, whether companies located in other regions in Korea are eligible for the tax credit under RSTA Article 26 is irrelevant to our determination that the tax credit under this program is available only to companies in a designated geographic region.

The GOK also contends that the program was broadly available and widely used throughout the economy. However, the number of companies that received tax benefits under this program is

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<sup>256</sup> *Id.* at 12, footnote 33.

<sup>257</sup> See Petitioner Rebuttal Brief at 6.

<sup>258</sup> *Id.*

<sup>259</sup> *Id.* at 2.

<sup>260</sup> See *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410 (March 26, 2012) (*Refrigerators from Korea*), and accompanying IDM at Comment 3.

<sup>261</sup> See *Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) (*Washers from Korea*), and accompanying IDM at Comment 9.

<sup>262</sup> See *Samsung Electronics Co., Ltd. v. United States*, 973 F. Supp. 2d 1321, 1328-29 (CIT 2014).

<sup>263</sup> See GOK Case Brief at 11.

<sup>264</sup> See GOK IQR at 239-242.



not relevant to our regional specificity analysis. Thus, consistent with our long-standing practice and based on the record evidence,<sup>265</sup> we continue to find that the GOK established a designated geographical region to which this program is available, and that subsidies under RSTA Article 26 are regionally specific within the meaning of section 771(5A)(D)(iv) of the Act.

## IX. RECOMMENDATION

We recommend approving all the above positions. If these positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

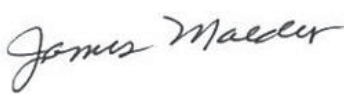


Agree



Disagree

6/25/2021

X 

Signed by: JAMES MAEDER

James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

<sup>265</sup> See, e.g., *Large Diameter Welded Pipe From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 84 FR 6369, (February 27, 2019) (*LDWP from Korea*), and accompanying IDM at 37-38; and *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Portland Hydraulic Cement and Cement Clinker from Mexico*, 48 FR 43063, 43065 (September 21, 1983); see also GOK IQR at 239-242; and *Preliminary Determination* PDM at 21.

## APPENDIX

### NOT-USED OR NOT-MEASURABLE PROGRAMS, BY COMPANY

#### ILJIN

##### *Programs Determined Not to Provide Measurable Benefits During the POI*

Count	Title
1	KEXIM Structured Trade Financing
2	RSTA Article 25 – Tax Credit for Investment in Facilities for Environment or Safety
3	The Job Sharing and Employment Management Program: Sharing of Working Opportunities/Employment Creating Incentives <sup>266</sup>
4	The Job Sharing and Employment Management Program: Assistance for Employment Adjustment <sup>267</sup>
5	KDB Banker's Usance
6	KDB Long-Term Facility Capital Loans
7	RSTA Article 104-8 – Tax Credits for Electronic Returns
8	Korea Energy Agency Energy Efficiency Program – LED Lighting
9	KEPCO Energy Savings Program – (1) Designated Period program; and (2) Advance Notice (or Prior Announcement) program
10	Korea Trade-Investment Promotion Agency (KOTRA) Promotion of Participation in Overseas Exhibition
11	Young Tomorrow Program – Gyeonggi Employer Federation and Best-in Jeonbuk Agency to Support Employment of Young People
12	Refund for Business Owners in Vocational Skills Development Training – the Korea Industrial Safety Association and Korea Productivity Center

##### *Programs Determined to Be Not Used During the POI*

Count	Title
1	KDB Short-Term Discounted Loans for Export Receivables
2	Long Term Loans for Overseas Resource Development from the Korean Energy Agency
3	Assistance and Financial Support for New Convergence Industries and Manufacturers

<sup>266</sup> See GOK 1SQR at 18 and Appendix 1; see also CVD Initiation Checklist: Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea, dated July 28, 2020 (CVD Initiation Checklist) at 31. We initiated on this program as the program name titled “Sharing of Working Opportunities/Employment Creating Incentives.” However, the GOK stated that this program is a sub-program under the Job Sharing and Employment Management Program. Thus, we list this program as the “The Job Sharing and Employment Management Program: Sharing of Working Opportunities/Employment Creating Incentives” in the appendix.

<sup>267</sup> ILJIN reported the use of this program. See ILJIN's Letter, “Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Supplemental Questionnaire Response,” dated November 9, 2020 (ILJIN 1SQR) at Exhibits Supp-Iljin-1 and Supp-Iljin-2. The GOK stated that this program is a sub-program under the Job Sharing and Employment Management Program. See GOK 1SQR at 18 and Appendix 22. Thus, we list this program as the “The Job Sharing and Employment Management Program: Assistance for Employment Adjustment” in the appendix.

	Program: Loans
4	KEXIM Export Project Loans
5	KEXIM Export Facilitation Loans
6	KEXIM Import Loans
7	KEXIM Import Facilitation Loans
8	KEXIM Performance Guarantees
9	KDB Support for Industrial Restructuring: Loans
10	Korea Trade Insurance Corporation (K-SURE) Export Credit Guarantee
11	K-SURE Export Credit Insurance <sup>268</sup>
12	RSTA Article 11 – Tax Credit for Investment in Facilities for Research and Manpower
13	RSTA Article 22 – Tax Exemption on Investment in Overseas Resources Development
14	RSTA Article 24 – Tax Credit for Investment for Productivity Increase Facilities
15	RSTA Article 25-2 – Tax Credit for Investments in Energy Economizing Facilities
16	RSTA Article 25-3 – Tax Credit for Investment in Environment and Safety Facilities
17	RSTA Article 104-14 – Third-Party Logistics Operations
18	RSTA Article 104-15 – Development of Overseas Resources
19	Restriction of Special Local Taxation Act Article (RSLTA) Article 109 – Tax Credit for Investing in Facilities for Increasing Productivity
20	RSLTA Article 110 – Tax Credit for Investing in Safety Facilities
21	RSLTA Article 111 – Tax Credit for Investing in Energy-Saving Facilities
22	RSLTA Article 112 – Tax Credit for Investing in Facilities for Environmental Conservation
23	RSLTA Article 114 – Tax Credit for Employment-Creating Investment
24	Demand Response Resources Program
25	Grants for Overseas Resource Development
26	Modal Shift Program
27	Grants for Conversion into Environment-Friendly Industrial Structure
28	Assistance and Financial Support for New Convergence Industries and Manufacturers Program: Grants
29	KDB Support for Industrial Restructuring: Grants
30	Management of Electricity Factor Load Program – Emergent Reduction Sub-Program
31	Seoul Guarantee Insurance <sup>269</sup>

<sup>268</sup> See ILJIN ISQR at S-30. ILJIN reported it received no payments from K-SURE Export Credit Insurance during the POI.

<sup>269</sup> *Id.* ILJIN reported it received no payments from Seoul Guarantee Insurance during the POI.

**Trader<sup>270</sup>***Programs Determined Not to Provide Measurable Benefits During the POI*

Count	Title
1	RSTA Article 7 – Special Tax Reductions or Exemptions for Small or Medium Enterprises
2	COMWEL Program: Job Stabilization Fund
3	COMWEL Program: Durunuri Assistance
4	KOSME Market Expansion Loan

*Programs Determined to Be Not Used During the POI*

Count	Title
1	KDB Short-Term Discounted Loans for Export Receivables
2	Long Term Loans for Overseas Resource Development from the Korean Energy Agency
3	Assistance and Financial Support for New Convergence Industries and Manufacturers Program: Loans
4	KEXIM Export Project Loans
5	KEXIM Export Facilitation Loans
6	KEXIM Import Loans
7	KEXIM Import Facilitation Loans
8	KEXIM Performance Guarantees
9	KEXIM Structured Trade Financing
10	KDB Support for Industrial Restructuring: Loans
11	K-SURE Export Credit Guarantee
12	K-SURE Export Credit Insurance
13	RSTA Article 10(1)(3) – Tax Reduction for Research and Human Resources Development
14	RSTA Article 11 – Tax Credit for Investment in Facilities for Research and Manpower
15	RSTA Article 22 – Tax Exemption on Investment in Overseas Resources Development
16	RSTA Article 24 – Tax Credit for Investment for Productivity Increase Facilities
17	RSTA Article 25 – Tax Credit for Investment in Facilities for Environment or Safety
18	RSTA Article 25-2 – Tax Credit for Investments in Energy Economizing Facilities
19	RSTA Article 25-3 – Tax Credit for Investment in Environment and Safety Facilities
20	RSTA Article 26 – GOK Facilities Investment Support
21	RSTA Article 104-14 – Third-Party Logistics Operations

<sup>270</sup> During the POI, ILJIN sold a small portion of subject merchandise to an unaffiliated Korean steel pipe trading company which then exported such subject merchandise to the United States. The name of the unaffiliated export trading company is proprietary; thus, we are referring to the company as “Trader.” See ILJIN’s Letter, “Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Section III “Affiliated Companies” Response,” dated September 4, 2020 at III-2.

22	RSTA Article 104-15 – Development of Overseas Resources
23	RSLTA Article 109 – Tax Credit for Investing in Facilities for Increasing Productivity
24	RSLTA Article 110 – Tax Credit for Investing in Safety Facilities
25	RSLTA Article 111 – Tax Credit for Investing in Energy-Saving Facilities
26	RSLTA Article 112 – Tax Credit for Investing in Facilities for Environmental Conservation
27	RSLTA Article 114 – Tax Credit for Employment-Creating Investment
28	RSLTA Article 78 – Acquisition and Property Tax Benefits to Companies in Industrial Complexes
29	Demand Response Resources Program
30	Grants for Overseas Resource Development
31	Industrial Grants Pursuant to the <u>Industrial Technology Innovation Promotion Act</u>
32	Modal Shift Program
33	Grants for Conversion into Environment-Friendly Industrial Structure
34	The Job Sharing and Employment Management Program: Sharing of Working Opportunities/Employment Creating Incentives <sup>271</sup>
35	Assistance and Financial Support for New Convergence Industries and Manufacturers Program: Grants
36	KDB Support for Industrial Restructuring: Grants
37	Management of Electricity Factor Load Program – Emergent Reduction Sub-Program

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<sup>271</sup> See GOK 1SQR at 18 and Appendix 1; *see also* CVD Initiation Checklist at 31. We initiated on this program as the program name titled “Sharing of Working Opportunities/Employment Creating Incentives.” However, the GOK stated that this program is a sub-program under the Job Sharing and Employment Management Program. Thus, we list this program as the “The Job Sharing and Employment Management Program: Sharing of Working Opportunities/Employment Creating Incentives” in the appendix.