



C-580-879

Administrative Review  
POR: 01/01/2019 - 12/31/2019

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July 12, 2021

**MEMORANDUM TO:** Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

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

**SUBJECT:** Decision Memorandum for the Preliminary Results of the  
Countervailing Duty Administrative Review; 2019: Certain  
Corrosion-Resistant Steel Products from the Republic of Korea

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on certain corrosion-resistant steel products (CORE) from the Republic of Korea (Korea) for the period of review (POR) January 1, 2019 through December 31, 2019. This review covers 39 producers/exporters of subject merchandise. Commerce selected Hyundai Steel Company (Hyundai Steel) and KG Dongbu Steel Co., Ltd. (KG Dongbu Steel) (formerly Dongbu Steel Co., Ltd.) (Dongbu Steel)/Dongbu Incheon Steel Co., Ltd. (Dongbu Incheon) (collectively, KG Dongbu) as mandatory respondents. We preliminarily determine that certain producers/exporters of subject merchandise received above *de minimis* countervailable subsidies. Hyundai Steel preliminarily received *de minimis* countervailable subsidies.

## II. BACKGROUND

On July 25, 2016, Commerce published the *CORE Order* in the *Federal Register*.<sup>1</sup> On July 1, 2020, Commerce published a notice of opportunity to request an administrative review of the *CORE Order*.<sup>2</sup> On July 21, 2020, we received a timely request for administrative review from

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<sup>1</sup> See *Certain Corrosion-Resistant Steel Products from India, Italy Republic of Korea and the People's Republic of China: Countervailing Duty Order*, 81 FR 48387 (July 25, 2016) (*CORE Order*).

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 85 FR 39531 (July 1, 2020).



Hyundai Steel, on behalf of itself.<sup>3</sup> On July 31, 2020, the petitioners<sup>4</sup> timely filed a request for review of the *CORE Order* for 39 firms and their subsidiaries or affiliates.<sup>5</sup> Additionally, on July 31, 2019, we received timely requests for administrative review from POSCO and POSCO Coated & Color Steel Co., Ltd. (POSCO C&C), on behalf of themselves.<sup>6</sup>

On September 3, 2020, Commerce initiated a CVD review of 39 companies.<sup>7</sup> In the *Initiation Notice*, we stated that, in the event that we limited the number of respondents selected for individual examination, we intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. On September 8, 2020, Commerce released CBP entry data, and provided interested parties until September 15, 2020, to submit comments on the data.<sup>8</sup> We received comments from Hyundai Steel requesting that we select it as a mandatory respondent in this review.<sup>9</sup> On October 6, 2020, Commerce selected KG Dongbu Steel and Hyundai Steel as mandatory respondents in this administrative review.<sup>10</sup>

On October 6, 2020, Commerce issued the initial questionnaire to the Government of Korea (GOK), Hyundai Steel, and KG Dongbu.<sup>11</sup> Hyundai Steel and KG Dongbu Steel submitted their affiliation questionnaire responses on October 27, 2020.<sup>12</sup> On December 1, 2020, Hyundai Steel submitted its responses to Section III of Commerce's Initial Questionnaire.<sup>13</sup> On December 2, 2020, KG Dongbu submitted its response to Section III of Commerce's Initial Questionnaire.<sup>14</sup> On December 4, 2020, the GOK submitted its response to Commerce's Initial Questionnaire.<sup>15</sup>

On December 21, 2020, and January 17, 2021, the petitioners filed deficiency comments on KG Dongbu's questionnaire response and Hyundai Steel's questionnaire response, respectively.<sup>16</sup> On January 7, 2021, the petitioners filed comments regarding KG Dongbu Steel's

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<sup>3</sup> See Hyundai Steel's Letter, "Request for Administrative Review," dated July 21, 2020.

<sup>4</sup> The petitioners are AK Steel Corporation, California Steel Industries, Inc.; Steel Dynamics Inc.; ArcelorMittal USA LLC; Nucor Corporation (Nucor); and United States Steel Corporation (U.S. Steel).

<sup>5</sup> The petitioners did not identify the subsidiaries or affiliates. The complete list for petitioners' requested companies can be found in Appendix I. See Petitioners' Letter, "Request for Administrative Review," dated July 31, 2020.

<sup>6</sup> See POSCO's Letter, "Administrative Review Request," dated July 21, 2020; see also POSCO C&C's Letter, "Administrative Review Request," dated July 30, 2020.

<sup>7</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 54983 (September 3, 2020) (*Initiation Notice*).

<sup>8</sup> See Memorandum, "Release of U.S. Customs Entry Data for Respondent Selection," dated September 8, 2020.

<sup>9</sup> See Hyundai Steel's Letter, "Comments on CBP Data and Respondent Selection," dated September 15, 2020.

<sup>10</sup> See Memorandum, "Respondent Selection," dated October 6, 2020.

<sup>11</sup> See Commerce's Letter, "Countervailing Duty Questionnaire," dated October 6, 2020 (Commerce's Initial Questionnaire).

<sup>12</sup> See Hyundai Steel's Letter, "Affiliated Companies Response," dated October 27, 2020 (Hyundai Steel's Affiliation QR); see also KG Dongbu's Letter, "Affiliated Companies Response," dated October 27, 2020 (KG Dongbu's Affiliation QR).

<sup>13</sup> See Hyundai Steel's Letter, "Hyundai Steel's Initial Questionnaire Response," dated December 1, 2021 (Hyundai Steel's Initial QR).

<sup>14</sup> See KG Dongbu's Letter, "Initial Questionnaire Response," dated December 2, 2020 (KG Dongbu's Initial QR).

<sup>15</sup> See GOK's Letter, "Initial Questionnaire Response," dated December 4, 2020 (GOK's Initial QR).

<sup>16</sup> See Petitioners' Letters "Comments on Dongbu's Initial Questionnaire Response," dated December 21, 2020; and "Comments on Hyundai Steel's Affiliated Companies Questionnaire Response," dated January 17, 2021.

creditworthiness and equityworthiness.<sup>17</sup> We issued supplemental questionnaires to the GOK, Hyundai Steel, and KG Dongbu, and each party filed their responses timely.<sup>18</sup> On January 29, 2021, the petitioners submitted comments on KG Dongbu's first supplemental questionnaire response.<sup>19</sup>

On January 4, 2021, the petitioners submitted a timely new subsidy allegation (NSA) that Korean CORE producers benefitted from subsidized electricity during the POR.<sup>20</sup> On February 1, 2021, Commerce initiated a review of the NSA of electricity for less than adequate remuneration (LTAR).<sup>21</sup> We issued our NSA questionnaire to the GOK, Hyundai Steel, and KG Dongbu, on February 2, 2021.<sup>22</sup> On February 9, February 23, and February 24, 2021, KG Dongbu, the GOK, and Hyundai Steel, respectively, filed their NSA questionnaire responses.<sup>23</sup> We issued supplemental NSA questionnaires to the GOK, Hyundai Steel, and KG Dongbu, and each party filed their responses timely.<sup>24</sup>

On March 4, 2021, and March 24, 2021, Commerce extended the deadline for the preliminary results of this review.<sup>25</sup> On March 16, 2021, and April 22, 2021, U.S. Steel and Nucor, respectively, filed deficiency comments concerning KG Dongbu's NSA responses.<sup>26</sup> On June

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<sup>17</sup> See Petitioners' Letter, "Comments Regarding Dongbu's Creditworthiness and Equityworthiness," dated January 7, 2021.

<sup>18</sup> See GOK's Letters, "Supplemental {sic} Questionnaire Response," dated January 14, 2021 (GOK's Supplemental QR); "Supplemental Questionnaire Additional Response," dated January 21, 2021; "Response to Question 1 of First Supplemental Questionnaire," dated January 21, 2021; "GOK's Second Supplemental Questionnaire," dated July 1, 2021 (GOK's Second Supplemental QR); *see also* KG Dongbu's Letters, "Supplemental Affiliated Companies Response," dated December 8, 2020 (KG Dongbu's Supplemental Affiliation QR); "First Supplemental Questionnaire Response," dated January 19, 2021; "Second Supplemental Questionnaire Response," dated March 10, 2021; and "Third Supplemental Questionnaire Response," dated May 28, 2021 (KG Dongbu's Third Supplemental QR); and Hyundai Steel's Letters, "Supplemental Affiliated Companies Response," dated December 9, 2020; and "First Supplemental Questionnaire Response," dated January 4, 2021.

<sup>19</sup> See Petitioners' Letter, "Comments on Dongbu's First Supplemental Questionnaire Response," dated January 29, 2021.

<sup>20</sup> See Petitioners' Letter, "New Subsidy Allegation," dated January 4, 2021.

<sup>21</sup> See Memorandum, "New Subsidy Allegation," dated February 1, 2021 (NSA Memorandum).

<sup>22</sup> See Commerce's Letter, "New Subsidy Allegation Questionnaire," dated February 2, 2021.

<sup>23</sup> See Dongbu's Letter, "New Subsidies Allegations Questionnaire Response," dated February 9, 2021 (KG Dongbu NSA QR); *see also* GOK's Letter, "New Subsidies Allegations Questionnaire Response," dated February 23, 2021 (GOK NSA QR); and Hyundai Steel's Letter, "New Subsidies Allegations Questionnaire Response," dated February 24, 2021 (Hyundai Steel NSA QR).

<sup>24</sup> See GOK's Letters, "GOK's New Subsidy Allegations Supplemental Questionnaire Response," dated March 11, 2021 (GOK NSAS1); "GOK's New Subsidy Allegations Second Supplemental Questionnaire Response," dated April 13, 2021 (GOK NSAS2); "GOK's New Subsidy Allegations Third Supplemental Questionnaire Response," dated April 28, 2021; "New Subsidy Allegations Fourth Supplemental Questionnaire Response," dated July 2, 2021; *see also* KG Dongbu's Letter, "NSA Supplemental Questionnaire Response," dated July 2, 2021; and Hyundai Steel's Letter, "Hyundai Steel's NSA Supplemental Questionnaire Response," dated July 2, 2021.

<sup>25</sup> See Memoranda, "Extension of Deadline for the Preliminary Results of the 2019 Countervailing Duty Administrative Review," dated March 4, 2021, and March 24, 2021, respectively.

<sup>26</sup> See U.S. Steel's Letter, "Deficiency Comments Concerning the GOK's NSA SQR and Rebuttal Factual Information," dated March 16, 2021; *see also* Nucor's Letter, "Comments on New Subsidy Allegation Questionnaire Responses," dated April 22, 2021.

29, 2021, Nucor file pre-preliminary comments concerning KG Dongbu Steel's creditworthiness and equityworthiness.<sup>27</sup>

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

### **III. PERIOD OF REVIEW**

The POR is January 1, 2019, through December 31, 2019.

### **IV. SCOPE OF THE ORDER**

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

- (1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and
- (2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

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

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or

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<sup>27</sup> See Nucor's Letter, "Comments in Advance of Preliminary Determination Regarding Dongbu," dated June 29, 2021.

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

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

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

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

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

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

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

consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

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

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

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

## **V. SUBSIDIES VALUATION INFORMATION**

### **A. Allocation Period**

For non-recurring subsidies, we applied the “0.5 percent test,” as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the average useful life (AUL). In the instant review, we are relying on a 15-year AUL.<sup>28</sup>

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

Commerce’s regulations at 19 CFR 351.525(b)(6)(i) state that Commerce will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides that Commerce will attribute subsidies received by certain other companies to the combined sales of those companies when: (1) two or more corporations with cross-ownership produce the subject merchandise; (2) a firm that received a subsidy is a holding or parent company of the subject company; (3) there is cross-ownership between an input supplier and a downstream producer and production of the input is primarily dedicated to the production of the downstream product; or (4) a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a corporation with cross-ownership with the subject company.

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<sup>28</sup> See U.S. Internal Revenue Service Publication 946, “How to Depreciate Property,” at Table B-2, Asset Class 33.4: Table of Class Lives and Recovery Periods.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The Court of International Trade (CIT) has upheld Commerce’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.<sup>29</sup>

### *KG Dongbu Steel*

KG Dongbu reported that, during the POR, with the exception of Dongbu Incheon which is a producer of subject merchandise, none of its other affiliates produced subject merchandise or supplied an input product to KG Dongbu Steel or Dongbu Incheon for the production of the downstream product.<sup>30</sup> In addition, KG Dongbu responded on behalf of its parent company KG Steel. KG Dongbu explained, “On September 1, 2019, KG Steel Co., Ltd. (“KG Steel”) became the major shareholder of Dongbu Steel. As a result, Dongbu Steel also became a member of the KG Group.”<sup>31</sup> KG Dongbu also explained, “At Dongbu Steel’s March 27, 2020 general shareholders’ meeting, a name change for the newly-merged Dongbu Steel to KG Dongbu Steel Co., Ltd. was approved.”<sup>32</sup>

KG Dongbu further explained that KG Steel was established in 2019 as part of the KG Group’s acquisition of Dongbu Steel. KG Dongbu also stated that Dongbu Steel recognizes KG Steel as its parent company although KG Steel’s ownership of Dongbu Steel is only 39.98 percent because KG Steel can have significant influence on Dongbu Steel.<sup>33</sup> Furthermore, we note that KG Steel was only established in 2019, as a financial services company, as part of the KG Group’s acquisition of Dongbu Steel. At the end of 2019, we note that KG Steel had no revenue during the POR.<sup>34</sup> We also note that KG Steel did not receive any benefits from the GOK.<sup>35</sup> As stated in KG Dongbu’s affiliated questionnaire response, KG Steel was created as an investment vehicle for purpose of acquiring Dongbu Steel.<sup>36</sup> Furthermore, we note that KG Dongbu did not request that any of the existing subsidies be extinguished due to the change in ownership.

In addition, KG Dongbu recognizes KG Chemical Corp. (KG Chemical) as the ultimate parent company of KG Dongbu Steel (formerly Dongbu Steel) because it is the lead company in the KG Group.<sup>37</sup> KG Dongbu also explained that KG Chemical owns only 19.5 percent of KG Steel’s shares and does not meet the first criterion of a holding company under Korean Law.<sup>38</sup> More

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<sup>29</sup> See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

<sup>30</sup> See KG Dongbu’s Affiliation QR at 7.

<sup>31</sup> *Id.* at 1.

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

<sup>33</sup> *Id.* at 7.

<sup>34</sup> *Id.* at Exhibit 1.

<sup>35</sup> See KG Dongbu’s Initial QR at 15.

<sup>36</sup> See KG Dongbu’s Supplemental Affiliation QR at 2; see also KG Dongbu’s Initial QR at 15.

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

<sup>38</sup> *Id.* at 8.

relevantly, we note KG Chemical does not meet any of the criteria which Commerce considers in determining whether a company is cross-owned.

Therefore, pursuant to 19 CFR 351.525(b)(6)(ii), we attributed subsidies received by KG Dongbu Steel and/or Dongbu Incheon to the sales of both companies. Regarding KG Steel, we note that KG Steel received no subsidies to attribute to KG Dongbu.

### *Hyundai Steel*

Hyundai Steel reported that it is a publicly traded company engaged in the production and sale of steel products, including CORE. Hyundai Steel reported that it is not a subsidiary of any other company and it has no parent or holding company.<sup>39</sup> Hyundai Steel provided a full response on behalf of itself, and for companies acquired prior to the POR, Hyundai HYSCO, and SPP Yulchon Energy (SPP Yulchon).<sup>40</sup> Both Hyundai HYSCO and SPP Yulchon ceased operations prior to the POR.<sup>41</sup> In its response for these two companies, Hyundai Steel reported that neither company received subsidies during the AUL period that would be attributable to Hyundai Steel during the POR.<sup>42</sup> Consistent with prior proceedings,<sup>43</sup> and pursuant to 19 CFR 351.525(b)(6)(i), we have attributed subsidies received by Hyundai Steel to the sales of Hyundai Steel for these preliminary results.

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<sup>39</sup> See Hyundai Steel's Affiliation QR at 4.

<sup>40</sup> See Hyundai Steel's Affiliation QR at 20; see also Hyundai Steel's Initial QR.

<sup>41</sup> See Hyundai Steel's Letters "Hyundai HYSCO's Initial Questionnaire Response," dated November 30, 2020 (Hyundai HYSCO's IQR) at 1; and "SPP Yulchon Energy's Initial Questionnaire Response," dated November 30, 2020 (SPP's IQR) at 1.

<sup>42</sup> See Hyundai HYSCO's IQR at 4 and Exhibits HYSCO-12 and HYSCO-13; see also SPP's IQR at 24 and Exhibits SPP-12 and SPP-13.

<sup>43</sup> See *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, Rescission of Review, In Part, and Intent to Rescind, In Part; 2015-16*, 83 FR 39671 (August 10, 2018) (*CORE First Admin Review Prelim*), and accompanying Preliminary Decision Memorandum (PDM) at "Attribution of Subsidies," unchanged in *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2015-2016*, 84 FR 11749 (March 28, 2019) (*CORE First Admin Review Final*), and accompanying Issues and Decision Memorandum (IDM) at "Attribution of Subsidies"; see also *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, and Rescission of Review, in Part; 2017*, 84 FR 48107 (September 12, 2019), and accompanying PDM at "Attribution of Subsidies," unchanged in *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2017*, 85 FR 15112 (March 17, 2020) (*CORE Second Admin Review*), and accompanying IDM at "Attribution of Subsidies"; and *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2018*, 85 FR 74692 (November 23, 2020) (*CORE Third Admin Review Prelim*), and accompanying PDM at "Attribution of Subsidies," unchanged in *Certain Corrosion-Resistant Steel Products From the Republic of Korea: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2018*, 86 FR 29237 (June 1, 2021) (*CORE Third Admin Review Final*), and accompanying IDM at "Attribution of Subsidies."



## C. Benchmarks and Discount Rates

### Short-Term U.S. Dollar and Korean Won (KRW)-Denominated Loans

Hyundai Steel reported receiving short-term import financing from the Korea Export-Import Bank (KEXIM) during the POR.<sup>44</sup> KG Dongbu reported receiving short-term import financing in U.S. dollars from Korea Development Bank (KDB) for document against acceptance (D/A) financing, KRW denominated short-term import financing from KEXIM, and KRW denominated loans under the KDB short-term discounted loan program and debt restructuring program during the POR.<sup>45</sup> The respondents provided information about short-term loans from commercial banks for consideration as comparable commercial loans for purposes of identifying an interest rate benchmark.<sup>46</sup> For KG Dongbu Steel's short-term U.S. dollar D/A financing from KDB and for Hyundai Steel's short-term KRW borrowing from KEXIM, consistent with 19 CFR 351.505(a)(2), we preliminarily determine that KG Dongbu Steel and Hyundai Steel received comparable commercial loans, and it is appropriate to use these loans to calculate a weighted-average benchmark interest rate.<sup>47</sup>

For KG Dongbu's short-term loans in KRW from KEXIM and short-term loans from the KDB debt restructuring program, KG Dongbu did not have comparable KRW-denominated short-term loans from private commercial banks during the POR. Therefore, consistent with CFR 351.505(a)(1) and 19 CFR 351.505(a)(3)(ii) and our past practice,<sup>48</sup> we are using data from the International Monetary Fund's (IMF) International Financial Statistics 2019 as a benchmark to measure the benefit received from KG Dongbu's short-term KRW-denominated loans from KEXIM and for the KDB restructured loan program.<sup>49</sup>

### Long-Term U.S. Dollar and KRW-Denominated Loans

During the POR, KG Dongbu Steel had outstanding countervailable long-term KRW-denominated loans from government-controlled banks. As benchmarks for countervailable, KRW-denominated long-term loans and as discount rates, we used, where available, the company-specific interest rates on the company's comparable commercial, KRW-denominated loans. If such loans were not available, we used, where available, the company-specific corporate bond rate on the company's public and private bonds, as we have determined that the

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<sup>44</sup> See Hyundai Steel's Initial QR at 13.

<sup>45</sup> See KG Dongbu's Initial QR at 19, Exhibit A-6.

<sup>46</sup> See KG Dongbu's Initial QR at Exhibits A-6; *see also* Hyundai Steel's Initial QR at Exhibit A-2.

<sup>47</sup> See Memorandum, "Calculations for the Preliminary Results: Hyundai Steel Company," dated concurrently with this memorandum (Hyundai Steel's Preliminary Calculation Memorandum); *see also* Memorandum, "Calculation for the Preliminary Results: KG Dongbu Steel Co., Ltd./Dongbu Incheon Steel Co., Ltd.," dated concurrently with this memorandum (KG Dongbu's Preliminary Calculation Memorandum).

<sup>48</sup> See, e.g., *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 63168 (September 14, 2016), and accompanying PDM at 15, unchanged in *Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 82 FR 16341 (April 4, 2017).

<sup>49</sup> See KG Dongbu's Preliminary Calculation Memorandum.

GOK did not control the Korean domestic bond market after 1991.<sup>50</sup> This is the approach Commerce has taken in several prior CVD proceedings involving Korea.<sup>51</sup> Specifically, in those cases, we determined that, absent company-specific, commercial long-term loan interest rates, the KRW-denominated corporate bond rate is the best indicator of the commercial long-term borrowing rates for KRW-denominated loans in Korea, because it is widely accepted as the market rate in Korea.<sup>52</sup> Where company-specific rates were not available, we used the national average of the yields on three-year, KRW-denominated corporate bonds, as reported by the Bank of Korea. This approach is consistent with 19 CFR 351.505(a)(3)(ii) and prior CVD proceedings involving Korea.<sup>53</sup> In accordance with 19 CFR 351.505(a)(2)(i), our benchmarks take into consideration the structure of the government-provided loans. For countervailable fixed-rate loans, pursuant to 19 CFR 351.505(a)(2)(iii), we used benchmark rates issued in the same year that the government loans were issued. KG Dongbu Steel also had restructured long-term debts/loans and received new long-term financing under the debt restructuring program. Because we preliminarily find that KG Dongbu Steel was uncreditworthy during the POR, *as* discussed below, we added a risk premium to the benchmark rate in accordance with 19 CFR 351.505(a)(3)(iii), to measure KG Dongbu Steel's countervailable long-term debts/loans during the POR.

#### **D. Creditworthiness**

In the underlying investigation and the prior administrative reviews, we investigated KG Dongbu Steel's (formerly Dongbu Steel's) Debt Restructuring Program and found this program to be countervailable.<sup>54</sup> We are again reviewing this debt restructuring program in this segment of the proceeding. Participation in this program allowed KG Dongbu Steel to restructure certain existing loans, corporate bonds, and L/C Usance loans, and to convert certain of KG Dongbu Steel's debt into equity.<sup>55</sup>

Commerce will consider a company to be uncreditworthy if it determines that, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources.<sup>56</sup> In the original investigation and the prior administrative reviews, we found KG Dongbu Steel to be uncreditworthy from

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<sup>50</sup> See, e.g., *Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR 15530, 15531 (March 31, 1999) (*SS Plate from Korea*).

<sup>51</sup> See, e.g., *SS Plate from Korea*; *Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea*, 65 FR 41051 (July 3, 2000), and accompanying IDM at "Benchmark Interest Rates and Discount Rates"; and *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003), and accompanying IDM at "Discount Rates and Benchmark for Loans."

<sup>52</sup> See *Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea*, 58 FR at 37328, 37345-37346 (July 9, 1993).

<sup>53</sup> See, e.g., *CORE First Admin Review Prelim PDM* at "Benchmark for Long Term Loans"; see also *CORE Second Admin Review PDM* at "Benchmark Interest Rates."

<sup>54</sup> See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination in Part*, 81 FR 35310 (June 2, 2016) (*CORE Investigation Final*), and accompanying IDM at "Debt Restructuring Program"; see also *CORE First Admin Review Final IDM*; and *CORE Second Admin Review IDM*.

<sup>55</sup> See KG Dongbu's Initial QR at 21-35.

<sup>56</sup> See 19 CFR 351.505(a)(4).

2014 to 2018.<sup>57</sup>

Because no new information has been submitted to cause Commerce to reevaluate its determinations with respect to KG Dongbu Steel's creditworthiness in the original investigation and the prior administrative reviews, we continue to find KG Dongbu Steel to have been uncreditworthy from 2014 to 2018. Additionally, Commerce has preliminarily determined that there is a reasonable basis to believe KG Dongbu Steel was uncreditworthy during the POR, pursuant to 19 CFR 351.505(a)(6). Similar to our findings during the original investigation and the prior administrative reviews, the record demonstrates that KG Dongbu Steel did not obtain any long-term loans from conventional commercial sources in 2019; KG Dongbu Steel's financial indicators, its past and present ability to meet its costs and fixed financial obligations with its cash flow, and KG Dongbu Steel's future financial position, have not changed since the period covered from the original investigation and the prior administrative reviews.<sup>58</sup> KG Dongbu Steel's current ratio and quick ratio have not improved and continue to be below Commerce's benchmark during the POR. KG Dongbu Steel's debt-to-equity ratio continues to be high and there is no evidence that KG Dongbu Steel's future financial position is likely to grow stronger.<sup>59</sup> Therefore, pursuant to 19 CFR 351.505(a)(4), we will continue to find KG Dongbu Steel to be uncreditworthy during the POR and countervail its restructured loans provided by the government policy banks during the POR using an uncreditworthiness benchmark with an added risk premium.

As described below, we preliminarily find the loans from the alleged private banks to KG Dongbu Steel cannot constitute "comparable commercial loans" under 19 CFR 351.505(a)(2) due to the substantial government influence and the fact that they were part of a government program; therefore, these loans were unsuitable for benchmark purposes. Commerce continues to find that when a company has been found uncreditworthy, Commerce calculates a benchmark pursuant to the formula found in 19 CFR 351.505(a)(3)(iii).

#### **E. Equityworthiness and Existence of Private Investor Prices**

19 CFR 351.507(a)(3) states that "{i}f actual private investor prices are not available under paragraph (a)(2) of this section, the Secretary will determine whether the firm funded by the government-provided equity was equityworthy or unequityworthy at the time of the equity infusion. If the Secretary determines that the firm was equityworthy, the Secretary will apply paragraph (a)(5) of this section to determine whether the equity infusion was inconsistent with the usual investment practice of private investors. A determination by the Secretary that the firm was unequityworthy will constitute a determination that the equity infusion was inconsistent with usual investment practice of private investors, and the Secretary will apply paragraph (a)(6) of this section to measure the benefit attributable to the equity infusion." In the Equity Infusions Analysis Memorandum, we stated that the private creditors on the creditors councils did not

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<sup>57</sup> See *CORE Investigation Final IDM* at Comment 6; see also *CORE First Admin Review Final*; *CORE Second Admin Review*; and *CORE Third Admin Review Prelim*, unchanged in *CORE Third Admin Review Final*.

<sup>58</sup> See KG Dongbu's Third Supplemental QR at Exhibit B-43.

<sup>59</sup> See KG Dongbu's Initial QR at Exhibit 12-A, KG Dongbu's Financial Statements ending December 31, 2019, Independent Auditor's Report, "We conclude that there is significant uncertainty about the ability of the entity to continue as a going concern based on the appropriateness of the entity's continuing accounting used by the management and the audit evidence obtained."

evaluate the reasonableness of the rate of return on any equity they were considering investing in the company in each debt-to-equity conversion.<sup>60</sup> Rather, they were considering how best to limit their losses and maximize the recovery. We also described that the purchases of shares by the private creditors were not significant and that the GOK policy banks control the decisions relating to KG Dongbu Steel's debt restructuring. After careful consideration of the record of this review and for the reasons described in the Equity Infusions Analysis Memorandum, we preliminarily find that while private creditors participated in the debt-to-equity conversions in the first, second, and third equity infusions, we cannot rely on the prices paid by the private creditors on the creditors councils for the purpose of determining a benchmark. Furthermore, as explained in the Equity Infusions Analysis Memorandum, we determined that KG Dongbu Steel is unequityworthy at the time of the first, second, and third debt-to-equity conversions. Therefore, we preliminarily find the entire amount of the equity infusions relating to the first, second, and third debt-to-equity conversion to be the benefit.<sup>61</sup>

However, at the time of the fourth debt-to-equity conversion, an additional private investor price existed because of the merger and acquisition (M&A). In this particular circumstance, the share price to government-owned creditors in KG Dongbu Steel's Creditor Financial Institutions' Committee (DSCFIC) was KRW 25,000 per share resulting from the debt-to-equity conversion, whereas the share price to private investors for the M&A was KRW 5,000 per share, and the purchases of newly issued shares by private investors were significant.<sup>62</sup> As described in the Equity Infusions Analysis Memorandum, we preliminarily find that the share price offered to private investors is reliable for determining a benchmark for purposes of the benefit calculation for the fourth equity infusion. A detailed analysis concerning equityworthiness and private investor prices is provided in the Equity Infusions Analysis Memorandum.<sup>63</sup>

## **F. Denominators**

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondent's receipt of benefits under each program. As discussed in further detail below, where the program has been found to be countervailable as a domestic subsidy, we have used total sales as the denominator for our subsidy rate calculations for Hyundai Steel and KG Dongbu. For KG Dongbu, because the short-term discounted loans for export receivables have been found to be countervailable as an export subsidy, we have used the recipient's export sales as the denominator. In the section below, we describe the denominators we used to calculate the countervailable subsidy rates for the various subsidy programs.

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<sup>60</sup> See Memorandum, "Preliminary Analysis Memorandum – Equity Infusions," dated concurrently with this memorandum (Equity Infusions Analysis Memorandum) at 9-13.

<sup>61</sup> *Id.* at 10.

<sup>62</sup> *Id.* at 8.

<sup>63</sup> *Id.* at 10-14.

## VII. ANALYSIS OF PROGRAMS

### A. Programs Preliminarily Determined to be Countervailable

#### 1. KG Dongbu Steel's Debt Restructuring

The GOK and KG Dongbu Steel reported that among the nine creditor banks on the KG Dongbu Steel Creditor Banks Committee (Creditor Bank Committee) administering KG Dongbu Steel's debt restructuring, the KDB, Corporate Bond Stabilization Fund (CBSF), Korea Financial Corporation (KoFC), KEXIM, Woori Bank (Woori) and Industrial Bank of Korea (IBK) were government-controlled.<sup>64</sup> The four remaining were private commercial banks (Nonghyup Bank, Shihan Bank, Hana Bank, Korea Exchange Bank).<sup>65</sup> The KDB was the primary creditor bank of KG Dongbu Steel.<sup>66</sup>

The Creditor Bank Committee held a series of meetings during 2014 to resolve how to restructure KG Dongbu Steel's debt. KG Dongbu reported that, on July 7, 2014, the first Creditor Bank Committee meeting was held which established the participation of the above-listed nine banks in KG Dongbu Steel's debt restructuring.<sup>67</sup> At the second meeting held on July 21, 2014, the Creditor Bank Committee approved certain emergency operating loans for KG Dongbu Steel.<sup>68</sup> The Creditor Bank Committee then approved a debt restructuring plan.

Three additional debt restructuring plans were approved by the DSCFIC under the Corporate Restructuring Promotion Act. The restructuring plans involved the restructuring of certain existing loans, corporate bonds, and L/C Usance loans. There were also four debt-to-equity conversions during the AUL and POR. Additionally, the last debt restructuring plan involved an investment in KG Dongbu Steel through a M&A agreement. Further details of the restructuring plans, as well as the pre-debt restructuring, are enumerated in the Equity Infusions Analysis Memorandum.<sup>69</sup>

#### *Financial Contribution and Specificity*

In the investigation and prior administrative reviews, Commerce found that the GOK-controlled banks of the Creditor Bank Committee are authorities under section 771(5)(B) of the Act and determined that under the debt restructuring the GOK-controlled policy banks provided a financial contribution to KG Dongbu Steel as defined under section 771(5)(D)(i) of the Act.<sup>70</sup> Specifically, we found in the final determination of the investigation and the first administrative review that KDB, CBSF, KoFC, KEXIM, Woori, and IBK are majority government-owned

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<sup>64</sup> The Creditor Bank Committee consists of KDB; KoFC; KEXIM; Woori; IBK; Nonghyup Bank; Shihan Bank, Hana Bank; and Korea Exchange Bank. See KG Dongbu's Initial QR at 51-54.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> See KG Dongbu's Initial QR at 26.

<sup>68</sup> *Id.* at 24 and Exhibit A-14.

<sup>69</sup> See Equity Infusions Analysis Memorandum at 1-8.

<sup>70</sup> See, e.g., *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Affirmative Determination*, 80 FR 68842 (November 6, 2015), and accompanying PDM at 13-14, unchanged in *CORE Investigation Final*; and *CORE First Admin Review Prelim*, and accompanying PDM at 13.

policy banks. Commerce also found that this program is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act, as the recipients of this special financing from the Creditor Bank Committee are limited in number.<sup>71</sup>

No information has been provided on the record of the current review that would cause us to reach a different determination.<sup>72</sup> Thus, we continue to find that the KDB, KoFC,<sup>73</sup> KEXIM, Woori, CBSF, and IBK are government-owned policy banks.<sup>74</sup> As Commerce explained in *NOES from Korea* final determination, policy banks are created by a government in order to implement government industrial policies through the provision of financing to industries and enterprises; thus, a policy bank, by its very nature, is an authority under section 771(5)(B) of the Act.<sup>75</sup> Because each of the six GOK-controlled banks (*i.e.*, KDB, CBSF, KoFC, KEXIM, Woori, and IBK) are policy banks, we preliminarily determine that they are authorities under section 771(5)(B) of the Act. We also preliminarily determine that, through the debt restructuring program, these six authorities provided a financial contribution to KG Dongbu Steel, as defined under section 771(5)(D)(i) of the Act.<sup>76</sup> Further, we found this program to be *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

### *Benefit*

#### a. Restructured Loans

In the investigation and the prior administrative reviews, we calculated the benefit from these restructured loans from GOK-controlled banks by comparing the interest actually paid on the loans during the period of investigation (POI) or POR to what the company would have paid on a comparable loan during the POI or POR. Furthermore, as Commerce found KG Dongbu Steel to be uncreditworthy at the time when the loans were restructured, Commerce calculated and used an uncreditworthy benchmark pursuant to the formula found in 19 CFR 351.505(a)(3)(iii).<sup>77</sup>

Under section 771(5)(E)(ii) of the Act, there is a benefit with respect to the provision of a loan if there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market. While there were some private commercial banks involved in the debt restructuring of KG Dongbu Steel, the restructuring of KG Dongbu Steel's debt was not overseen by those private banks.<sup>78</sup> Instead, KG Dongbu Steel's debt restructuring was controlled by the Creditor Bank Committee, which, in turn, was controlled by GOK policy banks, such as

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

<sup>72</sup> See *Magnola Metallurgy, Inc. v. United States*, 508 F.3d 1349, 1354-56 (Fed. Cir. 2007) (affirming that in an administrative review, Commerce need not re-examine an affirmative finding of specificity that was made in a prior segment of the proceeding). See also KG Dongbu's Initial QR at 51-54.

<sup>73</sup> KDB and KoFC merged on January 1, 2015.

<sup>74</sup> See KG Dongbu's Initial QR at 51-54.

<sup>75</sup> See *Non-Oriented Electrical Steel from the Republic of Korea: Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 79 FR 61605 (October 14, 2014) (*NOES from Korea*), and accompanying IDM at Comment 7.

<sup>76</sup> See *CORE Investigation Final IDM* at 28.

<sup>77</sup> See *CORE First Admin Review Final IDM*; see also *CORE Second Admin Review IDM* at "Dongbu Debt Restructuring Program."

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

the KDB. Therefore, the record of this case does not warrant any change from prior reviews. Consistent with *Refrigerators from Korea* and prior reviews,<sup>79</sup> we preliminarily determine that the loans from private creditors on the Creditor Bank Committee cannot be construed to be “comparable commercial loans” and, thus, cannot be used as a commercial benchmark under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(2), because the Creditor Bank Committee is controlled by GOK-controlled policy and special purpose banks.

To determine the benefit conferred to KG Dongbu Steel from these loans and loan restructuring during the POR, in accordance with 19 CFR 351.505(c)(2), we calculated the benefit from these loans by comparing the interest actually paid on the loans during the POR to the benchmarks as described in the “Benchmarks and Discount Rates” section above, during the POR. As explained in the “Creditworthiness” section of this memorandum, we preliminarily determine that KG Dongbu Steel was uncreditworthy at the time when these loans were restructured. Therefore, we have adjusted the benchmark rate using the methodology set forth under 19 CFR 351.505(a)(3)(iii), by adding a risk premium to the discount rate. We then applied this benchmark to both KG Dongbu Steel’s restructured long-term loans and bonds it received during the POR. On this basis, we determined a net countervailable subsidy rate of 5.38 percent *ad valorem* in 2019 for KG Dongbu.<sup>80</sup>

#### b. Debt-to-Equity Conversion

KG Dongbu Steel and the GOK reported that KG Dongbu Steel’s creditors committee had three debt-to-equity conversions during the AUL period and one debt-to-equity conversion in the POR. The first debt-to-equity conversion of KWR 53 billion took place in February 2015.<sup>81</sup> The second debt-to-equity conversion of KWR 200 billion took place on May 9, 2016.<sup>82</sup> The third debt-to-equity conversion of KWR 200 billion took place on April 3, 2018.<sup>83</sup> The fourth debt-to-equity conversion of KWR 605 billion took place on August 31, 2019.<sup>84</sup>

Generally, in case of a government equity infusion, “a benefit exists to the extent that the investment decision is inconsistent with the usual investment practice of private investors.”<sup>85</sup> Commerce will consider a government equity infusion as being “inconsistent with usual investment practice if the price paid by the government for newly issued shares is greater than the price paid by private investors for the same (or similar form of) newly issued shares.”<sup>86</sup> If private investor prices are available, then Commerce will compare the price paid by the government for the newly issued shares to the prices paid by the private investors for the same (or similar) newly issued shares. If private investor prices are unavailable, then Commerce may examine whether the respondent company was equityworthy at the time of the government-

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<sup>79</sup> See *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410 (March 16, 2012), and accompanying IDM at 111-14. See also *CORE Third Admin Review Prelim PDM* at 14, unchanged in *CORE Third Admin Review Final*.

<sup>80</sup> See KG Dongbu’s Preliminary Calculation Memorandum.

<sup>81</sup> See KG Dongbu’s Initial QR at 28.

<sup>82</sup> *Id.* at 43.

<sup>83</sup> *Id.* at 44.

<sup>84</sup> *Id.* at 45-46.

<sup>85</sup> See 19 CFR 351.507(a)(1).

<sup>86</sup> See 19 CFR 351.507 (a)(2).

provided equity infusion.<sup>87</sup>

In previous reviews of CORE, we did not perform an analysis of KG Dongbu Steel's equityworthiness. Instead, we determined that KG Dongbu Steel did not receive a benefit because the share price was the same for GOK-controlled creditors as it was for the private creditors. Furthermore, we noted that the private creditors accounted for a significant percentage of the shares of debt that were converted to equity. However, we stated, "{w}hile we are not making an unequityworthiness finding and continue to find the equity infusions provided no benefit to Dongbu for the instant administrative review, we may re-examine this issue for the next administrative review if new record evidence requires such an examination."<sup>88</sup>

After further analysis of the facts on the record of this immediate review, we have determined not to rely on the private investor prices for the first, second, and third equity infusions, because they were not "significant" within the meaning of 19 CFR 351.507(a)(2)(ii) for the following reasons.<sup>89</sup> First, the private creditors did not evaluate the reasonableness of the rate of return on any equity they were considering investing in the company in the first, second and third equity infusions. Rather, they were considering how best to limit their losses and maximize the debt recovery. Furthermore, they were part of the existing group of creditors involved in the debt restructuring.<sup>90</sup> Second, the record demonstrates that the GOK-controlled creditors had control of the decision making within the Creditor Bank Committee and DSCFIC.<sup>91</sup> In addition, the purpose of the policy banks was to implement government industrial policies through the provision of financing to troubled industries and enterprises. Third, the KDB exercised considerable control over the debt restructuring.<sup>92</sup> For further analysis, please see the Equity Infusions Analysis Memorandum.

Therefore, because we did not find the private prices from creditors to be reliable for the first three debt-to-equity conversions, we performed an equityworthiness analysis pursuant to 19 CFR 351.507(a)(3), which states, "{i}f actual private investor prices are not available under paragraph (a)(2) of this section, the Secretary will determine whether the firm funded by the government-provided equity was equityworthy or unequityworthy at the time of the equity infusion." In addition, 19 CFR 351.507(a)(4) states that "the Secretary will consider a firm to have been equityworthy if the Secretary determines that, from the perspective of a reasonable private investor examining the firm at the time the government-provided equity infusion was made, the firm showed an ability to generate a reasonable rate of return within a reasonable period of time."

Furthermore, pursuant to 19 CFR 351.507(a)(4)(ii), we requested KG Dongbu to provide questionnaire responses concerning KG Dongbu Steel's financial well-being surrounding the debt restructuring and the three equity infusions. In addition, as instructed by *CVD Preamble* to our regulations, we performed an analysis of information sufficient to determine the expected

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<sup>87</sup> See 19 CFR 351.507(a)(3).

<sup>88</sup> See *CORE Third Admin Review Final IDM* at Comment 7.

<sup>89</sup> See Equity Infusions Analysis Memorandum at 10-11.

<sup>90</sup> *Id.* at 13-21.

<sup>91</sup> *Id.* at 3-7.

<sup>92</sup> *Id.*



risk-adjusted return and how such a return compares to that of alternative investment opportunities of similar risk.<sup>93</sup>

In particular, we note that the creditors council commissioned Price Waterhouse Coopers (PWC) to prepare reports identifying the value of KG Dongbu Steel if the company was liquidated, or if KG Dongbu Steel continued as a going concern, during different stages of the debt restructuring.<sup>94</sup> KG Dongbu Steel's creditors were interested in how best to maximize KG Dongbu Steel's value in order to recover debt financing investments, and they sought to determine whether KG Dongbu Steel as a whole was worth more as a going concern, or at liquidation value. As they had already committed substantial debt capital to KG Dongbu Steel, the information on the record demonstrates that they were merely interested in how to recover the debt financing already invested in KG Dongbu Steel. Also, KG Dongbu Steel was effectively under the control of its creditors. This is inconsistent with the usual investment practice of private investors, which is to evaluate the potential risk versus the expected return. Typically, private investors analyze information to determine the expected risk-adjusted return as well as how such a return compares to that of alternative investment opportunities of similar risk. Therefore, we preliminarily determine that there was no analysis containing information typically examined by potential private investors as required under 351.507(a)(4)(ii). Even if we are to assume that the PWC analysis meets the requirement under 351.507(a)(4)(ii), an examination of the factors under 351.507(a)(4)(i) shows that KG Dongbu Steel was unequityworthy at the time the government-provided equity infusion was made."<sup>95</sup>

Furthermore, based on our analysis of 19 CFR 351.507(a)(4)(i)(A), the PWC reports provide no indication that new equity shareholders could expect any return on investment. The PWC reports indicate that proposed equity conversions might have been advantageous for KG Dongbu Steel's creditors' ability to recover as much as possible of their existing debt investments in the company, but they do not show that the proposed debt-to-equity conversions would be advantageous as equity investments in and of themselves. Most relevant, the PWC reports and the subsequent analyses were never intended to evaluate the value of the equity investments or return on the equity infusions themselves. The PWC reports and subsequent analyses' calculations of KG Dongbu Steel's value as a going concern do not account for creditors' claims on KG Dongbu Steel's free cash flows and non-business use assets. Thus, the methodology used in the PWC reports and subsequent analyses calculated the value of KG Dongbu Steel as a whole (as a going concern or under liquidation).<sup>96</sup>

In addition, pursuant to 19 CFR 351.507(a)(4)(i)(B), we requested that KG Dongbu provide the following relevant financial information and ratios to help us determine the company's equityworthiness. For the years 2012-2019, KG Dongbu Steel provided its current ratios, quick ratios, debt-to-equity ratios, net income, net profit margin, return on shareholder equity, interest coverage ratios, ratio of free cash flow over interest expense, ratio of operating cash flow over interest expense, ratio of free cash flow over shareholder equity, ratio of operating cash flow over shareholder equity, and ratio of leverage free cash flow over shareholder's equity. Our

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<sup>93</sup> See *Countervailing Duties; Final Rule*, 63 FR 65348, 65378 (November 25, 1998) (*CVD Preamble*).

<sup>94</sup> See, e.g., KG Dongbu's Initial QR at Exhibit B-7.

<sup>95</sup> See *Equity Infusions Analysis Memorandum* at 14-15.

<sup>96</sup> *Id.* at 15-16.

analysis in the Equity Infusions Analysis Memorandum indicates the company does not meet standards which would indicate it was equityworthy during the first, second and third debt-to-equity conversions.<sup>97</sup> Furthermore, KG Dongbu Steel's current and past indicators of financial health show that KG Dongbu Steel was unequityworthy at the time of the first, second, and third debt-to-equity conversions. Moreover, based on 19 CFR 351.507(a)(4)(i)(C), we reviewed rates of return on equity in the three years prior to the government equity infusion. As explained in the Equity Infusions Analysis Memorandum, KG Dongbu Steel failed to make a profit from 2012 through 2018. Thus, KG Dongbu Steel had no returns in the three years prior to any of the three debt-to-equity conversions.

Furthermore, pursuant to 19 CFR 351.507(a)(4)(i)(D), we reviewed the equity investments by private creditors in KG Dongbu Steel's debt-restructuring plan. As noted above, the prices paid by the private members of the creditors committee are not reliable for purposes of determining a benchmark market price under 19 CFR 351.507(a)(2)(i). Thus, they are also not usable for our equityworthiness analyses for the reasons explained above.

For the reasons explained above, we have determined that KG Dongbu Steel was not equityworthy at the time of either the February 16, 2015, May 9, 2016, or April 3, 2018 debt-to-equity conversions. Because we preliminarily find KG Dongbu Steel to be unequityworthy at the time of each of the first, second, and third debt-to-equity conversions, we find the benefit to be the entire amount of the debt-to equity infusion made by GOK-owned or controlled financial institutions, in accordance with 19 CFR 351.507(a)(6). In accordance with 19 CFR 351.507(a)(7)(c), we treated the benefit as a non-recurring subsidy and allocated the benefit over the AUL in accordance with 19 CFR 351.524(d).

Regarding the fourth equity infusion, as discussed above in the "Equityworthiness and Existence of Private Investor Prices" section as well as in Equity Infusions Analysis Memorandum, we preliminarily determine the private investor share price meets our criteria for use of private investor share prices, and we preliminarily determine to use the private investor share price as our benchmark to determine the benefit. Furthermore, in accordance with 19 CFR 351.507(a)(7)(c), we treated the benefit as a non-recurring subsidy and allocated the benefit over the AUL in accordance with 19 CFR 351.524(d). In order to calculate the benefit, we multiplied the difference between the GOK financial institutions share price resulting from the debt-to-equity conversion and the private investor share price by the shares of common stock received by the GOK financial institutions from the debt-to-equity conversion.

We preliminarily determine the subsidy provided to KG Dongbu Steel by the GOK for all equity infusions to be 5.09 percent *ad valorem* during the POR. For a complete discussion regarding the calculation of KG Dongbu's subsidy rate under this program, *see* KG Dongbu's Preliminary Calculation Memorandum, dated concurrently with this memorandum.

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<sup>97</sup> *Id.* at 17-20.

## **2. KDB and Industrial Base Fund (IBF) Short-Term Discounted Loans for Export Receivables**

Commerce has previously determined that short-term export financing in the form of discounted D/A loans issued by the KDB and other GOK policy banks are countervailable.<sup>98</sup> The GOK did not submit any evidence that would compel Commerce to revisit its previous decisions. During the POR, KG Dongbu Steel received D/A financing from the KDB for its export of subject merchandise to the United States.<sup>99</sup> As described above, KDB is an authority under section 771(5)(B) of the Act.<sup>100</sup> Thus, Commerce preliminarily determines that the KDB operated as a wholly state-owned policy bank, and provided a financial contribution through a direct transfer of funds to the respondent under section 771(5)(D)(i) of the Act. We also preliminarily determine that KDB lending is specific, in accordance with sections 771(5A)(A) and (B) of the Act, as the financing offered by the KDB is contingent upon export performance. A benefit within the meaning of section 771(5)(E)(ii) of the Act is conferred on the recipient to the extent that the recipient pays a lower interest rate on the loans than it would pay on a comparable short-term commercial loan.

Only KG Dongbu reported using this program. To calculate the benefit, we used the benchmarks described in the “Benchmarks and Discount Rates” section above, as well as the methodology described in 19 CFR 351.505(c) by taking the difference between the interest KG Dongbu Steel paid and the interest it would have paid on a comparable commercial loan during the POR, and dividing that benefit amount by KG Dongbu Steel’s total export sales of the subject merchandise to the United States during the POR. On this basis, we preliminarily determine that KG Dongbu received a countervailable subsidy rate of 0.01 percent *ad valorem*.<sup>101</sup>

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

Hyundai Steel reported receiving tax exemptions under Article 78 of the RSLTA.<sup>102</sup> The GOK administers the tax exemption program under Article 78 of the RSLTA to provide incentives for companies to relocate from populated areas in the Seoul metropolitan region to industrial sites in underdeveloped areas of the country.<sup>103</sup> Under Article 78 of the RSLTA, any entity acquiring real estate in a designated industrial complex for the purpose of constructing new buildings or renovating existing ones shall be exempted from the acquisition tax.<sup>104</sup> In addition, the entity located in these designated industrial complexes shall have the property tax reduced by 35 percent on the real estate for five years from the date the tax liability becomes effective. The property tax exemption is increased to 60 percent of the relevant land, buildings, or facilities that are located in an industrial complex outside of the Seoul metropolitan area. The program is

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<sup>98</sup> See *Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 FR 60639 (October 17, 2007), and the accompanying IDM at 17-18; see also *CORE Investigation Final*; and *CORE First Admin Review Final*.

<sup>99</sup> See KG Dongbu’s Initial QR at 18-19.

<sup>100</sup> See *NOES from Korea* IDM at Comment 7.

<sup>101</sup> See KG Dongbu’s Preliminary Calculation Memorandum.

<sup>102</sup> See Hyundai Steel’s Initial QR at 21-22 and Exhibit D-1.

<sup>103</sup> See GOK IQR at 1 of Appendix-7.

<sup>104</sup> *Id.* at 6-10 of Appendix-7.

administered by the local tax officials of the county where the industrial complex is located. The GOK reported there were no changes to this program during the POR.<sup>105</sup> KG Dongbu reported it did not use this program during the POR.<sup>106</sup>

Based on the above facts, we preliminarily determine that the tax reductions constitute a financial contribution in the form of revenue forgone, as described under section 771(5)(D)(ii) of the Act, and confer a benefit pursuant to section 771(5)(E) of the Act, and 19 CFR 351.509(a). We further preliminarily determine that the tax exemptions provided under this program are specific under section 771(5A)(D)(iv) of the Act, because the subsidies are limited to enterprises located within designated geographical regions. Our findings regarding financial contribution and specificity are consistent with prior CVD proceedings involving Korea.<sup>107</sup>

The tax credits provided under this program are recurring benefits, because the taxes are due annually. Thus, the benefit is expensed in the year in which it is received.<sup>108</sup> Hyundai Steel reported its tax benefits including the required Special Rural Development Tax that must be paid in order to receive the acquisition tax benefit, claiming the payment of Special Rural Development Tax as an offset in their benefit calculations.<sup>109</sup> However, we previously found that the “Special Rural Development Tax” does not meet the statutory requirement to be recognized as an offset.<sup>110</sup> Specifically, we stated that:

The application of the Special Rural Development Tax is a consequence of the exemption of acquisition or registration taxes; the Special Rural Development Tax obligation arises only when the exemption is granted. It is not a prerequisite to the exemption the way an application fee might be. Furthermore, as provided in 19 CFR 351.503(e), when calculating the amount of the benefit conferred from a countervailable subsidy program, the {Commerce} does not consider the tax consequences of the benefit.<sup>111</sup>

Accordingly, we calculated the tax benefits to Hyundai Steel without including the offset for the “Special Rural Development Tax.” To calculate the benefit, we subtracted the amount of taxes paid by Hyundai Steel from the amounts that would have been paid absent the program. To

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<sup>105</sup> *Id.*

<sup>106</sup> See KG Dongbu’s Initial QR at 65.

<sup>107</sup> See, e.g., *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; and Rescission of Review, in Part; Calendar Year 2017*, 84 FR 15182 (April 15, 2019), and accompanying PDM at 8, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; Calendar Year 2017*, 84 FR 42893 (August 19, 2019) (*CTL Plate from Korea 2017 Final*), and accompanying IDM at 4; and *Large Diameter Welded Pipe from the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 30693 (June 29, 2018) (*LDWP from Korea Prelim*), and accompanying PDM at 21-22, unchanged in *Large Diameter Welded Pipe from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 84 FR 6369 (February 27, 2019) (*LDWP from Korea Final*), and accompanying IDM at 14.

<sup>108</sup> See 19 CFR 351.524(a) and (c).

<sup>109</sup> See Hyundai Steel’s Initial QR at 21 and Exhibits D-1 and D-3

<sup>110</sup> See *Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012), and accompanying IDM at 16 and Comment 10.

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

calculate the net subsidy rate, we divided the total benefit by the total sales of the company. On this basis, we preliminarily determine the net subsidy rate under the Article 78 program for Hyundai Steel to be 0.01 percent *ad valorem* for 2019.<sup>112</sup>

#### **4. Restriction of Special Taxation Act (RSTA) Article 25(1)(2), formerly RSTA Article 25(2)**

Hyundai Steel reported receiving tax deductions under Article 25(1)(2).<sup>113</sup> KG Dongbu reported it did not use this program during the POR.<sup>114</sup> This program facilitates the enhancement of energy efficiency in business sectors through a deduction from income taxes payable. Commerce previously determined that this program was countervailable.<sup>115</sup> The GOK reported that the now former Article 25(2) of the RSTA was integrated into an amended Article 25 of the RSTA effective January 1, 2019.<sup>116</sup>

We preliminarily determine that this program results in a financial contribution from the GOK to recipients in the form of revenue forgone, as described in section 771(5)(D)(ii) of the Act. The benefit conferred on the recipient is the difference between the amount of taxes it paid and the amount of taxes that it would have paid in the absence of this program, in accordance with section 771(5)(E) of the Act and described in 19 CFR 351.509(a), effectively, the amount of the tax credit claimed. Regarding specificity, based on record evidence, we preliminarily determine there is no basis to find the program is limited, by law, to certain enterprises or industries under section 771(5A)(D)(i) of the Act. Therefore, we next examined whether the program is specific as a matter of fact under section 771(5A)(D)(iii) of the Act. Information from the GOK indicates that there were 787,438 corporate tax returns filed in 2019, of which 802 claimed the Article 25(1)(2) tax deduction.<sup>117</sup> Accordingly, we preliminarily determine that this program is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act, because the actual recipients of the subsidy are limited in number.

To calculate the net subsidy rate, we divided the amount of the tax savings received by Hyundai Steel by its total sales during the POR. On this basis, we preliminarily determine that Hyundai Steel received a countervailable subsidy rate of 0.06 percent *ad valorem* under this program.<sup>118</sup>

#### **5. RSTA Article 25(1)(3), formerly RSTA Article 25(3)**

Hyundai Steel reported receiving tax deductions under Article 25(1)(2).<sup>119</sup> KG Dongbu reported it did not use this program during the POR.<sup>120</sup> RSTA Article 25(1)(3) aims to motivate investments in facilities that are constructed for the purpose of preserving the environment.<sup>121</sup>

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<sup>112</sup> See Hyundai Steel's Preliminary Calculation Memorandum.

<sup>113</sup> See Hyundai Steel's Initial QR at 17.

<sup>114</sup> See KG Dongbu's Initial QR at 63.

<sup>115</sup> See *CORE Investigation Final*; see also *CORE First Admin Review Final*.

<sup>116</sup> See GOK's Initial QR at 14 of Appendix-4; see also GOK's Supplemental QR at Exhibit SQR1-RSTA 25.

<sup>117</sup> *Id.* at 12 of Appendix-4; see also GOK's Second Supplemental QR at 2.

<sup>118</sup> See Hyundai Steel's Preliminary Calculation Memorandum.

<sup>119</sup> See Hyundai Steel's Initial QR at 17.

<sup>120</sup> See KG Dongbu's Initial QR at 63.

<sup>121</sup> See GOK's Initial QR at 1 of Appendix-5.

Under RSTA Article 25(3), taxpayers may apply for a tax deduction from the income tax or corporate tax due. The GOK reported that the now former Article 25(3) of the RSTA was integrated into an amended Article 25 of the RSTA effective January 1, 2019.<sup>122</sup>

We preliminarily determine that the GOK provided a financial contribution to the recipients in the form of revenue forgone, as described in section 771(5)(D)(ii) of the Act. The benefit conferred on the recipient is the difference between the amount of taxes it paid and the amount of taxes that it would have paid in the absence of this program, as provided under section 771(5)(E) of the Act and described in 19 CFR 351.509(a), effectively, the amount of the tax credit claimed. We preliminarily determine that the provision of this tax benefit is specific, in fact, to an enterprise or industry or group thereof, pursuant to section 771(5A)(D)(iii) of the Act. The GOK reported that 439 companies were approved for assistance under this program.<sup>123</sup> Because only 439 companies benefitted from this program of a total of 740,215 corporate tax returns filed in 2019, we preliminarily determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, because the actual recipients of the subsidy are limited in number.

To calculate the net subsidy, we divided the amount of the tax savings received by Hyundai Steel by its total sales during the POR. On this basis, we preliminarily determine that Hyundai Steel received a countervailable subsidy rate of 0.11 percent *ad valorem* under this program.

## **6. Tax Deduction Under RSTA Article 26**

Under Article 26 of the RSTA, the GOK provides tax incentives to companies that make investments in their respective fields of business.<sup>124</sup> Under RSTA Article 26, taxpayers are permitted to apply for a tax deduction from the income tax or corporate tax of the qualifying investment.<sup>125</sup> The following categories of companies qualify for the tax incentives provided under the program: (1) a small- or medium-sized enterprise; and (2) a “middle-standing” company.<sup>126</sup> The GOK noted that there were no changes made to this program during the POR.<sup>127</sup> The relevant law authorizing the credit, RSTA Article 26, limits this program to enterprises or industries within a designated geographical region within the jurisdiction of the authority providing the subsidy, areas outside the Seoul Metropolitan Area.<sup>128</sup> Hyundai Steel claimed tax credits under this program on the tax return filed during the POR.<sup>129</sup> KG Dongbu reported it did not use this program during the POR.<sup>130</sup>

We preliminarily determine that the tax reductions under RSTA Article 26 constitute a financial contribution in the form of revenue forgone, as described under section 771(5)(D)(ii) of the Act, and confer a benefit pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a). We further preliminarily determine that the tax exemptions provided under this program are specific

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<sup>122</sup> *Id.* at 17 of Appendix-5.

<sup>123</sup> See GOK’s Second Supplemental QR at 4.

<sup>124</sup> See GOK’s Initial QR at 1 of Appendix-6.

<sup>125</sup> *Id.* at 6-8 of Appendix-6.

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

<sup>127</sup> *Id.* at 19 of Appendix-6.

<sup>128</sup> *Id.* at 6-8 of Appendix-6.

<sup>129</sup> See Hyundai Steel’s Initial QR at 18.

<sup>130</sup> See KG Dongbu’s Initial QR at 52.

under section 771(5A)(D)(iv) of the Act, because benefits are limited to enterprises located within designated geographical regions. Our findings in this regard are consistent with prior CVD proceedings involving Korea.<sup>131</sup>

To calculate the benefit for Hyundai Steel, we subtracted the amount of taxes paid by the firm from the amount that would have been paid absent the program. To calculate the net subsidy rate, we divided the total benefit by the total sales of the company. On this basis, we preliminarily determine the net subsidy rate under this program during the POR to be 0.18 percent *ad valorem* for Hyundai Steel.<sup>132</sup>

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

The DRR Program was developed in November 2014 to allow the Korea Power Exchange (KPX) to respond in a timely manner to any imbalance between supply and demand of electricity in the market, curb peak demand, optimize the construction of additional generators, and save the supply cost of electricity.<sup>133</sup> The program contains two sub-programs, the DRR Program for Peak Curtailment and the DRR Program for Electricity Price Curtailment.<sup>134</sup> The former program is designed to curtail load during peak electricity demand periods, and the latter is intended to minimize power generation costs through price competition.<sup>135</sup> The KPX, which manages the DRR program, pays multiple private Demand Management Business Operators, also called “aggregators,” which have direct, contractual relationships with end users of the program.<sup>136</sup> End users receive cash payments from those aggregators.<sup>137</sup> Prior to that exchange between the KPX and the aggregators, the Korea Electric Power Corporation (KEPCO) pays the KPX for the latter’s role in demand curtailment under the program.<sup>138</sup> KPX is majority-owned by KEPCO, which is, in turn, majority-owned by the GOK.<sup>139</sup> This program is established and operated under Article 31 of the Electricity Business Law (EBL) and Chapter 12 of the Rules on Operation of Electricity Utility Market (ROEUM).<sup>140</sup>

Consistent with our prior findings and further explained below, we preliminarily find KEPCO and KPX to be “authorities” within the meaning of section 771(5)(B) of the Act.<sup>141</sup> Therefore, we determine that a financial contribution in the form of a direct transfer of funds from KPX is provided to companies participating in this program, under section 771(5)(D)(i) of the Act, and a

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<sup>131</sup> See *Certain Cut-To-Length Carbon-Quality Steel Plate from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review*; 2018, 85 FR 13136 (March 6, 2020) (*CTL Plate from Korea 2018 Prelim*), and accompanying PDM at 11, unchanged in *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*).

<sup>132</sup> See Hyundai Steel’s Preliminary Calculation Memorandum.

<sup>133</sup> See GOK’s Initial QR at 1-2 of Appendix-8.

<sup>134</sup> *Id.* at 1 of Appendix-8.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 2-3 of Appendix-8.

<sup>137</sup> *Id.* at 4 of Appendix-8.

<sup>138</sup> *Id.* at 7 of Appendix-8.

<sup>139</sup> *Id.* at 9 of Appendix-8.

<sup>140</sup> *Id.* at 7 of Appendix-8.

<sup>141</sup> *LDWP from Korea Prelim* PDM at 16, unchanged in *LDWP from Korea Final*.

benefit exists in the amount of the grant provided to KG Dongbu and Hyundai Steel, in accordance with 19 CFR 351.504(a). Our findings in this regard are consistent with prior CVD proceedings involving Korea.<sup>142</sup>

The GOK submits that a limited number of companies were approved for the assistance under this program in 2019,<sup>143</sup> though participation in it is available to “all entities” in Korea.<sup>144</sup> We, therefore, preliminarily determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual recipients of the subsidy were limited in number. Our findings in this regard are consistent with Commerce’s approach in prior CVD proceedings involving Korea.<sup>145</sup>

Because we found no evidence on the record indicating that subsidies under the DRR program were tied to export sales, we used the total sales of Hyundai Steel and KG Dongbu as denominators to determine the countervailable subsidy rates under this program during the POR. On this basis, we preliminarily determine the net subsidy rate that Hyundai Steel received under this program to be 0.07 percent *ad valorem* for 2019.<sup>146</sup> We also preliminarily determine that the net subsidy rate that KG Dongbu received under this program to be 0.03 percent *ad valorem* for 2019.<sup>147</sup>

## **8. Reduction for Sewerage Fees**

In the initial questionnaire responses, Hyundai Steel and Dongbu Incheon reported that they used this program.<sup>148</sup> This program provides a reduction in the water bill if a company can demonstrate that the amount of sewage water that was sent down the public sewerage system was less than the amount of clean water that it had consumed from the public water supply system.<sup>149</sup> Absent this program, the amount of sewage water that each user sends down into the public sewerage system is assumed to be the same as the amount of clean water that it consumed from the public water supply system. The user is then billed on that basis, regardless of how much sewage water is sent down to the public sewerage system.<sup>150</sup>

Under this program, the GOK bills companies and households for water consumption from the public water supply. If a user can show that the amount of sewage water that it has sent down the public sewerage system is less than the amount of clean water that it has consumed from the public water supply system, authorities will calculate the public sewerage system usage fee on the basis of the proven amount of the sewage water drained down the sewerage system.<sup>151</sup> A user can also use recycled water or install a “gray water system,” which is an approved system

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<sup>142</sup> *Id.*

<sup>143</sup> See GOK’s Initial QR at 15 of Appendix-8; and *CTL Plate from Korea 2018 Prelim PDM* at 12, unchanged in *CTL Plate from Korea 2018 Final*.

<sup>144</sup> See GOK’s Initial QR at 11-14 of Appendix-8.

<sup>145</sup> See *CTL Plate from Korea 2018 Prelim PDM* at 11-13, unchanged in *CTL Plate from Korea 2018 Final*.

<sup>146</sup> See Hyundai Steel’s Preliminary Calculation Memorandum.

<sup>147</sup> See KG Dongbu’s Preliminary Calculation Memorandum.

<sup>148</sup> See Hyundai Steel’s Initial QR at 58-59 and Exhibit I-43; see also KG Dongbu’s Initial QR at 83.

<sup>149</sup> See GOK’s Initial QR at 1-2 of Appendix-25.

<sup>150</sup> *Id.* at 2 of Appendix-25.

<sup>151</sup> *Id.* at 1-2 of Appendix-25.



by the GOK that processes unclean water for recycling purposes without discharging the unclean water through the public sewerage system. If recycled water is used or a gray water system is installed, the amount of the waste water that a user sends through the public sewerage system is considered to be less than the amount of clean water consumed from the public water supply system.<sup>152</sup> The reasoning for this conclusion is that, based on the recycling mechanism of the gray water system, the amount of waste water would be much less than the amount of water that a company or any other entity actually consumes.<sup>153</sup>

The legal basis for the program is found under Article 65(1) of the Sewerage Act and Article 36(2) of the Enforcement Decree of the Sewerage Act. For Incheon Metropolitan City, Article 14(1) and Article 21(1)(7) of the Incheon Metropolitan City Ordinance on Sewage System Usages, and Article 9 of the Enforcement Decree of the same ordinance stipulate the method by which the service fee and the usage of the public sewerage system is calculated.<sup>154</sup> For Pohang City, the method used to calculate the usage fee is stipulated in Articles 14 and 27 of the Pohang City Ordinance on Sewerage System Use and Article 15 of the Enforcement Regulation of the same ordinance.<sup>155</sup> To qualify for this program for Incheon Metropolitan City, companies or households must submit an application to their local government authority. For Pohang City, there is no application process. Although the program was introduced through the amendment of the Presidential Decree of the Sewerage Act by the Ministry of Environment, which is a central level of the Korean government, the authority to execute the program is delegated to regional level governments, which in this case was the Incheon Metropolitan City and Pohang City governments.<sup>156</sup> Further, the Incheon Metropolitan City Government delegated the authority to execute this program to local level governments, which in this case was the Incheon Waterwork Authority.<sup>157</sup>

The Incheon Waterwork Authority maintains the application forms and notification letters, which report that a “gray water” system” has been installed or show that the amount of water sent down the public sewerage system is less than the amount of clean water consumed from the public water supply system.<sup>158</sup> The public sewerage system usage fees are calculated on the basis of the sewage water actually used or deemed to have been used and not on the basis of the amount of clean water consumed from the public water supply system.<sup>159</sup> The approval notifications are then sent to applicants. The Incheon Waterwork Authority keeps a record as to the billing and collection of the public sewerage system usage fees.<sup>160</sup>

We preliminarily determine that the reduction in sewerage fees under this program results in a financial contribution from the GOK to the recipients in the form of revenue forgone, as described in section 771(5)(D)(ii) of the Act. Record information does not indicate that the reduction in sewerage fees under this program is limited by law to certain enterprises or

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<sup>152</sup> *Id.* at 2 of Appendix-25.

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

<sup>154</sup> *Id.* at 5 of Appendix-25.

<sup>155</sup> *Id.* at 9 of Appendix-25.

<sup>156</sup> *Id.* at 3 of Appendix-25.

<sup>157</sup> *Id.* at 3-4 of Appendix-25.

<sup>158</sup> *Id.* at 5 of Appendix-25.

<sup>159</sup> *Id.* at 1-2 of Appendix-25.

<sup>160</sup> *Id.*

industries.<sup>161</sup> For this reason, we preliminarily determine that this program does not meet the criteria to be considered *de jure* specific under section 771(5A)(D)(i) of the Act. We then examined whether the program is specific as a matter of fact under section 771(5A)(D)(iii) of the Act. Based on the total amount of revenue forgone by the GOK during the POR of which Hyundai Steel received a significant share, we preliminarily determine that this program is *de facto* specific within the meaning of section 771(5A)(D)(iii)(II) of the Act because Hyundai Steel received a predominant amount of the benefit under the program.<sup>162</sup>

The benefit conferred on the recipient under this program is the difference between the amount of sewerage fees paid by each respondent and the amount of sewerage fees that it would have paid in the absence of this program, in accordance with section 771(5)(E) of the Act. In effect, the benefit equals the amount of the sewerage fees waived if the company had paid the sewerage usage bill in full. We treated the total amount of fees waived during the POR to Hyundai Steel and Dongbu Incheon as the benefit attributable to each company.

To calculate the net countervailable subsidy rate for the POR, we divided the total benefit amount by each respondent's total sales during the POR. On this basis, we preliminarily determine a net subsidy rate of 0.01 percent *ad valorem* for Hyundai Steel.<sup>163</sup> We also preliminarily determine a net subsidy rate of 0.01 percent for KG Dongbu.<sup>164</sup>

## **9. Provision of Port Usage Rights at the Port of Incheon**

The GOK submits that this program is part of a public-private partnership wherein the GOK entered into an arrangement to construct a wharf at the North Port of Incheon (Incheon Wharf), attracting investment from the private sector instead of using its own budget.<sup>165</sup> The public-private partnership is a cooperative arrangement between two or more public and private partners, typically of a long-term nature, that work together to complete a project and/or to provide services to the population.<sup>166</sup> The Incheon Wharf project is administered by the Ministry of Oceans and Fisheries, under the Private Participation in Social Infrastructure Act introduced in 1994, and the Basic Plan for the Public-Private Partnership Projects, which is a ministerial decree adopted by the Ministry of Economy and Finance.<sup>167</sup> The details of the agreement on the Incheon Wharf project are contained in the North Incheon Wharf Private Investment Project Implementation Agreement (the Agreement) and maintained by the Ministry of Oceans and Fisheries.<sup>168</sup> The construction of the Incheon Wharf started in 2003 and ended in 2006.<sup>169</sup> The GOK bestowed the right to use the Incheon Wharf to the private partner for a specified period of time without paying port usage fees, as well as the right to collect certain usage fees from third-

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<sup>161</sup> *Id.* at 11 -13 of Appendix-25.

<sup>162</sup> *Id.* at 13 of Appendix-25; *see also Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review*; 2018, 86 FR 7063 (January 26, 2021), and accompanying PDM at 29-30.

<sup>163</sup> *See* Hyundai Steel's Preliminary Calculation Memorandum.

<sup>164</sup> *See* KG Dongbu's Preliminary Calculation Memorandum.

<sup>165</sup> *See* GOK's Initial QR at 27028.

<sup>166</sup> *Id.* at footnote 2.

<sup>167</sup> *Id.* at 1 of Appendix-23.

<sup>168</sup> *Id.* at 3 of Appendix-23 and Exhibit PPP-2.

<sup>169</sup> *Id.* at 28, Footnote 4.

party users.<sup>170</sup> Article 2 paragraph 54 of the Agreement states the types of fees that can be collected under the Harbor Act and the Harbor Transport Business Act.<sup>171</sup>

Hyundai Steel reported it entered into an agreement with the Ministry of Oceans and Fisheries regarding the construction of the wharf at North Incheon Harbor in August 2001, and entered into a revised agreement in April 2009.<sup>172</sup> Hyundai Steel financed the construction of Incheon Wharf and, pursuant to Korean law, ownership of the port facility reverted to the GOK in 2007.<sup>173</sup> Hyundai Steel received money from the GOK between 2004 and 2007 for some of the construction costs.<sup>174</sup> The remaining construction costs are being amortized by Hyundai Steel over a specified period.<sup>175</sup> Specifically, Hyundai Steel was granted the right to operate and use the port for its own operations freely, as well as collect fees from third-party users, for a specified time period.<sup>176</sup> Thus, Hyundai Steel reported it collected berth occupancy charges (or berthing income) from shipping companies and reported these amounts for each of the years from 2007 through 2019.<sup>177</sup>

Hyundai Steel also reported that in connection with its own usage of the port, it had a service contract with an unaffiliated private terminal operating company.<sup>178</sup> The specific harbor facility usage fees relating to the terminal operating company during the POR that Hyundai Steel reported are (1) apron usage fees, (2) land usage fees, and (3) open storage yard fees.<sup>179</sup> Hyundai Steel's treatment of harbor facility usage fees contains business proprietary information and cannot be disclosed in this decision memorandum.<sup>180</sup> For further analysis, see Hyundai Steel's Preliminary Calculation Memorandum.

We preliminarily determine that the program provides a financial contribution because the fees that the GOK gave Hyundai Steel the right to collect, which would otherwise have been collected by the GOK absent the agreement between the parties, represent revenue forgone by the GOK within the meaning of section 771(5)(D)(ii) of the Act. The berthing income and the harbor facility usage fees are revenue forgone by the GOK, as Hyundai Steel did not pay the GOK the fees it collected. Further, we preliminarily find the program to be specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients of the subsidy are limited in number.<sup>181</sup> A benefit exists under section 771(5)(E) of the Act in the amount of the fees exempted as reported by Hyundai Steel. Consistent with prior CVD proceedings involving Korea, we have treated this program as a recurring grant program.<sup>182</sup> To calculate the benefit we

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<sup>170</sup> *Id.* at 29.

<sup>171</sup> *Id.* at Exhibit PPP-2.

<sup>172</sup> *See* Hyundai Steel's Initial QR at 42.

<sup>173</sup> *Id.*

<sup>174</sup> *Id.* at 43.

<sup>175</sup> *Id.*

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

<sup>177</sup> *Id.* at 43 and Exhibit I-23.

<sup>178</sup> *Id.* at 46.

<sup>179</sup> *Id.* at 6-8.

<sup>180</sup> *See* Hyundai Steel's Preliminary Calculation Memorandum.

<sup>181</sup> *See* GOK's Initial QR at 28-29; *see also* Hyundai Steel Preliminary Calculation Memorandum.

<sup>182</sup> *See Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 2017, 85 FR 64122 (October 9, 2020), and accompanying IDM at Comment 6; *see also*,

summed up the berthing income and the harbor facility usage fees that Hyundai Steel benefitted from during the POR, and divided this amount by its total sales. On this basis, we preliminarily determine a countervailable subsidy rate of 0.01 percent *ad valorem* for Hyundai Steel under this program.<sup>183</sup> Our determination is consistent with that in the prior CORE review.<sup>184</sup>

#### **10. Research and Development (R&D) Grants Provided Under the Industrial Technology Innovation Promotion Act (ITIPA)**

Funding for research and development projects under the ITIPA is designed to promote innovation of industrial technologies and develop a base for industrial technology innovation.<sup>185</sup> The legal basis of this program is Article 11 of the ITIPA.<sup>186</sup> Under Article 11, the Ministry of Trade, Industry and Energy (MOTIE) is authorized to regulate and operate this program, and the Korea Evaluation Institute of Industrial Technology (KEIT), the Korea Institute of Energy Technology Evaluation and Planning (KETEP), and the Korea Industrial Complex Corporation (KICOX) are authorized to administer this program.<sup>187</sup> To implement this program, KEIT, KETEP, and KICOX prepare a basic plan each year for the development of industrial technology.<sup>188</sup>

The plan includes the technology R&D projects that KEIT, KETEP, and KICOX intend to pursue, and describes the application process and supporting documentation required from potential participants. According to the GOK, any company seeking to participate in one of the projects then prepares a business plan that conforms to the requirements set forth in the basic plan, and submits that business plan to the Review Committee established by MOTIE.<sup>189</sup> The Review Committee then evaluates the business plans submitted to verify their conformity with the terms and conditions set forth in the basic plan. If the business plans conform with the basic plan, MOTIE and the applicants for the program sign a contract, after which the government will contribute to the companies' project costs.<sup>190</sup> Regardless of the number of participants, per project, the GOK may contribute up to 75 percent of the total project costs if the participant is a small or medium size enterprise and 50 percent of the total project costs for all other companies.<sup>191</sup>

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*e.g., Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 72 FR 38565 (July 13, 2007), and accompanying IDM at 6-7 and Comment 1; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review*; 2011, 78 FR 55241 (September 10, 2013), and accompanying PDM at 11, unchanged in *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*; 2011, 79 FR 5378 (January 31, 2014); and *Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea*, 67 FR 62102 (October 3, 2002), and accompanying IDM at 20 and Comment 11.

<sup>183</sup> See Hyundai Steel Preliminary Calculation Memorandum.

<sup>184</sup> See *CORE Third Admin Review Prelim* at 24-25, unchanged in *CORE Third Admin Review Final*.

<sup>185</sup> See GOK's Initial QR at 1 of Appendix-9.

<sup>186</sup> *Id.* at 2 of Appendix-9.

<sup>187</sup> *Id.* at 1-2 of Appendix-9.

<sup>188</sup> *Id.* at ITIPA-3.

<sup>189</sup> *Id.* at 6-7 of Appendix-9.

<sup>190</sup> *Id.* at ITIPA-3.

<sup>191</sup> *Id.* at 6-7 of Appendix-9.

Consistent with prior CVD proceedings involving Korea, we preliminarily determine the ITIPA program to be *de jure* specific under section 771(5A)(D)(i) of the Act, because it is limited to projects in certain fields of industrial technology that MOTIE, or the administering authorities working on behalf of MOTIE, determine will support the development of industrial technologies in Korea.<sup>192</sup>

For the portion of the subsidy that does not have to be repaid, we preliminarily determine that a financial contribution was provided within the meaning of section 771(5)(D)(i) of the Act because the GOK's payments constitute a direct transfer of funds, and a benefit exists in the amount of the grant provided in accordance with section 771(5)(E) of the Act and 19 CFR 351.504(a).

KG Dongbu reported it did not participate in this program.<sup>193</sup> During the POR, Hyundai Steel received various R&D grants pursuant to the ITIPA.<sup>194</sup> The names of the R&D projects in which Hyundai Steel has participated are business proprietary and, thus, cannot be disclosed in this decision memorandum.<sup>195</sup> We find no evidence on the record indicating that subsidies under the ITIPA program were tied to export sales. Therefore, we divided the total grants received under ITIPA by the total sales of Hyundai Steel in order to determine whether this program conferred a countervailable benefit during the POR.<sup>196</sup> Accordingly, we preliminarily determine that the net subsidy rate that Hyundai Steel received under this program during the POR is 0.01 percent *ad valorem*.

## **11. Discount of Electricity Fee for Energy Storage System (ESS)**

The electricity discounts under the ESS program is designed to reduce the maximum demand of electricity in Korea and is administered by KEPCO.<sup>197</sup> Under this program, participants improve the power usage efficiency by storing the produced electricity in a storage device and supplying it when power is needed.

For the ESS program, KEPCO provides two types of electricity discounts to participants that operate qualifying systems: (1) a basic fare discount; and (2) an electric power consumption price discount. The basic fare discount is calculated by KEPCO by multiplying the average of the reduced electricity demand amount during the highest peak hours by the basic rate applied to the customer. The electric power consumption price discount provides a 50 percent discount from the energy charged to a representative customer that used electric energy in the lowest peak

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<sup>192</sup> See *CTL Plate from Korea 2018* PDM from 21-22, unchanged in *CTL Plate from Korea 2018 Final*.

<sup>193</sup> See KG Dongbu's Initial QR at 66.

<sup>194</sup> See Hyundai Steel's Initial QR at 25.

<sup>195</sup> For a listing of the various R&D projects for which Hyundai Steel received grants, see Hyundai Steel Preliminary Calculation Memorandum

<sup>196</sup> See *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; and Rescission of Review, in Part; Calendar Year 2016*, 83 FR 10661 (March 12, 2018), and accompanying PDM at 12, unchanged in *Certain Cut to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; and Rescission of Countervailing Duty Administrative Review, in Part*, 83 FR 32840 (July 26, 2018), and accompanying IDM at 5.

<sup>197</sup> See GOK's Initial QR at 1 of Appendix-26.

hours.<sup>198</sup> During the POR, Hyundai Steel reported receiving reductions on its energy bill under this program.<sup>199</sup> KG Dongbu did not report participating in this program.

As noted above, we preliminarily determine KEPCO to be an “authority” within the meaning of section 771(5)(B) of the Act. This program results in a financial contribution from the GOK to recipients in the form of revenue forgone, as described in section 771(5)(D)(ii) of the Act. In its response, the GOK indicates that a small number of firms received benefits under the program during the POR.<sup>200</sup> Based on this information, we preliminarily determine that the benefit recipients under the program are limited in number and, accordingly, the subsidy is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

The benefit conferred on the recipient is the amount of the energy charge/basic fare discounts during the POR. To calculate the net countervailable subsidy rate, we divided the total benefit amount received by Hyundai Steel by its total sales during the POR. On this basis, we preliminarily determine a net subsidy rate for Hyundai Steel of 0.02 percent *ad valorem*.

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

### **1. Electricity for LTAR**

#### Overview of the Korean Electricity Market

In 2001, the GOK reformed its laws and introduced an electricity market with three distinct areas of operation: electricity generation companies, electricity market operators, and the transmission/distribution/selling of electricity to end users.<sup>201</sup>

#### *Electricity Generators*

The electricity generators of Korea consist of KEPCO’s six wholly-owned subsidiary generators (GENCOs),<sup>202</sup> independent power generation companies, and community energy systems.<sup>203</sup>

The community energy systems are private generating companies that generate, transmit, and distribute electricity to small communities.<sup>204</sup> These private generating companies charge KEPCO’s tariff rates to its customers.<sup>205</sup> Finally, KEPCO continues to generate electricity for remote and isolated islands for which there is no commercial generation company.<sup>206</sup>

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<sup>198</sup> *Id.* at 7-8 of Appendix-26.

<sup>199</sup> *See* Hyundai Steel’s Initial QR at 65.

<sup>200</sup> *Id.* at 15 of Appendix-26.

<sup>201</sup> *See* GOK NSA QR at 23 – 24.

<sup>202</sup> *Id.* at 3 (The six companies are: Korea Hydro & Nuclear Power Co., Korea South-East Power Co., Korea Midland Power Co., Korea Western Power Co., Korea Southern Power Co., and Korea East-West Power Co.) and 4 (KEPCO’s power generation department was spun off through the Promotion of the Restructuring of the Electricity Business Act in 2001.)

<sup>203</sup> *Id.* at 3-4.

<sup>204</sup> *Id.* at 4.

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

### *Electricity Market Operator –KPX*

KPX was established under the Electricity Business Law and is responsible for setting the price of electricity, overseeing the electricity trading, and collecting relevant data for the electricity market in Korea.<sup>207</sup> Except for the community energy systems and KEPCO's two long-term purchase agreements prior to 2001, all purchasing and selling of electricity is required to be done through KPX.<sup>208</sup>

The electricity market works on a cost-based pool system. The system has two main components: the marginal (representing the variable costs) and capacity (representing the fixed costs) prices.<sup>209</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 lowest generator's bid will receive a purchase order for its supply of electricity and the purchase orders will be issued to the next lowest bid until the supply for the given hour is met.<sup>210</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 submitted bids and exceeded the system marginal price for the hour will not receive purchase orders to supply electricity for the hour.<sup>211</sup> For nuclear, coal-power, and GENCOs, an adjusted coefficient is also included in their KPX price for electricity.<sup>212</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>213</sup>

The purpose of the capacity price 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>214</sup> The capacity price is set based on a standardized generation unit output, but also factors in the year the generation unit started operations and the capacity reserve factor.<sup>215</sup>

### *Transmission/Distribution/Selling of Electricity – KEPCO*

KEPCO is the exclusive supplier of electricity in Korea, except for the customers serviced by community energy services, as explained above.<sup>216</sup> Moreover, under Article 31 of the Electricity Business Law, KEPCO can only purchase electricity through KPX, except for the two long-term purchase agreements noted above.<sup>217</sup> Finally, the GOK submitted the underlying laws and

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<sup>207</sup> *Id.* at 23.

<sup>208</sup> *Id.*

<sup>209</sup> *Id.* at 24.

<sup>210</sup> *Id.*

<sup>211</sup> *Id.* at 25.

<sup>212</sup> *Id.*

<sup>213</sup> *Id.* at 25-26

<sup>214</sup> *Id.* at 26.

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

<sup>216</sup> *Id.* at 3-4.

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

described the process for KEPCO to set the electricity tariff rates and provided the applicable tariff rates during the POR.<sup>218</sup> The tariff rates were last updated in 2013 for industrial users.<sup>219</sup>

### Analysis

The petitioner has alleged the provision of electricity for LTAR.<sup>220</sup> KEPCO is the supplier of electricity to the respondents during the POR.<sup>221</sup> KEPCO also wholly owns the six GENCOs and KPX.<sup>222</sup> KEPCO is a statutory legal entity (separately incorporated) that is established and operated pursuant to the Korea Electric Power Corporation Act and its Enforcement Decree and the Electricity Business Law.<sup>223</sup> Under Korean law, the GOK is required to own, directly or indirectly, at least fifty-one percent of KEPCO's capital, which allows the GOK to control the approval of corporate matters relating to KEPCO.<sup>224</sup> The GOK also exercises significant control over KEPCO's business and operations.<sup>225</sup> Moreover, the GOK exercises significant control over KEPCO and pursues government policy objectives through KEPCO's business and operations.<sup>226</sup> Accordingly, we preliminarily find KEPCO to be an "authority" within the meaning of section 771(5)(B) of the Act, which provides producers of the subject merchandise a financial contribution in the form of the provision of a good or service under section 771(5)(D)(iii) of the Act.

Under 19 CFR 351.511(a)(2), Commerce determines whether electricity is provided for LTAR by comparing, in order of preference: (i) the government price to a market determined price for actual transactions within the country such as electricity tariffs from private parties (referred to as a Tier 1 benchmark); (ii) the government price to a world market price where it would be reasonable to conclude that such a world market price is available to electricity consumers in the country in question (referred to as a Tier 2 benchmark); or (iii) if no world market price is available then Commerce will measure the adequacy of remuneration by assessing whether the government price is consistent with market principles (referred to as a Tier 3 benchmark).

KEPCO is an exclusive provider of electricity in Korea, and the GOK regulates the rates that KEPCO charges for electricity by approving KEPCO's application to change the electricity tariff rates.<sup>227</sup> As noted above, electricity is supplied directly to consumers through community electricity systems, but they use KEPCO's tariff rates.<sup>228</sup> However, if the government provider constitutes a majority, or in certain circumstances, a substantial portion of the market, as in this case, Commerce determines that prices within the country are distorted and cannot be used for

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<sup>218</sup> *Id.* at 2-3 at Exhibit E-9.

<sup>219</sup> *Id.* at 3.

<sup>220</sup> *See* NSA Memorandum.

<sup>221</sup> *See* KG Dongbu NSA QR at 1; *see also* Hyundai Steel NSA QR at 1.

<sup>222</sup> *See* GOK NSA QR at F-82 and F-86 of Exhibit E-1.

<sup>223</sup> *Id.* at 4 of Appendix-1.

<sup>224</sup> *Id.* at 4-9 and 29 of Exhibit E-1.

<sup>225</sup> *Id.*

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

<sup>227</sup> *Id.* at 5 – 7.

<sup>228</sup> *Id.* at 4.



benchmark purposes. Therefore, we determine that a Tier 1 benchmark (a price within the country) is not available.<sup>229</sup>

The next alternative in the benchmark hierarchy is to use world market prices (Tier 2 benchmark). However, under 19 CFR 351.511(a)(2)(ii), Commerce will only use world market prices if the good or service is actually available to the purchaser in the country under investigation or review. With respect to electricity, Commerce has stated that electricity prices from countries in the world market are normally not available to purchasers in the country under investigation or review.<sup>230</sup> The GOK has stated that there is no cross-border transmission or distribution of electricity in Korea;<sup>231</sup> therefore, we determine that we cannot rely on world market prices to determine whether electricity is provided for LTAR.

The final alternative in the benchmark hierarchy, set forth under 19 CFR 351.511(a)(2)(iii), is to determine whether the government price is consistent with market principles (Tier 3 benchmark).<sup>232</sup> Because we are unable to use Tier 1 or Tier 2 benchmarks, we preliminarily determine to use a Tier 3 benchmark to examine whether the respondents have received a countervailable benefit from the provision by KEPCO of electricity for LTAR. Under a Tier 3 benchmark analysis, Commerce will assess whether the prices charged by KEPCO are set in accordance with market principles through an analysis of factors such as KEPCO's price-setting philosophy and costs (including rates of return sufficient to ensure future operations). In accordance with our past practice, we have not put these factors in any hierarchy and may rely on one or more of these factors in any particular case.<sup>233</sup>

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<sup>229</sup> See *CVD Preamble* at 65377 (We normally do not intend to adjust such prices to account for government distortion of the market. While we recognize that government involvement in a market may have some impact on the price of the good or service in that market, such distortion will normally be minimal unless the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market. Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy.).

<sup>230</sup> *Id.* (Paragraph (a)(2)(ii) provides that, if there are no useable market-determined prices stemming from *actual* transactions, we will turn to world market prices that *would be available* to the purchaser. We will consider whether the market conditions in the country are such that it is reasonable to conclude that the purchaser could obtain the good or service on the world market. For example, a European price for electricity normally would not be an acceptable comparison price for electricity provided by a Latin American government, because electricity from Europe in all likelihood would not be available to consumers in Latin America.)

<sup>231</sup> See GOK NSA QR at 6.

<sup>232</sup> See *CVD Preamble*, 63 FR at 65378 (Paragraph (a)(2)(iii) provides that, in situations where the government is clearly the only source available to consumers in the country, we normally will assess whether the government price was established in accordance with market principles. Where the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government's price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination. We are not putting these factors in any hierarchy, and we may rely on one or more of these factors in any particular case. In our experience, these types of analyses may be necessary for such goods or services as electricity, land leases, or water, and the circumstances of each case vary widely. See, e.g., *Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946, 30954 (July 13, 1992) and *Final Affirmative Countervailing Duty Determination: Venezuelan Wire Rod*, 62 FR 55014, 55021-22 (October 22, 1997)).

<sup>233</sup> See *CVD Preamble*, 63 FR at 65378.

With regard to our Tier 3 benchmark analysis, the GOK stated the applicable tariff schedule during the POR came into effect in November 2013.<sup>234</sup> Commerce has previously evaluated the process and underlying methodology to develop and approve the November 2013 tariff schedule and determined it was set according to market principles.<sup>235</sup> In our determinations, we noted the GOK had a pricing methodology in place and that it considered costs and a return on investment.<sup>236</sup> In this segment of the proceeding, the GOK has placed on the record application approval documents,<sup>237</sup> cost information,<sup>238</sup> and Commerce's electricity verification report from the *CORE from Korea Final Determination* associated with the November 2013 tariff schedule.<sup>239</sup> Therefore, we preliminarily determine there are no changes from these prior findings for the 2013 tariff schedule and will examine these rates in the context of whether KEPCO recovered its cost (including rates of return sufficient to ensure future operations) for the POR.

### *KPX Prices*

As noted above, KEPCO is required to purchase its electricity through KPX.<sup>240</sup> These purchases of electricity are reflected in the company's operating costs and expenses.<sup>241</sup> In recent U.S. Court of Appeals for the Federal Circuit (CAFC) decisions, the extent that KPX is a subsidiary of KEPCO and may provide a subsidy through its pricing to KEPCO has been reviewed and, in one instance, remanded.<sup>242</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>243</sup> Commerce evaluated the marginal and capacity price and the adjusted coefficient under a Tier 3 analysis and found there was no benefit.<sup>244</sup> Moreover, in the *CORE Third Admin Review Final* and *2019 Seamless Pipe Investigation*, the GOK placed the six GENCOs' financial statements on the record and we

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<sup>234</sup> See GOK NSA QR at 18-19.

<sup>235</sup> See *Certain Carbon and Alloy Steel Cut-To-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 82 FR 16341 (April 4, 2017), and accompanying Issues and Decision Memorandum (IDM) at Comment 2; see also *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016), and accompanying IDM at Comment 2; *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 4996 (July 29, 2016), and accompanying IDM at Comment 2; *CORE Investigation Final* and accompanying IDM at Comment 2; and *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015,) and accompanying IDM at Comment 1.

<sup>236</sup> *Id.*

<sup>237</sup> See GOK NSA QR at Exhibits E-8, E-13-E-16.

<sup>238</sup> *Id.* at Exhibit E-18.

<sup>239</sup> *Id.* at Exhibit E-19.

<sup>240</sup> *Id.* at 23-24 (except for two long-term electricity contracts in place prior to 2001).

<sup>241</sup> *Id.* at 11-13.

<sup>242</sup> See *Nucor Corp. v. United States* 927 F.3d 1243, 1259 - 60 (Fed. Cir. 2019); and *POSCO v. United States*, 977 F.3d 1369, 1378 (Fed. Cir. 2020).

<sup>243</sup> See *CORE Second Admin Review*, and accompanying IDM 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; and *CTL Plate from Korea 2018 Final* IDM at Comment 7.

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

determined that each generating company recovered its costs in 2018 and 2019.<sup>245</sup> In this instant case, the GOK provided financial statements for the GENCOs and we continue to find preliminarily that each of the six GENCOs recovered its costs.<sup>246</sup> With regard to a rate of return, as stated above, the calculation of the system marginal price includes consideration of the GENCOs' and KEPCO's rate of return.<sup>247</sup> As such, the price paid by KEPCO through KPX is inclusive of a rate of return. Thus, there is no information on this record that would have us revisit our prior findings concerning the price KEPCO pays for electricity through KPX.

### *KEPCO's Reported 2019 Costs*

According to Article 6 of the Price Stabilization Act (PSA) and its Presidential Decree, all public utilities must be determined at the level that reconciles the aggregate costs for supplying such services.<sup>248</sup> Moreover, Article 7 of the Enforcement Decree of the Electricity Business Law and Article 11 of the Notification on the Power Generating Business Approval Criteria, Electricity Tariff Calculation Standard, the Permitted Error of the Electric Consumption Measuring Instrument, and Scope of the Business Operations Related to Electricity (Notification), state the tariff rate for each class be set to cover the cost for the corresponding electricity class, which includes a reasonable amount of investment return.<sup>249</sup> However, Article 14 of the Notification states the tariff rates can be adjusted after considering customers' economic circumstances and other societal factors. Therefore, each year, KEPCO will submit its cost and sales data to MOTIE.<sup>250</sup>

When KEPCO submits its cost and sales data to MOTIE, it reflects the operating costs and return on investment through the follow steps:

- 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,<sup>251</sup> 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;

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<sup>245</sup> See *CORE Third Admin Review Final* and accompanying IDM at 9 – 10 and Comment 1, and *Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 86 FR 35267 (July 2, 2021) (*2019 Seamless Pipe Investigation*), and accompanying IDM at 9.

<sup>246</sup> See GOK's Letter, "GOK's New Subsidy Allegations Fourth Supplemental Questionnaire Response" dated July 2, 2021 (GOKNSASR4) at Exhibit E-33.

<sup>247</sup> See section "Electricity Market Operator –KPX" above; see also GOKNSASR4 at 1 – 2.

<sup>248</sup> See GOK NSA QR at 9.

<sup>249</sup> *Id.* at 9.

<sup>250</sup> *Id.* at 3 and 8.

<sup>251</sup> As noted above, KEPCO includes purchases of electricity in its operating costs and expenses. See GOK NSA QR at 13.

Step 7. Distribute the cost according to the number of customers for each {class};  
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>252</sup>

The submitted cost data are also audited through KEPCO's financial statements each year.<sup>253</sup> For 2019, the GOK submitted KEPCO's audit of its 2019 financial statements and tied the audited numbers to Exhibit E-17.1 (submitted 2019 cost data) of the GOK NSAS1.<sup>254</sup>

For return on capital (rate of return), the GOK provided the relevant regulation, formula, and calculation, and tied each of the reported numbers in the formula to its financials or source documentation.<sup>255</sup> As noted in the steps above, the rate of return is inclusive of its reported costs to MOTIE.<sup>256</sup> We examined the above process and 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 NSAIQR at 9, 14 – 16 and Exhibit E-17.<sup>257</sup>

For 2019, KG Dongbu and Hyundai Steel provided electricity usage that included voltage, option, rates, and amount paid for the industrial classification.<sup>258</sup> As noted above, KEPCO's cost data calculate a cost recovery rate based on the classifications set by the tariff schedule. We, therefore, compared the companies' reported industrial tariff rates to KEPCO's cost data. From this comparison, we noted that certain reported industrial rates recovered costs and a rate of return and certain rates did not recover costs and a rate of return.<sup>259</sup> Therefore, we preliminarily determine that KEPCO does have a pricing mechanism in place that is based on market principles, but also that the industrial rates did not always recover costs and a rate of return under our Tier 3 analysis.

For those rates that did not recover costs and a rate of return, we determined a percentage amount that would enable cost recovery and a rate of return. We then multiplied this percentage amount by the rates assigned to the applicable classification to determine the amount each rate would need to be increased to allow for cost recovery and a rate of return. The applicable rate was then subtracted from this calculated rate to determine the benefit per-unit rate. This per-unit rate was then multiplied by the electricity volume for each rate on a monthly basis and summed to

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<sup>252</sup> *Id.* at 11 – 12.

<sup>253</sup> *Id.* at 9.

<sup>254</sup> See GOK NSAS1 at 1 and Exhibit E-20; see also GOK NSAS2 at 1 – 4.

<sup>255</sup> See GOK NSAS1 at 4-9; see also GOK NSAS2 at 3-5.

<sup>256</sup> See GOK NSA QR at 9, 11-13, and 14-16.

<sup>257</sup> See Hyundai Steel's Preliminary Calculation Memorandum; see also KG Dongbu's Preliminary Calculation Memorandum.

<sup>258</sup> See KG Dongbu NSA QR at 1; see also Hyundai Steel NSA QR at 1.

<sup>259</sup> See Hyundai Steel's Preliminary Calculation Memorandum; see also KG Dongbu's Preliminary Calculation Memorandum.

determine the benefit. The benefit amount was then divided by the applicable sales value. The above calculation resulted in a non-measurable benefit for KG Dongbu and Hyundai Steel.<sup>260</sup>

**B. Programs Preliminarily Determined to be Not Used or Not to Confer a Measurable Benefit**

**Hyundai Steel**

1. Suncheon Harbor Port Usage Fee Exemptions
2. KEXIM Import Financing
3. KEXIM Short-Term Export Credits
4. KEXIM Export Factoring
5. KEXIM Export Loan Guarantees
6. KEXIM Loan Guarantees for Domestic Facility Loans
7. KEXIM Trade Bill Rediscounting Program
8. KEXIM Overseas Investment Credit Program
9. KDB and IBK Short-Term Discounted Loans for Export Receivables
10. Loans under the Industrial Base Fund
11. K-SURE Export Credit Guarantees
12. K-SURE Short-Term Export Credit Insurance
13. Long-Term Loans from KORES and KNOC
14. Clean Coal Subsidies
15. GOK Subsidies for “Green Technology R&D” and its Commercialization
16. Support for SME “Green Partnerships”
17. RSTA Article 10(1)(1)
18. RSTA Article 10(1)(2)
19. RSTA Article 10(1)(3)
20. RSTA Article 11
21. RSTA Article 25(1)(4), formerly RSTA Article 94
22. RSTA Article 25(1)(5), formerly RSTA Article 25
23. RSTA Article 25(1)(6), formerly RSTA Article 24
24. RSLTA 57-2
25. RSTA 104(14)
26. RSLTA Articles 19, 31, 46, 84, 57-2, LTA 109, 112, and 137
27. Tax Reductions and Exemptions in Free Economic Zones
28. Grants and Financial Support in Free Economic Zones
29. Modal Shift Program
30. Sharing of Working Opportunities/Employment Creating Incentives
31. GOK Infrastructure Investment at Incheon North Harbor
32. Machinery & Equipment (KANIST R&D) Project
33. Grant for Purchase of Electrical Vehicle
34. Incentive for Early Scrapping of Old Diesel Vehicle
35. Provision of Liquefied Natural Gas (LNG) for LTAR
36. Energy Savings Programs

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<sup>260</sup> See Hyundai Steel’s Preliminary Calculation Memorandum; *see also* KG Dongbu’s Preliminary Calculation Memorandum.

- Electricity Savings for Designated Period Program
- Electricity Savings through the Bidding Process Program
- Electricity Savings upon an Emergent Reduction Program
- Electricity Savings through General Management Program
- Management of the Electricity Load Factor Program
- 37. The GOK's Purchases of Electricity for MTAR
- 38. Incentives for Compounding and Prescription Cost Reduction
- 39. Incentives for Usage of Yeongil Harbor in Pohang City
- 40. VAT Exemptions on Imported Goods
- 41. Incentives for Usage of Gwangyang Port
- 42. Incentives for Natural Gas Facilities
- 43. Subsidies for Construction and Operation of Workplace Nursery
- 44. Subsidies for Hyundai Steel Red Angels Women's Football Club
- 45. Seoul Guarantee Insurance
- 46. Subsidies for Pohang Art Festival
- 47. Fast-Track Restructuring Program
- 48. Grants for LED Efficiency Improvement
- 49. Purchase of Land from Government Entities
- 50. Tax Credits for Electronic Returns
- 51. VAT Tax Deductions Due to Bad Debt
- 52. Port Usage Rights at the Port of Incheon
- 53. Other Transactions with Government Entities

## **KG Dongbu**

- 1. KEXIM Import Financing
- 2. RSTA Article 25(1)(2): Tax Deductions for Investments in Energy Economizing Facilities
- 3. RSLTA Article 78: Acquisition and Property Tax Benefits to Companies Located in Industrial Complexes
- 4. RSTA Article 26: GOK Facilities Investment Support
- 5. Provision of LNG for LTAR
- 6. Energy Savings Programs
  - Electricity Savings for Designated Period Program
  - Electricity Savings through the Bidding Process Program
  - Electricity Savings upon an Emergent Reduction Program
  - Electricity Savings through General Management Program
  - Management of the Electricity Load Factor Program
- 7. KEXIM Short-Term Export Credits
- 8. KEXIM Export Factoring
- 9. KEXIM Export Loan Guarantees
- 10. KEXIM Trade Bill Rediscounting Program
- 11. KEXIM Overseas Investment Credit Program
- 12. KDB and IBF Loans under the Industrial Base Fund
- 13. K-SURE Export Credit Guarantees
- 14. K-SURE Short-Term Export Credit Insurance

15. Long-Terms Loans from KORES and KNOC
16. Special Accounts for Energy and Resources (SAER) Loans
17. Clean Coal Subsidies
18. GOK Subsidies for “Green Technology R&D” and its Commercialization
19. Support for SME “Green Partnerships”
20. Daewoo International Corporation Debt Work Out
21. Research, Supply or Workforce Development Investment Tax Deduction for “New Growth Engines” under RSTA Article 10(1)(1)
23. Research, Supply, or Workforce Development Expense Tax Deductions for “Core Technologies” under RSTA Article 10(1)(2)
24. Tax Reduction for Research and Human Resources Development under RSTA Article 10(1)(3)
25. Tax Credit for Investment in Facilities for Research and Manpower under RSTA Article 11
26. Tax Deduction for Investment in Environmental and Safety Facilities under RSTA Article 25(1)(3)
27. Tax Program for Third-Party Logistics Operations under RSTA Article 104(14)
28. RSLTA Articles 46, 84
29. Tax Reductions and Exemptions in Free Economic Zones
30. Exemptions and Reductions of Lease fees in Free Economic Zones
31. Grants and Financial Support in Free Economic Zones
32. Modal Shift Program
33. Sharing of Working Opportunities/Employment Creating Incentives
34. R&D Grants Provided under ITIPA
35. GOK Infrastructure Investment at Incheon North Harbor
36. Machinery & Equipment (KANIST R&D) Project
37. Grant for the Purchase of an Electric Vehicle
38. The GOK’s Purchases of Electricity from Corrosion-Resistant Steel Producers for MTAR
39. Land Purchase at Asan Bay
40. KG Dongbu’s Exemptions from Payment of Harbor Fees
41. Grants from the Korea Agency for Infrastructure Technology Advancement
42. Port Usage Rights at the Port of Incheon

## VII. RECOMMENDATION

Based on our analysis, we recommend adopting the above positions. If this recommendation is accepted, we will publish the preliminary results of this review in the *Federal Register*.



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Agree

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Disagree

7/12/2021

X



Signed by: CHRISTIAN MARSH

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Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance



## Appendix I

### Companies Requested for Review by Petitioners

1. Ajin H & S Co., Ltd.
2. AJU Steel Co. Ltd.
3. B&N International
4. CDS Global Logistics
5. Dong A Hwa Sung Co., Ltd.
6. Dongbu Incheon Steel., Co., Ltd.
7. KG Dongbu Steel Co., Ltd. (formerly Dongbu Steel Co., Ltd.)
8. Dongkuk International, Inc.
9. Dongkuk Steel Mill Co., Ltd.
10. Hyundai Steel
11. Hyundai Steel Co.
12. Korea Clad Tech. Co., Ltd.
13. Pantos Logistics Co., Ltd.
14. PL Special Steel Co., Ltd.
15. POSCO
16. POSCO C&C
17. POSCO Daewoo Corp.
18. Samsung C&T Corporation
19. Samsung Electronics Co., Ltd.
20. Sanglim Steel Co., Ltd.
21. SeAH Coated Metal
22. SeAH Steel Corporation
23. Seajin St. Industry, Ltd.
24. Sejung Shipping Co., Ltd.
25. Seun Steel Co., Ltd.
26. Segye Chemical Industry Co., Ltd.
27. Shandongsheng Cao Xian Yalu Mftd.
28. Shengzhou Hanshine Import and Export Trade
29. Soon Hong Trading Co., Ltd.
30. Southern Steel Sheet Co., Ltd.
31. SSangyong Manufacturing
32. Sung A Steel Co., Ltd.
33. SW Co., Ltd.
34. SY Co., Ltd.
35. Syon
36. TCC Steel. Co., Ltd.
37. Young Steel Korea Co., Ltd.
38. Young Sun Steel Co.
39. Young Steel Co.