C-580-882
Administrative Review
POR: 01/01/2018-12/31/2018
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July 22, 2021

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

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the 2018 Administrative Review of the Countervailing Duty Order on Certain Cold-Rolled Steel Flat Products from the Republic of Korea

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I. SUMMARY

The Department of Commerce (Commerce) analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the countervailing duty (CVD) order on certain cold-rolled steel flat products (cold-rolled steel) from the Republic of Korea (Korea) covering the period of review (POR) January 1, 2018, through December 31, 2018. As a result of this analysis, we made changes to the *Preliminary Results*.[1] We recommend that you approve the positions described in the "Discussion of Comments" section of this memorandum.

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

II. LIST OF ISSUES

Comment 1: Whether Electricity for Less Than Adequate Remuneration Confers a Benefit
Comment 2: Whether Commerce's Determination that Port Usage Rights Provide a Countervailable Benefit is Unsupported by Evidence and Contrary to Law
Comment 3: Whether the Reduction for Sewerage Usage Fees is Countervailable
Comment 4: Whether the Restructuring of Dongbu's Existing Loans by GOK-Controlled Financial Institutions Constitutes a Financial Contribution and a Benefit to Dongbu

[1] *See Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2018*, 86 FR 7063 (January 26, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

Comment 5: Whether the Restructured Loans Provided to Dongbu were Specific
Comment 6: Whether Commerce Should Use the Interest Rates from Loans Provided by Private Banks Participating in the Creditor Bank Committee as Benchmarks
Comment 7: Whether Dongbu Steel's Debt-to-Equity Conversions are Countervailable
Comment 8: Whether Commerce Incorrectly Calculated the Discount Rate for Allocating the Benefits from the Debt-to-Equity Conversions
Comment 9: Whether Commerce Made a Ministerial Error in Its Calculation of the Benefit Conferred by Dongbu's Debt Restructuring Program by Omitting Certain Benefit Amounts

III. BACKGROUND

On January 26, 2021, Commerce published the *Preliminary Results* of this review.[2] On December 15, 2020, Commerce initiated a new subsidy allegation (NSA) filed by the United States Corporation (U.S. Steel) and Nucor Corporation (Nucor) (collectively, the petitioners) on the provision of electricity for less than adequate remuneration (LTAR).[3] On December 16, 2020, Commerce issued questionnaires regarding the NSA to the Government of Korea (GOK), Hyundai Steel Co., Ltd., also referred as Hyundai Steel Company (Hyundai Steel), and Dongbu Steel Co., Ltd.(Dongbu Steel)/Dongbu Incheon Steel Co., Ltd. (Dongbu Incheon) (collectively, Dongbu), and received timely responses.[4] In the *Preliminary Results*, we stated that we intended to examine the provision of electricity for LTAR program further after the preliminary results.[5] Between February 12, and April 14, 2021, we issued supplemental questionnaires to the GOK and the GOK timely responded.[6] Between January 13, and March 10, 2021, the petitioners filed comments on the GOK's questionnaire responses.[7]

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[2] *See Preliminary Results.*
[3] *See* Memorandum, "New Subsidy Allegation," dated December 15, 2020.
[4] *See* Commerce's Letter, "Countervailing Duty Administrative Review of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: New Subsidy Allegation Questionnaire," dated December 16, 2020; *see also* GOK Letter, "Countervailing Duty Administrative Review on Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Response to the New Subsidy Allegation," dated December 31, 2020; Hyundai Steel's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-882: Hyundai Steel's NSA Questionnaire Response," dated December 21, 2020; Dongbu's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-882: Dongbu's New Subsidy Allegations Questionnaire Response," dated December 21, 2020; Hyundai's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-882: Clarification of the Government of Korea's New Subsidy Allegation Questionnaire Response," dated January 12, 2021; and Dongbu's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-882: Clarification of the Government of Korea's New Subsidy Allegation Questionnaire Response," dated January 11, 2021.
[5] *See Preliminary Results* PDM at 5.
[6] *See* GOK's Letter, "Countervailing Duty Review on Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Response to the Supplemental Questionnaire on New Subsidy Allegation," dated February 19, 2021 (GOK NSAS1); *see also* GOK Letter, "Countervailing Duty Administrative Review on Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Response to the NSA Second Supplemental Questionnaire," dated April 2, 2021 (GOK NSAS2); and GOK Letter, "Administrative Review of the Countervailing Duty Order on Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Response to NSA Third Supplemental Questionnaire," dated April 14, 2021 (GOK NSAS3).
[7] *See* U.S. Steel's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Deficiency Comments Concerning the GOK's NSA IQR and Rebuttal Factual Information," dated January 13, 2021; *see also* U.S. Steel's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Deficiency Comments

Separately, in the *Preliminary Results*, we stated that we intended to examine the debt-to-equity conversion program, including the petitioners' allegation that Dongbu was unequityworthy at the time of the debt-to-equity conversions, after the preliminary results.[8] On March 24, 2021, we issued a supplemental questionnaire to Dongbu and received a timely response.[9] On May 25, 2021, Commerce issued its post-preliminary analysis on the provision of electricity for LTAR and Dongbu's equity infusions.[10] On May 28, 2021, Commerce issued a briefing schedule and placed new factual information (NFI) on the record.[11] The petitioners, Hyundai Steel, and Dongbu timely filed case briefs on June 4, 2021.[12] On June 11, 2021, the petitioners, Hyundai Steel, Dongbu, and the GOK timely filed rebuttal briefs.[13]

On April 8, 2021, Commerce postponed the final results of review to July 23, 2021.[14]

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

Concerning the GOK's NSA SQR," dated February 22, 2021; and U.S. Steel's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Deficiency Comments and Supplemental Questions Concerning the GOK's NSA IQR and SQR," dated March 10, 2021.

[8] *See Preliminary Results* PDM at 5.

[9] *See* Commerce's Letter, "Countervailing Duty Administrative Review of Certain Cold-Rolled Steel Flat Products: Fifth Supplemental Questionnaire for Dongbu Steel Co., Ltd.," dated March 24, 2021; see also Dongbu's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-882: Dongbu's Fifth Supplemental Questionnaire Response," dated March 31, 2021.

[10] *See* Memorandum, "Countervailing Duty Administrative Review of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Post-Preliminary Analysis Memorandum – Electricity for Less Than Adequate Remuneration and Equity Infusions," dated May 25, 2021 (Post-Preliminary Analysis Memorandum); *see also* Memorandum, "Calculations for Post-Preliminary Analysis Memorandum of Electricity for Less than Adequate Remuneration," dated May 25, 2021.

[11] *See* Memorandum, "Briefing Schedule," dated May 28, 2021; *see also* Memorandum, "2018 Administrative Review of the Countervailing Duty Order on Certain Cold-Rolled Steel Flat Products from the Republic of Korea: placement of New Factual Information," dated May 28, 2021 at Attachment (Memorandum, "Post-Preliminary Analysis of Countervailing Duty Investigation: Certain New Pneumatic Off-The-Road Tires from Sri Lanka," dated August 18, 2016 (OTR Tires from Sri Lanka Post-Preliminary Memorandum)).

[12] *See* Petitioners' Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Case Brief of United States Steel Corporation and Nucor Corporation," dated June 4, 2021 (Petitioners Case Brief re Electricity); *see also* Nucor's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Case Brief," dated June 4, 2021 (Petitioners Case Brief re Dongbu); Hyundai Steel's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Case No.C-580-882: Hyundai Steel's Case Brief," dated June 4, 2021 (Hyundai Steel Case Brief); and Dongbu's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Case No.C-580-882: Dongbu's Case Brief," dated June 4, 2021 (Dongbu Case Brief).

[13] *See* Petitioners' Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Nucor's Rebuttal Brief regarding Hyundai Steel," dated June 11, 2021 (Petitioners Rebuttal Brief re Hyundai Steel); *see also* Petitioners' Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Rebuttal Brief Regarding Dongbu Steel," dated June 11, 2021 (Petitioners Rebuttal Brief re Dongbu); Hyundai Steel's and Dongbu's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Case No.C-580-882: Respondents Rebuttal Brief," dated June 11, 2021 (Hyundai Steel and Dongbu Rebuttal Brief); and GOK's Letter, "Rebuttal Brief of the Government of the Republic of Korea," dated June 11, 2021 (GOK Rebuttal Brief).

[14] *See* Memorandum, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Countervailing Duty Administrative Review; 2018: Extension of Deadline for Final Results," dated April 8, 2021.

IV. CHANGES SINCE THE *PRELIMINARY RESULTS*

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

V. SCOPE OF THE *ORDER*

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

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

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

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

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

- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

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

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

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

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

- Ball bearing steels;[15]
- Tool steels;[16]
- Silico-manganese steel;[17]

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

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

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

- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in *Grain-Oriented Electrical Steel from Germany, Japan, and Poland*.[18]
- Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in *Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan*.[19]

The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0040, 7209.16.0045, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0040, 7209.17.0045, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050.

The products subject to the order may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

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

VI. PERIOD OF REVIEW

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

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

[19] *See Non-Oriented Electrical Steel from the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders*, 79 FR 71741, 71741-42 (December 3, 2014). The orders define NOES as "cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term 'substantially equal' means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied."

VII. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

We made no changes to the allocation period and the allocation methodology used in the *Preliminary Results*. No issues were raised by interested parties in case briefs that would lead us to reconsider our preliminary finding regarding the allocation period or the allocation methodology for the respondent companies. For a description of allocation period and the methodology used for these final results, *see* the *Preliminary Results* PDM at 10.

B. Attribution of Subsidies

Commerce has made no changes to the methodologies used in the *Preliminary Results* for attributing subsidies. No issues were raised by interested parties in case briefs that would lead us to reconsider our preliminary finding regarding the attribution of subsidies. For a description of the methodologies used for these final results, *see* the *Preliminary Results* PDM at 10-11.

C. Benchmarks and Discount Rates

Commerce made no changes to benchmarks or discount rates used in the *Preliminary Results*. We addressed the comments raised by interested parties at Comments 6 and 8. For a description of the benchmarks and discount rates used for these final results, *see* the *Preliminary Results* PDM at 11-13.

D. Creditworthiness

In accordance with 19 CFR 351.505(a)(6)(i), Commerce continues to find that Dongbu was uncreditworthy during the years 2014, 2015, 2016, 2017 and 2018. Parties did not comment on this issue since the issuance of the *Preliminary Results*. For a description of our analysis used for the final results, *see* the *Preliminary Results.*[20]

E. Equityworthiness

In the post-preliminary analysis, we found that Dongbu Steel was not equityworthy at the times of each debt-to-equity conversion and calculated a countervailable subsidy rate of 2.12 percent *ad valorem* during the POR for Dongbu Steel's equity infusions.[21] Parties have raised comments on this issue; *see* Comment 7. For the final results, we continue to find that Dongbu received countervailable benefits from the debt-to-equity conversions.

F. Denominators

Commerce has made no changes to the denominators used in the *Preliminary Results*. No issues were raised by interested parties in case briefs that would lead us to reconsider our preliminary

[20] *See Preliminary Results* PDM at 13-16.
[21] *See* Post-Preliminary Analysis Memorandum at 27.

finding regarding the appropriate denominators. For a description of the denominators used for these final results, *see* the *Preliminary Results* PDM at 16.

VIII. USE OF FACTS OTHERWISE AVAILABLE

Due to the GOK's failure to provide timely responses to several questions in the GOK First Supplemental Questionnaire,[22] Commerce relied on "facts otherwise available," including an adverse inference, for our analyses regarding various programs in the *Preliminary Results*.[23] No issues were raised by interested parties in case briefs that would lead us to reconsider our preliminary decisions regarding the use of facts otherwise available. Commerce has made no changes to its decisions to use facts otherwise available in the final results. For a description of this decision, *see* the *Preliminary Results* PDM at 16-18.

IX. ANALYSIS OF PROGRAMS

A. Programs Determined to be Countervailable

1. Dongbu's Debt Restructuring

Commerce made changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results. *See* Comments 4-6 and 9.

Loans and Bonds:

Hyundai Steel:	Not used
Dongbu:	7.02 percent *ad valorem*

Equity Infusions:

Commerce made no changes to the post-preliminary determination regarding this program.

Hyundai Steel:	Not used
Dongbu:	2.12 percent *ad valorem*

2. Korea Development Bank Short-Term Discounted Loans for Export Receivables

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

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

[22] *See* Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Certain Cold-Rolled Steel Flat Products from the Republic of Korea: First Supplemental Questionnaire," dated May 7, 2020 (GOK First Supplemental Questionnaire).
[23] *See Preliminary Results* PDM at 16-18.

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

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

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

4. Restriction of Special Taxation Act Article 25(2): Tax Deductions for Investments in Energy Economizing Facilities

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

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

5. Restriction of Special Taxation Act Article 25(3): Tax Credit for Investment in Environmental and Safety Facilities

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

Hyundai Steel:	0.09 percent *ad valorem*
Dongbu: [24]	Less than 0.005 percent

6. Restriction of Special Taxation Act Article 26: Tax Deduction for GOK Facilities Investment Support

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

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

7. Electricity Discounts under Trading of Demand Response Resources Program

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

Hyundai Steel:	0.05 percent *ad valorem*
Dongbu:	0.02 percent *ad valorem*

8. Modal Shift Program

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

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

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

9. Reduction for Sewerage Fees

Commerce made no changes to the *Preliminary Results* regarding this program. *See* Comment 3.

Hyundai Steel: 0.01 percent *ad valorem*
Dongbu: 0.01 percent *ad valorem*

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

Commerce made no changes to the *Preliminary Results* regarding this program. *See* Comment 2.

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

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

Hyundai Steel

1. Suncheon Harbor Port Usage Fee Exemptions
2. Port Usage Fee Exemption Programs
3. Other Port Usage Fee Exemption Programs
4. KEXIM Import Financing
5. KEXIM Short-Term Export Credits
6. KEXIM Export Factoring
7. KEXIM Export Loan Guarantees
8. KEXIM Trade Bill Rediscounting Program
9. KEXIM Overseas Investment Credit Program
10. KDB Short-Term Discounted Loans for Export Receivables
11. Industrial Base Fund Loans
12. K-SURE Export Credit Guarantee
13. K-SURE Short-Term Export Credit Insurance
14. Long-Terms Loans from KORES and KNOC
15. Clean Coal Subsidies
16. GOK Subsidies for "Green Technology R&D" and its Commercialization
17. Support for SME "Green Partnerships"
18. RSTA Article 8-3
19. RSTA Article 9, formerly TERCL Article 8
20. RSTA Article 10(1)(1)
21. RSTA Article 10(1)(2)

22. RSTA Article 10(1)(3)
23. RSTA Article 10-2
24. RSTA Article 11
25. RSTA Article 22
26. RSTA Article 24
27. RSTA Article 25
28. RSTA Article 29(4)
29. RSTA Article 30
30. RSTA Article 120
31. RSTA Article 104(5)
32. RSTA Article 104(14)
33. RSTA Article 104(15)
34. RSTA Article 104(8)(1)
35. RSTA 94
36. RSLTA Articles, including 19, 31, 46, 47-2, 84, 109 and 112
37. LTA 109, 112, 137, 145, and 146
38. Asset Revaluation Under Article 56(2) of the TERCL
39. Tax Reductions and Exemptions in Free Economic Zones
40. Exemptions and Reductions of Lease Fees in Free Economic Zones
41. Grants and Financial Support in Free Economic Zones
42. Sharing of Working Opportunities/Employment Creating Incentives
43. R&D Grants under ITIPA
44. Power Generation Price Difference Payments (PGPDP)
45. Daewoo International Corporation's (DWI's) Debt Workout
46. GOK Infrastructure Investment at Incheon North Harbor
47. Machinery & Equipment (KANIST R&D) Project
48. Grant for Purchase of Electrical Vehicle
49. Power Business Law Subsidies
50. Provision of Liquefied Natural Gas (LNG) for LTAR
51. Dongbu Debt Restructuring
52. Special Accounts for Energy and Resources (SAER) Loans
53. Energy Savings Programs:
    - Electricity Savings for Designated Period Program
    - Electricity Savings through the Bidding Process Program
    - Electricity Savings upon an Emergency Reduction Program
    - Electricity Savings through General Management Program
    - Utilization of Capability of the Private Sector
    - In Accordance with Prior Announcement
    - Intelligent Electricity Savings
    - Support for Instruments with High Energy Efficiencies
    - Management of the Electricity Load Factor Program
54. Energy Savings Program[25]
55. The GOK's Purchases of Electricity for MTAR

[25] *See Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49943 (July 29, 2016) (*CRS Final Determination*), and accompanying IDM at 26, n.119.

56. Incentives for Compounding and Prescription Cost Reduction
57. Subsidies for Employment Security during Period of Childbirth and Childcare
58. Incentives for Usage of Yeongil Harbor in Pohang City
59. VAT Exemptions on Imported Goods
60. Import duty Exemptions
61. Incentives for Usage of Gwangyang Port
62. Incentives for Natural Gas Facilities
63. Subsidies for Construction and Operation of Workplace Nursery
64. Subsidies for Hyundai Steel Red Angels Women's Football Club
65. Co-existence Project for Large- Medium- Small Enterprises as Energy Companies
66. One Company for One Street Clean Management Agreement
67. Support for Smoking Cessation Treatment
68. Seoul Guarantee Insurance
69. Subsidies for Pohang Art Festival
70. Fast-Track Restructuring Program
71. Grants from the Korea Agency for Infrastructure Technology Advancement
72. Discount of Expenses for Wastewater Reclamation and Reusing System
73. Discount on Expenses for Water Usage
74. Grants for LED Efficiency Improvement
75. Purchase of Land from Government Entities
76. Other Transactions with Government Entities
77. Discount of Electricity Fee for Energy Storage System
78. VAT Tax Deductions Due to Bad Debt
79. Other Transactions with Government Entities
80. Various Government Grants Contained in Financial Statements
81. Supporting on Projects under Center for Creative Economy and Innovation
    - Job Experience Program for Job-Seekers
    - Idea Competition for Venture Business
    - Operating Expense for Projects to Support SMEs
    - Project for Supporting SME's Startups
82. Provision of Medical Services
83. Compensation for Moving Cost
84. Vocational Skills Development
85. Vocational Skills Development for Non-POSCO Employees
    - Corporate University
    - Work and Learn Program
    - Consortium Project
    - Support for Job-Seekers
    - Operating Council for Cooperation with SMEs
86. Other Assistance in the AUL Period
87. Support for Inducement of Tourists
88. Assistance for Medical Business Research
89. Assistance for Small Entrepreneurs in the Cosmetic Industry
90. Reimbursement of Operating Expenses for the Consultative Counsel of Consigned Enterprises
91. Subsidy Program for Extension of Employment of Elderly Persons

92. Subsidy Program of Promoting Employment of the Disabled
93. Project on Construction of Innovative IT Network
94. Subsidy for Installation of High-Efficient Induction Motor
95. Subsidy for Registration in Green House Gas Emission Reduction Project
96. Grants for Employment of Youth Interns
97. Grants for Participation in Green Energy EXPO
98. Provision of Electricity for LTAR

Dongbu

1. Port Usage Fee Exemption Programs
2. Other Port Usage Fee Exemption Programs
3. KEXIM Import Financing
4. KEXIM Short-Term Export Credits
5. KEXIM Export Factoring
6. KEXIM Export Loan Guarantees
7. KEXIM Trade Bill Rediscounting Program
8. KEXIM Overseas Investment Credit Program
9. Industrial Base Fund Loans
10. K-SURE Export Credit Guarantees
11. K-SURE Short-Term Export Credit Insurance
12. Long-Terms Loans from KORES and KNOC
13. Clean Coal Subsidies
14. GOK Subsidies for "Green Technology R&D" and its Commercialization
15. Support for SME "Green Partnerships"
16. RSTA Article 8-3
17. RSTA Article 9, formerly TERCL Article 8
18. RSTA Article 10(1)(1)
19. RSTA Article 10(1)(2)
20. RSTA Article 10(1)(3)
21. RSTA Article 10-2
22. RSTA Article 11
23. RSTA Article 22
24. RSTA Article 24
25. RSTA Article 25
26. RSTA Article 25(2)
27. RSTA Article 25(3)
28. RSTA Article 29(4)
29. RSTA Article 30
30. RSTA Article 120
31. RSTA Article 104(5)
32. RSTA Article 104(14)
33. RSTA Article 104(15)
34. RSLTA Articles, including 19, 31, 46, 47-2, 84, 109 and 112
35. LTA 109, 112, 137, 145, and 146
36. Asset Revaluation Under Article 56(2) of the TERCL

37. Tax Reductions and Exemptions in Free Economic Zones
38. Exemptions and Reductions of Lease Fees in Free Economic Zones
39. Grants and Financial Support in Free Economic Zones
40. Sharing of Working Opportunities/Employment Creating Incentives
41. R&D Grants under ITIPA
42. Power Generation Price Difference Payments (PGPDP)
43. Machinery & Equipment (KANIST R&D) Project
44. Grant for Purchase of Electrical Vehicle
45. Power Business Law Subsidies
46. Provision of Liquefied Natural Gas (LNG) for LTAR
47. Special Accounts for Energy and Resources (SAER) Loans
48. Energy Savings Programs:
    - Electricity Savings for Designated Period Program
    - Electricity Savings through the Bidding Process Program
    - Electricity Savings through General Management Program
    - Utilization of Capability of the Private Sector
    - In Accordance with Prior Announcement
    - Intelligent Electricity Savings
    - Management of the Electricity Load Factor Program
49. Energy Savings Program[26]
50. The GOK's Purchases of Electricity for MTAR
51. Incentives for Compounding and Prescription Cost Reduction
52. Subsidies for Employment Security during Period of Childbirth and Childcare
53. Incentives for Usage of Yeongil Harbor in Pohang City
54. VAT Exemptions on Imported Goods
55. Import duty Exemptions
56. Incentives for Usage of Gwangyang Port
57. Incentives for Natural Gas Facilities
58. Subsidies for Construction and Operation of Workplace Nursery
59. Co-existence Project for Large- Medium- Small Enterprises as Energy Companies
60. One Company for One Street Clean Management Agreement
61. Support for Smoking Cessation Treatment
62. Seoul Guarantee Insurance
63. Subsidies for Pohang Art Festival
64. Fast-Track Restructuring Program
65. Grants from the Korea Agency for Infrastructure Technology Advancement
66. Discount of Expenses for Wastewater Reclamation and Reusing System
67. Discount on Expenses for Water Usage
68. Other Transactions with Government Entities
69. Discount of Electricity Fee for Energy Storage System
70. VAT Tax Deductions Due to Bad Debt
71. Other Transactions with Government Entities
72. Supporting on Projects under Center for Creative Economy and Innovation
    - Job Experience Program for Job-Seekers
    - Idea Competition for Venture Business

[26] *See CRS Final Determination* IDM at footnote 119.

Operating Expense for Projects to Support SMEs
Project for Supporting SME's Startups

73. Provision of Medical Services
74. Compensation for Moving Cost
75. Other Assistance in the AUL Period
76. Development of Advanced River Road Disaster Prevention Design Adjacent to Water Impact Area for the Control of Debris Flow and Sediment
77. Refund on Employer's Support Training Education Expense
78. Employment Promotion of Disabled
79. Employment Promotion of the Elderly
80. Development of PROTECT Explosion Proof Panel with 20mm Thickness
81. Development of Direct Reduction Iron Manufacturing and Process Technology Using Domestic Resources
82. Dangjin Dongbu Steel's Housing Playground Replacement Support
83. Dangjin Dongbu Steel's Housing Playground Safety Inspection Support
84. Industrial Natural Gas Support Program
85. Development of Integrated Design Engineering Technology for Retractable Large Spatial Structures
86. Rewards for Outstanding Recycling Performance
87. Development of Advanced River Road Disaster Prevention Design Adjacent to Water Impact Area for the Control of Debris Flow and Sediment
88. Employment Stability Promotion for Employees During Period of Childbirth and Childcare
89. Industrial Natural Gas Support Program
90. Development of integrated design engineering technology for retractable large spatial structures
91. Provision of Electricity for LTAR

X. DISCUSSION OF COMMENTS

Comment 1: Whether Electricity for LTAR Confers a Benefit

Petitioners' Case Brief re Electricity

- The prevailing market condition for electricity in Korea is established through a monopoly by the government-owned KEPCO and its six wholly owned generation facilities (GENCOs). KEPCO transmits and distributes almost all the electricity in Korea. The pricing of electricity from the GENCOs to KEPCO and KEPCO's prices to end users are not independently set by these companies. They may propose prices, but they are approved by the GOK. Commerce should have taken the market condition into consideration when establishing a benchmark under 19 CFR 351.511(a)(2) and makes scant reference to this market reality in its benefit analysis and, thus, is unlawful.[27]
- Citing *POSCO CAFC*, the U.S. Court of Appeals for the Federal Circuit (CAFC) determined that the prevailing market condition for electricity in Korea demonstrates a major component of KEPCO's total cost is the acquisition of electricity through KPX from the GENCOs. As such, Commerce must understand the costs associated with generating and acquiring

[27] *See* Petitioners Case Brief re Electricity at 6 – 9.

electricity from these wholly-owned subsidiaries. Commerce did not follow this binding precedent in its benefit analysis.[28]

- Although Commerce states it did not need to evaluate the GENCOs' costs as it did not initiate on an upstream allegation, *POSCO CAFC* makes clear the GENCOs' costs should be analyzed in the context of the LTAR allegation and a determination should be made as to whether they provide adequate remuneration.[29]
- The term "adequate remuneration" is not defined in the statute, but Commerce has stated it refers to a market-based price. Moreover, in *Nucor CAFC*, the CAFC affirmed this interpretation and also linked "fair value" under section 771(18) of the Act to "market principles," stating there would be no sound basis for any other meaning under 19 CFR 351.511(a)(2)(iii). The comparison of Korean electricity prices to full or fair value can only be achieved through using a reasonable and reliable benchmark, which Commerce failed to do and, thus, its preliminary finding is contrary to law.[30]
- The GOK failed to respond fully and accurately to Commerce's questions regarding the GENCOs' cost and profitability. The record demonstrates that the GOK did not cooperate to the best of its ability and only provided selected information or information it deemed relevant. Thus, adverse facts available (AFA) is warranted with regard to the GENCOs' cost and profitability. The petitioners suggest a method, as AFA, to account for the GENCOs missing cost and profitability information.[31]
- Citing to *CTL Plate from Korea 2018*, the petitioners argue that Commerce cannot rely on the finding in this case, as it is a separate proceeding and Commerce must evaluate the information on the record of this proceeding. Moreover, Commerce's cites to KEPCO's submitted Form 20-F to the U.S. Securities and Exchange Commission to support the GENCOs were profitable is misplaced as the number is on an aggregate, not individual company basis. The record information demonstrates that certain GENCOs were not profitable.[32]
- The audited reports cited by Commerce are flawed. First, the GOK provided only income statements, without identifying the GENCO, and are not part of a complete financial statement. Commerce appears to depart from its practice outlined in the antidumping context, that it would not accept data reported in financial statements unless accompanied by

[28] *Id*. at 10 (citing *POSCO v. United States*, 977 F.3d 1369 (Fed. Cir. 2020) (*POSCO CAFC*)).
[29] *Id*. at 11 – 12.
[30] *Id.* at 12 – 15 (citing *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Trinidad and Tobago*, 62 FR 55003, 55007 (October 22, 1997) (*Wire Rod from Trinidad and Tobago)*; *Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Softwood Lumber Products from Canada*, 66 FR 43186, 43193 (August 17, 2001); and *Nucor Corp. v. United States*, 927 F.3d 1243, 1249, 1253 – 54 (Fed. Cir. 2019) (*Nucor CAFC*)).
[31] *Id*. at 18 – 21.
[32] *Id*. at 22 – 26 (citing *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; Calendar Year 2018*, 85 FR 84296 (December 28, 2020), and accompanying IDM at Comment 7 (*CTL Plate from Korea 2018*); *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 70163 (November 25, 2014), and accompanying IDM at Comment 8; *Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Final Results of Antidumping Administrative Review; 2010-2011*, 77 FR 73616 (December 11, 2012), and accompanying IDM at Comment 2; and *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results of the Countervailing Duty Administrative Review*, 77 FR 21744 (April 11, 2012), and accompanying IDM at Comment 5).

an auditor's report, statement of accounting practices, and the relevant notes, finding such incomplete financial statements unreliable. Second, the income statements demonstrate that certain GENCOs did incur losses. Accordingly, Commerce would need to account for this in its analysis of adequate remuneration.[33]

- For the GENCOs, Commerce's analysis is also partial and fails to address whether the GENCOs earned a reasonable rate of return to ensure future operations, consistent with its Tier 3 benchmarking analysis. As such, its analysis of the GENCOs is unsupported by substantial evidence and Commerce should address whether the GENCOs' earned a reasonable rate of return during the POR in the final results.[34]
- Commerce erroneously and unlawfully departed from its practice and did not establish a benchmark to compare to respondents' reported acquisition prices for electricity. Instead, Commerce merely observed that on a tariff-line basis, KEPCO covered its reported costs to purchase and distribute electricity on an annual basis. This was a major departure from judicially-affirmed practice and even in cases involving a Tier 3 benchmarking analysis, Commerce has established a benchmark to compare to the price actually paid by the respondents under investigation. The petitioners provide a calculated benchmark that may be compared to respondent's purchase of electricity from KEPCO.[35]

GOK Rebuttal Brief

- Commerce considered the prevailing market conditions in evaluating the Korean electricity market. The prevailing market condition is the formula as prescribed by the relevant laws and regulations. The formula takes variable and fixed costs under consideration as well as an investment return based on a merit-based system. The GOK, KEPCO and KPX responded to Commerce's requests and made its best effort to provide information. Commerce properly examined the provided data under 19 CFR 351.511(a)(2)(iii).[36]
- The petitioners mischaracterize the Korean electricity market as a KEPCO monopoly and the GOK arbitrarily setting electricity rates. On the generation side, 31.7 percent of electricity is generated by private parties. Moreover, the market is dominated by a formula stipulated under laws and regulations that would not allow KEPCO or KPX to arbitrarily set rates. The formula is the market pricing mechanism, which allows for cost recovery and an investment return. The electricity tariffs rates were also affirmed by the CAFC as being prices that were in accordance with market principles. Thus, whether KEPCO or the GENCOs are authorities

[33] *Id*. at 26 – 28 (citing *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 6132 (February 26, 2019) (*Bearings from China*), and accompanying IDM at Comment 10).
[34] *Id*. at 29 – 30.
[35] *Id.* 30 – 33 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Amended Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 54566 (October 30, 2018) (*Solar Cells from China*), and accompanying IDM at Comment 10; *Supercalendered Paper from Canada: Final Results of Countervailing Duty Expedited Review*, 82 FR 18896 (April 24, 2017) (*Supercalendered Paper from Canada Expedited Review*), and accompanying IDM at Comment 26; *Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 FR 60639 (October 25, 2007), and accompanying IDM at Comment 15; *Canadian Solar, Inc. v. United States*, Consol. Court No. 18-00184, Slip Op. 2020-23 (CIT 2020) at 19-20; and *Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 20, 2015) (*Supercalendered Paper from Canada Inv*), and accompanying IDM at Section VI.A.12).
[36] *See* GOK Rebuttal Brief at 5 – 6.

is irrelevant to the prevailing market condition as formula is the main instrument in setting electricity prices in Korea.[37]

- Commerce took into account the *POSCO CAFC* decision regarding an examination of KPX prices by incorporating its upstream determination in *CTL Plate from Korea 2018*. For this proceeding, Commerce determined not to initiate an upstream subsidy investigation as there was no new information submitted with the allegation since "{the upstream determination in 2017 administrative review of this proceeding}."[38]
- The price of electricity between KEPCO and the GENCOs cannot be considered an internal price as there is no negotiation between the prices. The price is set according to the formula as stipulated by the relevant laws and regulations through KPX.[39]
- Commerce did follow 19 CFR 351.511(a)(2)(iii) to conduct a Tier 3 analysis based on market principles. Citing *Nucor CAFC*, the GOK asserts in addition to fair value, a cost analysis could also be utilized and, therefore, a benchmark is not necessary.[40]
- AFA is not warranted as the GOK fully cooperated and answered Commerce's questions.[41]
- The GOK reiterates its position that there was no information that would lead to an initiation of an upstream allegation in the instant proceeding since "{last administrative review of this proceeding}." Moreover, the GOK agrees with the Commerce's finding that nothing on the instant record contradicts or would have Commerce revisit its finding in *CTL Plate from Korea 2018* that the GENCOs' electricity costs were fully revered through prices upon which electricity was sold to KEPCO in 2018.[42]
- *Solar Cells from China* is inapplicable, as Commerce applied a Tier 1 benchmark as AFA in that proceeding and applied a Tier 3 analysis in the instant proceeding.[43]

Hyundai Steel and Dongbu Rebuttal Brief

- Commerce recently rejected all of the petitioners' arguments in *CORE from Korea 2018*, relying on the same facts over the same review period as the instant review. For the reasons described in *CORE from Korea 2018*, Commerce should reject the petitioners' arguments.[44]
- In a Tier 3 analysis, Commerce has wide latitude as to which method it applies, as affirmed in *Nucor CAFC*. Moreover, the petitioners' argument that Commerce must examine the GENCOs' costs is misplaced, either based on its NSAs or the CAFC's finding in *POSCO CAFC*. In its preliminary analysis, Commerce followed *POSCO CAFC* by examining the impact of KPX's prices on KEPCO and, thus, met the statutory requirement.[45]

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[37] *Id*. at 6 – 7 (citing *Nucor*).
[38] *Id*. at 7 – 8 (citing *POSCO CAFC*).
[39] *Id*. at 8.
[40] *Id*. at 9 (citing *Nucor*, 927 F 3d. at 1254 – 55).
[41] *Id.* at 10 – 11.
[42] *Id*. at 12.
[43] *Id.* at 12.
[44] *See* Hyundai Steel and Dongbu Rebuttal Brief at 4 (citing *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 from Korea 2018*), and accompanying IDM at Comment 1).
[45] *Id*. at 4 – 7 (citing *Notice of Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products from Canada*, 66 FR 43186, 43193 (August 17, 2001); *Wire Rod from Trinidad and Tobago*, 62 FR at 55007).

- The petitioners' argument that the GENCOs' analysis conducted in *CTL Plate from Korea 2018* is under a different statutory framework (*e.g.*, upstream vs. LTAR) that should be applied is contradicted by its own arguments that the analysis would be the same no matter which part of the statute it is examined.[46]
- Commerce did consider the prevailing market conditions as part of its analysis under19 CFR 351.511(a)(2). Hence, the reason it did not utilize a Tier 1 or Tier 2 benchmark and conducted a Tier 3 analysis that is typically applied when it is demonstrated the market is a regulated monopoly. This analysis has been conducted in numerous Korean countervailing duty proceedings involving electricity for LTAR and has been affirmed on appeal.[47]
- Commerce measuring adequate renumeration through a comparison of a government price to a competitive, market-based price is not supported by *Wire Rod from Trinidad and Tobago* or the CAFC's decision in *Nucor CAFC*. In *Wire Rod from Trinidad and Tobago*, the market was a regulated monopoly and a market principles analysis based on cost recovery and a reasonable rate of return was conducted. Moreover, the CAFC has not stated that just competition involves competitive pricing.[48]
- The petitioners cite to *Solar Cells from China* is misplaced as it involved the offsetting of negative benefits when compared to a benchmark in an LTAR calculation. It does not establish a requirement to determine a benchmark to measure adequate remuneration. In this proceeding, Commerce lawfully conducted a Tier 3 analysis that measured whether KEPCO prices were consistent with market principles.[49]
- *Supercalendered Paper from Canada Inv* also does not support the use of a benchmark in determining whether electricity in this proceeding was provided at LTAR. In that case, the respondent was outside the tariff schedule and received a rate that was unique to the company. That set of facts is not present here. Commerce made a similar finding in *Carbon & Alloy CTL Plate from Korea 2018*.[50]
- The Act and prior CAFC/U.S. Court of International Trade (CIT) rulings require Commerce to make two separate findings in applying facts available (FA) and AFA. Based on the record information, the GOK responded to Commerce's requests, cooperated to the best of its ability, and corrected deficiencies identified by Commerce. Moreover, Commerce relied on

[46] *Id.* at 8.
[47] *Id.* at 9 – 12 (citing *Countervailing Duties; Final Rule*, 63 FR 65348, 65378 (November 25, 1998) (*CVD Preamble*); *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35310 (June 2, 2016) (*CORE from Korea Inv*), and accompanying IDM at 18-24; *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015), and accompanying IDM at 13-18; and *Nucor CAFC*, 927 F.3d at 1375 and *Maverick Tube Corp. v. United States*, 273 F. Supp. 3d 1293, 1309-10 (CIT 2017)).
[48] *Id.* at 12 – 15 (citing *Wire Rod from Trinidad and Tobago*, 62 FR at 55007; *Nucor CAFC*, 927 F.3d at 1250, 1255; *Horne v. U.S. Department of Agriculture*, 576 U.S. 350, 368-69 (2015) (quoting *United States v. 50 Acres of Land*, 469 U.S. 24, 29 (1984); *United States v. 564.54 Acres of Land*, 441 U.S. 506, 511 (1979) (quoting *United States v. Miller*, 317 U.S. 369, 374 (1943)).
[49] *Id.* at 16 – 17 (citing *Solar Cells from China* at 45 – 46; and *Supercalendered Paper from Canada Expedited Review* IDM at Comment 26).
[50] *Id.* at 17 – 18 (citing *Supercalendered Paper from Canada Inv* IDM at 32, 47 – 48; and *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Final Results and Partial Rescission of Countervailing Duty Administrative Review, 2018*, 86 FR 15184 (March 22, 2021) (*Carbon & Alloy CTL Plate from Korea 2018*), and accompanying IDM at 25).

the information in its preliminary analysis. Thus, there is no support for applying FA or AFA in this instance.[51]

- The petitioners' calculation of a benchmark to compare to the respondents' electricity purchases is not supported because they do not explain why Commerce's finding that: (1) the GENCOs' pricing recovered costs; and (2) KEPCO's purchases of electricity reflect the actual cost of generating electricity is not sufficient. Moreover, the petitioners never explain why using certain amounts on an aggregate basis is warranted, total losses from certain GENCOs and KEPCO are the focus in the calculation and how the benchmark would more accurately reflect KEPCO's cost as it applies to the respondents' tariff classification, which is the appropriate level of examination.[52]

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

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

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

In evaluating whether a government provides a benefit in terms of a good or service for LTAR, Commerce applies 19 CFR 351.511(a) to determine the adequacy of remuneration.[53]

In the Post-Preliminary Analysis Memorandum, Commerce described the Korean electricity market,[54] determined a financial contribution was provided,[55] and then

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

[52] *Id.* at 22 – 25 (citing *CTL Plate from Korea 2018* IDM at Comment 7; *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2017*, 85 FR 38361 (June 26, 2020), and accompanying IDM at Comment 1; *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2017*, 85 FR 15112 (March 17, 2020) (*CORE from Korea 2017*), and accompanying IDM at Comment 1; and *CORE from Korea Inv* IDM at 18-19).

[53] *See CVD Preamble*, 63 FR at 65377 ("Under section 771(5)(E) of the Act, the adequacy of remuneration is to be determined … we are providing guidance on how we intend to apply this new standard. Accordingly, paragraph (a) outlines the conceptual approach we will follow to measure the benefit from governmental provision of goods or services.")

[54] *See* Post-Preliminary Analysis Memorandum at 2 – 3 (section "Overview of the Korean Electricity Market").

[55] *Id*. at 3 – 4 (We note Commerce stated that "KEPCO also wholly owns the six GENCOs and KPX," in its financial contribution analysis).

proceeded to apply 19 CFR 351.511(a) to evaluate the adequacy of remuneration.[56] Thus, Commerce did examine the prevailing market conditions, as stated in the Act, through its adequacy of remuneration analysis as provided in 19 CFR 351.511(a)(2)(i)-(iii).[57]

With regard to the GENCOs, we are guided by the CAFC's decision in *POSCO CAFC*. The CAFC decision stated that "Commerce's failure to investigate and include KPX's generation costs in its analysis renders its final determination unsupported by substantial evidence."[58] In the Post-Preliminary Analysis Memorandum, Commerce described KPX and the process by which electricity is sold through this market operator.[59] In this system, the electricity price contains a marginal and capacity price component and an adjusted coefficient for certain fuel type and the GENCOs.[60] We further explained that, "{t}he purpose of the adjusted coefficient is two-fold: to prevent over-payment to generators with low fuel-costs (*e.g.*, nuclear and coal); and to maintain a differential between the expected rate of return between the GENCOs and KEPCO."[61]

The petitioners refer to KEPCO's acquisition price as an internal affiliated price or transfer price.[62] As explained in the Post-Preliminary Analysis Memorandum, there are additional generators that provide electricity to KEPCO through KPX.[63] Moreover, KPX has established a standardized pricing system that applies to all electricity generators in Korea.[64] As such, KEPCO's acquisition price cannot be viewed as an internal or transfer price in the traditional sense, because it is not set by either the seller or buyer. As noted above, KPX's pricing system includes fixed and variable costs and, for the GENCOs and KEPCO, ensures the expected rate of return is suitably allocated between the GENCOs and KEPCO. Finally, KEPCO is obligated to pay the GENCOs for the total cost of generating electricity, including interest on loans, even if KEPCO is not profitable.[65] Therefore, the record of this proceeding established how KEPCO's electricity acquisition price is determined and the additional factors that are considered with regard to the GENCOs in KPX's pricing system.

The petitioners' argument regarding our decision not to collect cost information for the GENCOs based on our determination not to initiate on an upstream allegation is also misplaced. As noted above, Commerce's prior evaluation of KPX's electricity prices and record information demonstrates that there is a pricing mechanism in place for KEPCO to acquire electricity that does not confer a benefit. Our reference to the upstream allegation

[56] *Id*. at 4 – 8.
[57] *Id*.
[58] *See POSCO CAFC*, 977 F. 3d at 1378.
[59] *See* Post-Preliminary Analysis Memorandum at 2 – 3 (section "Electricity Market Operator – Korea Power Exchange (KPX)").
[60] *Id*.
[61] *Id*. at 3.
[62] *See* Petitioners Case Brief at 10 and 12.
[63] *See* Post-Preliminary Analysis Memorandum at 2 (section "Electricity Generators").
[64] *Id*. at 2–3; *see also* GOK NSA IQR at 22 – 26.
[65] *See* GOK NSAS1 at 10.

supported the preliminary analysis that no new information has been placed on this record that would lead us to reexamine our prior finding on KPX's pricing system.[66]

Additionally, in terms of the GENCOs' specific cost information, the GOK provided information on whether KEPCO paid the GENCOs the total cost of electricity, even if in a loss position.[67] The GOK provided further clarification in a subsequent response that it reported the profit and loss of each GENCO and it included amounts irrelevant to the generating and selling of electricity.[68] In a subsequent supplemental questionnaire, the GOK stated KPX considers each GENCO's profits and losses in relation to the adjusted coefficient.[69] The GOK then submitted data in relation to profits and losses and tied certain reported amounts to the GENCOs' unconsolidated financial statements.[70] In the GOK NSAS3 at Exhibit E-31, the GOK highlighted "Net Profit" and "Profit & Loss related to Investment Stake at Affiliates, Joint Ventures & Subsidiaries" in each GENCO income statement. When considering cost recovery and rate of return in connection with generating electricity, isolating the analysis to net profit or other similar line items without including other factors, is not representative of the KPX's pricing of electricity. As in *CTL Plate from Korea 2018*, there is unconsolidated financial information on the record.[71] The information demonstrates for all GENCOs that costs were recovered and there was operating profit.[72] Moreover, for the GENCOs that were not overall profitable, the income statements also show that financial costs and/or currency fluctuations were factors as opposed to the electricity operations. This was the same conclusion reached in *CTL Plate from Korea 2018*.[73] Therefore, contrary to the petitioners' assertions, Commerce fully evaluated the role of KPX and the GENCOs in the Korean electricity market and considered the generation costs and pricing in the instant review as required by *POSCO CAFC.*

With regard to the unconsolidated financial information submitted, as discussed above, citing to *Bearings from China*, the petitioners also argue that Commerce should not consider the submitted data because only select parts of the financials statement were provided. First, the petitioners cite to an antidumping proceeding that addressed the use of financial statements when assigning surrogate values.[74] In that proceeding, Commerce stated in its position that the "practice is not to rely on financial statements that are missing significant elements, or which are otherwise deficient, when there are other, more complete financial statements on the record."[75] Thus, in the selection of financial statements for assigning surrogate values, Commerce has a preference of complete financial statements. However, in this proceeding, the GOK submitted the financial information in response to Commerce requesting that specific data be tied to the

[66] *See* Post-Preliminary Analysis Memorandum at 7 ("Further, we declined to initiate an upstream subsidy alleging the provision of electricity for LTAR through KPX prices to KEPCO and then passed through to subject merchandise producers, because there was no new information provided in the allegation since *CRS from Korea 2017*.")
[67] *See* GOK NSAS1 at 10 – 11.
[68] *See* GOK NSAS2 at 7 – 8.
[69] *See* GOK NSAS3 at 3.
[70] *Id*.
[71] *Id*. at Exhibit E-31.
[72] *Id*.
[73] *Id*. and *CTL Plate from Korea 2018* at 24.
[74] *See Bearings from China* IDM at 53.
[75] *Id*.

unconsolidated financial statements.[76] This is the context under which the income statement that ties to the specific reported information was submitted on the record.

The petitioners also argue that AFA should be applied to the GOK for impeding this proceeding and by not cooperating to the best of its ability. We disagree with the petitioners' assertion that there are examples on the record of the GOK's non-cooperation. Where the GOK was unable to answer, the GOK provided clarification or other information. For example, although the GOK was unable to respond to questions on generation costs or include it in Exhibit E-17, the GOK alternatively stated that KEPCO records the acquisition costs from its electricity purchases on the KPX.[77] Additionally, although the GOK did not provide subsidiary payments for KPX-adjusted prices, the GOK stated KPX will modify the adjusted coefficient.[78] The other examples cited by the petitioners also involve clarifications by the GOK on requests for data or information that explain why the question cannot be answered or why the relevant data and information that pertains to Commerce's request cannot be provided. Thus, the GOK has cooperated to the best of its ability in answering questions regarding the electricity for LTAR program and the application of FA or AFA is not warranted.

Lastly, Commerce did not depart from its practice. Under a Tier 3 market principles analysis, Commerce will assess whether the government price is consistent with market principles.[79] In instances where the government is the sole provider of a good, Commerce will determine this through an analysis of such factors as the government's price-setting philosophy, costs (including rates of return sufficient to ensure future returns) or possible price discrimination.[80] In the Post-Preliminary Analysis Memorandum, Commerce conducted this analysis to determine that KEPCO either fully recovered costs or if it did not fully recover costs, the electricity rates resulted in a non-measurable benefit for electricity sold to the respondents.[81] As noted above, Commerce determined the KPX pricing for electricity sold to KEPCO had a price-setting mechanism. The KPX includes a differential in the adjustment coefficient to ensure a rate of return differential with KEPCO, and the GENCOs' own financial data demonstrate that electricity operations were profitable and recovered costs. As such, there is no change in our analysis of KEPCO. In the Post-Preliminary Analysis Memorandum, Commerce used the electricity purchased in examining KEPCO's cost and rate of return to determine whether the industrial tariff classification recovered costs and had a rate of return sufficient to ensure future operations.[82]

The petitioners assert that market principles equate to full value or a market-based price and that Commerce should use a reasonable or reliable benchmark in measuring adequate remuneration. Although *Nucor CAFC* does tie market principles to fair value under section 771(18) of the Act, the CAFC also noted the regulated rates and the methodologies available to Commerce to

[76] *See* GOK NSAS3 at question 5b.
[77] *See* GOK NSA IQR at 13.
[78] *See* GOK NSAS1 at 10-11.
[79] *See* 19 CFR 351.511(a)(2)(iii).
[80] *See CVD Preamble*, 63 FR at 65378.
[81] *See* Post-Preliminary Analysis Memorandum at 5 – 8.
[82] *Id*. at 7 – 8.

measure value.[83] Here, the market principles analysis utilized in this program evaluated the price-setting mechanism in Korea as well as cost recovery. The petitioners' reference to *Wire Rod from Trinidad and Tobago* is misplaced because Commerce utilized a cost analysis and only after determining that cost and a rate of return were not recovered did Commerce rely on a benchmark to measure the benefit.[84] *Solar Cells from China* is also misplaced because the benchmark utilized in the case was based on AFA and did not apply 19 CFR 351.511, unlike the situation here.[85] Moreover, the section of the proceeding cited by the petitioners involved offsetting of electricity purchases above the benchmark.[86] Finally, the petitioners cite to *Supercalendered Paper from Canada Inv* as another case where Commerce used a benchmark in evaluating an electricity for LTAR program. However, in that case, Commerce utilized a market principles analysis on the Nova Scotia electricity market and only used a benchmark when it was established that the respondent was outside the general tariff schedule and its unique rate did not recover costs.[87] In contrast, all of the respondents in this proceeding pay rates from KEPCO's industrial tariff schedule. Therefore, for these final results of review, Commerce continues to use its methodology from the post-preliminary results and continues to analyze the KEPCO tariff schedule for industrial users under a market principles analysis.

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

Hyundai Steel Case Brief

- Commerce's *Preliminary Results* are devoid of any discussion regarding how the GOK's provision of usage rights to Hyundai Steel for a period long enough to recover its port construction costs provides a benefit, other than vague references to prior decisions.[88]
- To the extent Commerce relies on prior determinations, it must describe how those determinations apply, and not merely cite to them.[89]
- The cases cited by Commerce to support its decision that the program is a "recurring grant program" actually reveal that these cases stand for the proposition that repayments for the

[83] *See Nucor CAFC* at 1254 – 55 ("In our analysis rejecting the government's broad position, we have decided that non-preferentiality of the sort the government stresses is insufficient to meet the statutory standard of adequate remuneration, which, along with its implementing regulation, requires ensuring that the government authority's price is not too low considering what the authority is selling. That ruling is significant but limited in constraining Commerce. We readily recognize that such a standard, while excluding the government's broad preferentiality position potential, leaves a large range of potential implementation choices. One need only look outside the present statutory context to the familiar rate-regulation context to see the great variety of methodologies used over time to ensure that rates of a monopoly provider are not too low, some directly focused on value (such as ""fair value""), some on various measures of "cost" (which may reflect value). {*Verizon Communications, Inc. v. FCC*}, 535 U.S. {467,} 484-86, 122 S.Ct. 1646 {(2002)}; *see generally id*. at 411-89, 122 S. Ct. 1646 {2002}. Commerce has considerable prima facie leeway to make a reasonable choice within the permissible range, and properly justify its choice, based on the language and policies of the countervailing duty statute as well as practicality and other relevant considerations").

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

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

[86] *Id*. at Comment 10.

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

[88] *See* Hyundai Steel Case Brief at 4.

[89] *Id*.

construction of the port facilities are only countervailable to the extent they are excessive, and Commerce has offered no support that port usage rights provided to Hyundai Steel were excessive. In fact, Hyundai Steel was granted port usage rights for the Incheon Harbor facility for 41 years and 8 months, which is well short of even the IRS AUL period.[90]

- The GOK has explained in detail the port usage rights period, and its very structure is set up to avoid excessive reimbursements to Hyundai Steel. Accordingly, compared to prior cases this period is not excessive.[91]
- The port usage rights were provided as a payment of a debt owed by the GOK which is not a countervailable benefit. Further, Commerce has not explained under which provision of section 771(5)(E) of the Act the benefit is conferred, and under the "catch-all" provision, the CIT has understood that what the company receives should exceed what the company paid or should have paid. In this case, there is no benefit to Hyundai Steel.[92]
- The port usage rights the GOK provided are part of Hyundai Steel's just compensation, similar to the Fifth Amendment of the U.S. Constitution that requires the government to provide just compensation prior to obtaining ownership of private property intended for public use.[93]
- In *GOSL*, the CIT found that repayment of a debt is distinct from payments through grants, loans, or equity infusions. In this case the court concluded that the reimbursement program at issue "did not constitute a gift-like transfer, but rather the interest-free repayment of a debt." The court also noted that Commerce was "not authorize{d}… to ignore clear, readily available and already-verified record evidence that a transfer of funds constituted repayment of a debt." These principles make clear that port usage rights in repayment for construction are similarly not countervailable.[94]
- In *HRS from Korea 2017*, Commerce characterized the essence of the program as "the GOK help{ing} Hyundai Steel build a port for its own use for a very long time," without support in the record for its assertion, as is the case in this review also, ignoring the record evidence that Hyundai Steel paid huge sums and incurred all direct costs to build the port.[95]
- The GOK agreement described the formula and details for Hyundai Steel to fully recover its costs which was 41 years and 8 months, and there was nothing excessive about the repayment of this debt and, accordingly, Commerce's finding should be reversed in the final results.[96]

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[90] *Id*. at 5-7 (citing *Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea*, 67 FR 62102 (October 3, 2002) (*CR Carbon Steel from Korea 2000*); and *Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 72 FR 38565 (July 13, 2007) (*CTL Plate from Korea 2005*); and *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2011*, 78 FR 55241 (September 10, 2013)).
[91] *Id*. at 6-8.
[92] *Id*. at 8-10.
[93] *Id*. at 10-11.
[94] *Id.* at 12-13 (citing *Government of Sri Lanka v. United States*, 308 F. Supp. 3d 1373, 1381 (CIT 2018) (*GOSL*)).
[95] *Id*. at 14-15 (citing *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 2017*, 85 FR 64122 (October 9, 2020) (*HRS from Korea 2017*), and accompanying IDM at 30-31).
[96] *Id*. at 15-17.

- Even if Commerce erroneously countervails the fees Hyundai Steel could have, but did not, collect, then it should subtract the amount of the amortized wharf usage rights applicable to the POR 2018.[97]

Petitioners' Rebuttal Brief re Hyundai Steel

- Commerce should follow its practice and find this program countervailable as it has done in other cases.[98]
- In *HRS from Korea 2017*, concerning the same respondent Hyundai Steel, Commerce concluded that the income was revenue forgone and a benefit was received. Similarly, in *CORE from Korea 2018*, Commerce rejected nearly identical arguments by Hyundai Steel and countervailed both the berthing income and harbor facility usage fees, as revenue forgone by the GOK as Hyundai Steel did not pay the GOK the fees it collected from other parties.[99] Consistent with these findings, Commerce should continue to countervail the berthing income and harbor facility usage fees.[100]
- Hyundai Steel ignores the fact that it was in a position to collect fees because it acquired the right from the GOK to operate and use the port. Absent this right, Hyundai Steel would have to pay fees to the GOK. The question is whether revenue was forgone by the GOK, not whether third parties paid Hyundai Steel the revenue that the GOK did not collect from Hyundai Steel.[101]
- Regardless of whether Hyundai Steel actually collected these fees, this income constitutes revenue forgone by the GOK and, thus, should continue to be accounted for in Commerce's benefit calculations.[102]

Commerce's Position: In the *Preliminary Results*, Commerce determined that this program provided a financial contribution because the fees that the GOK gave Hyundai Steel the right to collect, which would otherwise have been collected by the GOK absent the agreement between the parties, represented revenue forgone by the GOK within the meaning of section 771(5)(D)(ii) of the Act. Specifically, the berthing income and the harbor facility usage fees are revenue forgone by the GOK because Hyundai Steel did not pay the GOK the fees it collected from other third parties. Further, Commerce found the program to be specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients were limited in number,[103] and a benefit existed under section 771(5)(E) of the Act in the amount of the fees exempted that were reported by Hyundai Steel. Consistent with prior proceedings, we have treated this program as a

[97] *Id*. at 17.
[98] *See* Petitioners Rebuttal Brief re Hyundai Steel at 2-3.
[99] *Id*. at 3 (citing *HRS from Korea 2017* IDM at 29-30; and *CORE from Korea 2018* IDM at 21).
[100] *Id*. at 3-4.
[101] *Id*. at 6.
[102] *Id*. at 7.
[103] *See* GOK's Letter, "Countervailing Duty Administrative Review on Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Second Supplemental Questionnaire Response," dated December 16, 2020 (GOK December 16, 2020 SQR) at 2; *see also Preliminary Results* PDM at 32; and Memorandum, "Calculations for the Preliminary Results: Hyundai Steel," dated January 15, 2021 at 5.

recurring program.[104] We continue to find this program countervailable for the reasons explained below.

Hyundai Steel does not deny that the reason for receiving the right to collect fees for about 41 years was because it had incurred construction costs for building the port.[105] The record is also clear that Hyundai Steel uses the port to transport raw materials for steel production.[106] In other words, Hyundai Steel agreed to build the port. Once the port was built, Hyundai Steel used the port to transport inputs free of charge. Further, Hyundai Steel had the right to collect port usage fees from other port users to compensate for the costs it incurred. Hyundai Steel's argument that this program is not countervailable is an argument of form over substance. Commerce has consistently found countervailable these types of programs, which lower the cost of production for a company. In *Supercalendered Paper from Canada Inv*, Commerce found countervailable the total amount of benefit conferred, without any offsets, under the Federal Pulp and Paper Green Transformation Program, as well as the Ontario Forest Sector Prosperity Fund program, because both programs involved the governments providing funds to respondent companies against costs incurred for capital investment.[107] In *Quartz Surface Product from Turkey*, Commerce found countervailable the total amount of benefit conferred, without any offsets, under the Foreign Fair Support program, which involved the government providing reimbursements for expenses incurred related to respondent's participation in international fairs.[108]

Hyundai Steel argues that port usage rights are received as repayment of a debt from the GOK because harbors and related infrastructure must be controlled and owned by the GOK and that the GOK was simply repaying Hyundai Steel for creating the facilities over which it is required to exercise control and ownership.[109] Hyundai Steel's argument that this program does not confer a countervailable benefit is not supported by the record. The record is clear that the GOK

[104] *See HRS from Korea 2017* IDM at Comment 6; *see also CTL Plate from Korea 2005* IDM at 6-7 and Comment 1; *CORE from Korea 2011 Preliminary Results* PDM at 11, unchanged in *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*; 2011, 79 FR 5378 (January 31, 2014); and *CR Carbon Steel from Korea 2000* IDM at 20 and Comment 11.
[105] *See* Hyundai Steel Case Brief at 3; *see also* Hyundai Steel's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-882: Hyundai Steel's Initial Questionnaire Response," dated February 24, 2020 (Hyundai Steel IQR) at 39-43.
[106] *See* GOK December 16, 2020 SQR at 8; *see also* Hyundai Steel's Letters, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-882: Hyundai Steel's First Supplemental Questionnaire Response," dated May 26, 2021 at 24; and "Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-882: Hyundai Steel's Second Supplemental Questionnaire Response," dated December 16, 2020 (Hyundai Steel December 16, 2020 SQR) at 15-16 and Exhibit G-53.
[107] *See Supercalendered Paper from Canada: Preliminary Affirmative Countervailing Duty Determination*, 80 FR 45951 (August 3, 2015), and accompanying PDM at 25-26; *see also Supercalendered Paper from Canada Inv* IDM at 26-29.
[108] *See Certain Quartz Surface Products from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 54841 (October 11, 2019), and accompanying PDM at 10-11, unchanged in *Certain Quartz Surface Products from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, In Part*, 85 FR 25400 (May 1, 2020), and accompanying IDM at 4.
[109] *See* Hyundai Steel Case Brief at 10-11.

is not collecting fees that it is entitled to collect,[110] and the record does not demonstrate that the main purpose of building the port was for the public good or for any governmental functions.[111] Instead, the record shows Hyundai Steel has the right to use the port for free for about 41 years. Once again, Hyundai Steel's argument is an argument of form over substance. We do not see a difference in substance between the program at issue and a program in which a government directly provides funding to a company to build a port for the company's benefit. In both situations, a company is able to receive assistance for building a port for its own use. Further, the record shows that the GOK agreed to provide various forms of support for the port construction.[112]

Hyundai Steel contends that the *Preliminary Results* are devoid of any discussion of how the usage rights provide a benefit. In *CTL Plate from Korea 2005*,[113] we cited to the GOK Infrastructure Investment at Inchon Harbor program under which the respondent in a similar arrangement received the right to collect fees from other users for a period of 50 years. Commerce found "that the 50 year duration of the lease of the pier facility is so long that it effectively renders DSM the owner of the facility." In *CORE from Korea 2011 Preliminary Results*, we cited to the Exemption of Port Fees Under the Harbor Act program, in which the respondent was provided the right to collect fees from other users of the facility, in addition to exemptions the respondent received for a period of 70 years, which Commerce determined to be excessive. Similarly, in *CR Carbon Steel Korea 2000*, Commerce found the Exemption of Port Fees under the Harbor Act to be an excessive period. Further, in *HRS from Korea 2017*, Commerce treated the benefits received from the berthing income and harbor facility usage fees as a recurring subsidy. Thus, we provided numerous instances of how Commerce has treated similar programs in prior proceedings, demonstrating that the fees collected from third parties were treated as recurring subsidies. These programs are relevant to the instant case because here, too, the GOK provided free usage of the port and the right to the collection of fees for a period of 41 years and 8 months,[114] similar to the extended periods of 50 to 70 years in the above cases, which we determine to be excessive and thus provide a benefit. Further, our determination in the instant review is consistent with these prior proceedings.

Further, with regard to Hyundai Steel's argument that Commerce has not explained under which provision of section 771(5)(E) of the Act the benefit is conferred, as Hyundai Steel itself notes the examples outlined under section 771(5)(E) of the Act are not meant to be exhaustive.[115] We further clarify that the benefit received is further supported by Commerce's regulations at 19 CFR 351.503(b), which states that for other government programs, the Secretary normally will consider a benefit to be conferred where a firm pays less for its inputs (*e.g.*, money, a good, or a service) than it otherwise would pay in the absence of the government program, or receives more revenues than it otherwise would earn. Here, Hyundai Steel was able to collect berthing fees and other fees and was not required to remit those fees to the GOK. Thus, a benefit was conferred under 19 CFR 351.503(b) under this program.

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[110] *See* GOK December 16, 2020 SQR at 3-4.
[111] *See* Hyundai Steel IQR at Exhibit G-1.
[112] *Id*. at Exhibit G-1, Article 48 to Article 54.
[113] *See CTL Plate from Korea 2005* IDM at 7.
[114] *See* Hyundai Steel Case Brief at 7; *see also* Hyundai Steel December 16, 2020 SQR at 16-17.
[115] *See* Hyundai Steel Case Brief at 9.

We disagree with Hyundai Steel that Commerce should compute the benefit using only income to Hyundai Steel which exceeded the cost incurred by Hyundai Steel in constructing the port of North Incheon. For the reasons we have provided in past cases, Commerce has consistently not included an offset for the cost of constructing the port in its benefit analysis. As noted in *HRS from Korea 2017*,[116] we continue to find that the essence of this program is that the GOK helped Hyundai Steel build a port for its own use for an extended period of time. The GOK provided the benefit for this program by forgoing revenue that the GOK was otherwise entitled to collect, such as berthing fees and other user fees.[117] Consistent with past cases, no offsets to Hyundai Steel's benefit calculation for this program are warranted. Further, under section 771(6) of the Act, only under very limited circumstances, the statute allows Commerce to offset a subsidy benefit.[118]

We also disagree with Hyundai Steel that *GOSL* is applicable here. The facts in *GOSL* are in contrast to the facts in this review and are distinguishable. In *GOSL*, the CIT characterized payments under the GPS program as interest-free repayment of a debt rather than "a direct transfer of funds," and it held that the payments constituted reimbursement of an interest-free debt that did not benefit the tire producer.[119] In *Tires Sri Lanka Final*,[120] we determined that the government's payments to the respondent were direct transfers of funds and countervailable in their full amount (treating the respondent's earlier payment of the "guaranteed price" to its producer as irrelevant).[121] However, the CIT found that we had erroneously assessed the reimbursements in isolation from the GPS program because the tire producer was required to provide the government an interest free loan by paying an above-market price for which it was later reimbursed. The CIT concluded that Commerce ignored record evidence that the respondent received payment corresponding exactly to the above-market portion of its payment to the small-scale farmer, paid on behalf of the government.[122]

We find that the Harbor Act program in this review is not comparable to the GPS program that the CIT analyzed in *GOSL.* In *GOSL*, the program at issue, the Rubber Guarantee Price Scheme, was implemented to support small-scale rubber farmers.[123] The Government of Sri Lanka (GOS) stated that it used buyers of natural rubber such as respondent, Camso, to facilitate payments to these small-scale rubber farmers.[124] The Rubber Guarantee Price Scheme was set up with the specific purposes of benefiting the small-scale farmers rather than respondent Camso.[125] In this review, neither Hyundai Steel nor the GOK argue that the program at issue in this case was implemented for the purpose of supporting other beneficiaries. In *GOSL*, the CIT characterized the transaction at issue as resulting in a

[116] *See HRS from Korea 2017* IDM at 30.
[117] *See* GOK December 16, 2020 SQR at 3-4; *see also* Hyundai Steel IQR at 42.
[118] *See* section 771(6) of the Act.
[119] *See GOSL*, 308 F. Supp. 3d at 1381.
[120] *See Certain New Pneumatic Off-the-Road Tires from Sri Lanka: Final Affirmative Countervailing Duty Determination, and Final Determination of Critical Circumstances*, 82 FR 2949, 2950 (January 10, 2017) (*Tires Sri Lanka Final*), and accompanying IDM.
[121] *Id.* at Comment 4.
[122] *See GOSL*, 308 F. Supp. 3d at 1380-83.
[123] *See* OTR Tires from Sri Lanka Post-Preliminary Memorandum at 2.
[124] *Id*. at 3.
[125] *Id*. at 2-3.

detriment, rather than a benefit, to the respondent in that case.[126] In this review, as explained above, the transaction at issue is not a detriment to Hyundai Steel. A key feature of the Guarantee Price Scheme is that the GOS *required* Camso to pay a guaranteed rubber price for natural rubber when purchasing natural rubber from small farmers.[127] Because Camso was required to buy natural rubber at a guaranteed price for the benefit of the small farmers, the GOS reimbursed Camso for the difference between the guaranteed price Camso paid and the average rubber price.[128] Such a feature does not exist in the program at issue for this case. The GOK did not require Hyundai Steel to build a port at a certain cost, nor did the GOK require Hyundai Steel to build a port in order to benefit other recipients. Rather, Hyundai Steel benefitted from building the port. Therefore, Hyundai Steel's reliance on *GOSL* is inapposite and does not support its request that Commerce provide offsets to its benefit calculations.

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

Comment 3: Whether the Reduction for Sewerage Usage Fees is Countervailable

Hyundai Steel Case Brief

- The *Preliminary Results* are based on a fundamental misunderstanding of how the program actually operated with respect to Hyundai Steel. When the facts are fully considered, it is clear that Hyundai Steel received no financial contribution or benefit from this program, because it fully paid its sewerage fees based on its actual usage and, thus, there was no reduction or waiver by the GOK.[129]
- Sewage fees are calculated on the basis of the amount and type of the sewage water drained down the system. In cases where there are no meters to measure the amount of sewage water, billing charges are based on the clean water supplied, as it is assumed the amount of water sent through the sewerage system is the same as the amount of clean water consumed.[130]
- Hyundai Steel demonstrated that the volume of wastewater sent through the system was much lower than the volume of clean water consumed, based on which a reduced sewage usage rate was calculated and applied to Hyundai Steel. Thus, it is clear that the reduction is based on actual water and sewerage usage and directly related to the lower volume of wastewater that needs to be purified, and cannot be considered a benefit.[131]
- Hyundai Steel pays sewerage usage fees based on its proven sewerage usage volume, and does not receive reductions in the amount of sewerage fees, nor are any fees waived. Thus, there is no revenue forgone, and no benefit conferred to Hyundai Steel.[132]

[126] *See GOSL*, 308 F. Supp. 3d at 1382.
[127] *See* OTR Tires from Sri Lanka Post-Preliminary Memorandum at 3.
[128] *Id*.
[129] *See* Hyundai Steel Case Brief at 18.
[130] *Id*. at 19.
[131] *Id*. at 19-22.
[132] *Id*. at 22.

- Pursuant to section 771(5)(D)(ii) of the Act, "financial contribution" means "forgoing or not collecting revenue that is otherwise due." In Hyundai Steel's case, the sewerage usage fee was based on demonstrated usage of the water system, and thus no discount was provided, and Commerce's preliminary finding is inconsistent with the statute as there are no fees that would have "otherwise" been due and no financial contribution.[133]
- There is also no benefit conferred in accordance with section 771(5)(E) of the Act, as Hyundai Steel did not owe the government any more fees than the fees that it paid.[134]
- Even if Commerce erroneously continues to treat the program as countervailable, it should find the subsidy is tied to non-subject merchandise.[135]
- The CIT has stated "as a matter of practice, Commerce determines whether a subsidy is tied by evaluating the purpose of the subsidy based on information available at the time of bestowal." The record is clear that sewerage fee reductions could only be attributed to production at the Incheon facility, while subject merchandise is produced at the Dangjin and Suncheon facilities. Commerce's attribution of sewerage fees was improper under its tying regulation, and should be reversed for the final results.[136]

Petitioners' Rebuttal Brief re Hyundai Steel

- The *Preliminary Results* are consistent with *CTL Plate from Korea 2018* and *CORE from Korea 2018*, where Commerce found this program countervailable.[137]
- Commerce has recognized that Article 65(1) of the Sewerage Act, Article 36(2) of the Enforcement Decree of the Sewerage Act and Article 14(1) and Article 21(1)(7) of the Incheon ordinances do not prescribe for the situation under which Hyundai Steel qualified for its sewerage reduction fee, or the amount of reduction received by Hyundai Steel; rather, the fee reduction received by Hyundai Steel was significantly higher than the rate adjustments specified in the ordinance and the GOK provisions do not explicitly provide that entities could claim a reduction in their overall water bill based on the amount of sewage water discharged.[138]
- While Hyundai Steel claims there are special reasons for its reduction, none of the adjustment criteria listed in Article 21 apply to Hyundai Steel. As such, Commerce should continue to find that this program represented a financial contribution in the form of revenue forgone.[139]
- With regard to Hyundai Steel's contention that Commerce is attributing benefits to a facility that does not produce subject merchandise, Hyundai Steel incorrectly interprets and misunderstands Commerce's regulation. Pursuant to 19 CFR 351.525(b)(5)(i), if a subsidy is tied to the production or sale of a particular product, Commerce will attribute the subsidy to only that product. That is, the subsidy attribution "depends upon the type of subsidy and whether it is tied to a particular market or product," and not to whether the subsidy in question was used by the respondent to produce subject or non-subject merchandise.[140]

[133] *Id*. at 23-24.
[134] *Id*. at 24-25.
[135] *Id*. at 25.
[136] *Id*. at 25-27 (citing *Jindal Poly Films Ltd. of India v. United States*, 439 F. Supp. 3d 1354, 1360 (CIT 2020) (*Jindal Poly Films Ltd*.)).
[137] *See* Petitioners Rebuttal Brief re Hyundai Steel at 7-8.
[138] *Id*. at 9.
[139] *Id*. at 10.
[140] *Id*. at 11.

- In *Jindal Poly Films Ltd*., the CIT explained that the government license providing the benefit did not restrict the merchandise to which an exporter could apply the credit, even though the respondent could identify which credits were used for subject and non-subject merchandise, stating "Commerce's practice is not to post hoc 'trace the use of subsidies' through records."[141]
- Likewise, this program is not tied to a particular product as the user of the program only needs to show that the amount of sewage water sent down the public sewerage system is less than the amount of clean water consumed. Commerce did not err in the *Preliminary Results* and should continue to allocate the benefit to subject and non-subject merchandise.[142]

Commerce's Position: For the reasons described below, we continue to find this program countervailable. In the *Preliminary Results*, we determined that the reduction in sewerage fees resulted in a financial contribution from the GOK to Hyundai Steel in the form of revenue forgone, as described in section 771(5)(D)(ii) of the Act, and the benefit conferred was in accordance with section 771(5)(E) of the Act.[143]

The record shows that under certain conditions, households and businesses may receive a reduction in their overall water bill as prescribed in Article 21(1)7 of Regulation on Sewerage Usage Incheon Metropolitan City and Article 9 of Enforcement Regulation on Sewerage Usage Incheon Metropolitan City.[144] Users are eligible for a reduced water bill under these provisions if they can demonstrate that the amount of sewage water that is discharged into the public sewerage system is less than the amount of clean water consumed from the public water supply system, or if the user installs a "gray water system." A "gray water system" refers to an individual or regional level system which processes unclean water for recycling purpose without discharging unclean water into the public sewerage system.[145] The GOK further explained that the execution of this program is delegated to regional level governments. In this instance, the Incheon Metropolitan City was the regional level government charged with administering the public sewerage system utilized by Hyundai Steel during the POR.[146]

In its initial questionnaire response, Hyundai Steel stated that its Incheon Plant received reductions from monthly fees incurred for usage of a sewerage system for purification of sewage from Incheon City because it reduced the volume of wastewater that requires sewage treatment by a purification facility operated by Incheon City.[147] Hyundai Steel noted that its application for reduction for sewerage usage fees also included underlying research demonstrating its reduced water usage rate.[148] Further, Hyundai Steel provided the GOK's approval of its application for reduction of sewerage fees.[149]

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[141] *Id*. at 11-12.
[142] *Id*. at 12.
[143] *See Preliminary Results* PDM at 29-30.
[144] *See* GOK's Letter, "Administrative Review on Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Response," dated March 2, 2020 (GOK IQR) at 196; *see also* Hyundai Steel IQR at Exhibits G-31 and G-32.
[145] *See* GOK IQR at 193.
[146] *Id*. at 194.
[147] *See* Hyundai Steel IQR at 60.
[148] *Id*. at Exhibit G-32.
[149] *Id*. at Exhibit G-31.

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

> Contrary to the claims by the GOK, Article 65(1) of the Sewerage Act, Article 36(2) of the Enforcement Decree of the same Act, Article 14(1) and Article 21(1)(7) of the Incheon Metropolitan City Ordinance on Sewerage System Usages, and Article 9 of the Enforcement Decree of the same Ordinance do not prescribe for the situation under which Hyundai Steel qualified for its sewerage fee reduction, or the amount of the reduction received by Hyundai Steel. The relevant legal provision describing the basis for any such fee reductions, Article 21 ("Reduction and Exemption, *etc*.") of the Incheon Metropolitan City Ordinance on Sewerage System Usages, provides for fee reductions on the basis of other criteria and conditions. Article 21, or any other legal provisions cited by the GOK, do not explicitly provide that entities may claim a reduction in their overall water bill with regard to the amount of sewage water discharged. Hyundai Steel did not qualify for a reduction in its sewerage fee on the basis of any of the criteria listed in the Incheon Metropolitan City Ordinance. Additionally, the amount of the fee reduction that Hyundai Steel received on its overall water bill significantly exceeds the rate adjustments that are specified in the ordinance, with the exception of certain special conditions, such as being located in a disaster area. For these reasons, we determine that the basis under which Hyundai Steel received a sewerage fee reduction during the POR is an arrangement unique to the respondent and not otherwise contemplated under the provisions of Korean law on our record. We thus continue to find that the reduction in Hyundai Steel's sewerage fee under the program constitutes revenue forgone and that a benefit was conferred in accordance with sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Because record evidence indicates that the basis for which Hyundai Steel qualified for a reduction in sewerage fees was not granted to any other companies; we determine that this program is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.[150]

This review pertains to the same program, the same respondent, *i.e*., Hyundai Steel, and the identical period of review, as in *CTL Plate from Korea 2018*. Indeed, the record evidence pertaining to this program is the same in this case as in *CTL Plate from Korea 2018*. As in *CTL Plate Korea 2018*, Hyundai Steel did not qualify for a reduction in its sewerage fee on the basis of any criteria listed in the Incheon Metropolitan City Ordinance. Additionally, the amount of the fee reduction that Hyundai Steel received on its overall water bill significantly exceeds the rate adjustments that are specified in the ordinance, with the exception of certain special conditions, such as being located in a disaster area.[151] Therefore, based on these facts we continue to find this program countervailable and disagree with Hyundai Steel that the *Preliminary Results* are based on a fundamental misunderstanding because the reductions in sewerage fees Hyundai Steel received are not according to the criteria listed in the Incheon Metropolitan City Ordinance.

Further, Hyundai Steel contends that it demonstrated that the volume of wastewater sent through the system was much lower than the volume of clean water consumed based on which a reduced sewage rate was calculated and applied to Hyundai Steel. However, as noted above, the amount

[150] *See CTL Plate from Korea 2018* IDM at Comment 6.
[151] *See* GOK IQR at Exhibit SEWER-1 ("Sewerage Usage Fee Adjustment Criteria").

of the fee reduction that Hyundai Steel received on its overall water bill significantly exceeds the rate adjustments that are specified in the ordinance, with the exception of certain special conditions not applicable here, such as being located in a disaster area.[152]

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

With respect to Hyundai Steel's argument that this subsidy is tied to non-subject merchandise, we note that pursuant to 19 CFR 525(b)(5)(i), if a subsidy is tied to the production or sale of a particular product, Commerce will attribute the subsidy only to that product. To determine whether a subsidy is "tied," Commerce's focus is on "the purpose of the subsidy based on information available at the time of bestowal" (*i.e*., when the terms for the provision are set), and not on how a firm has actually used the subsidy.[153] Thus, under our tying practice, a subsidy is tied to particular products or operations only if the bestowal documents (*e.g*., the application, contract or approval) explicitly indicate that an intended link to the particular products or operations was known to the government authority and so acknowledged prior to, or concurrent with, conferral of the subsidy.[154] In this review, the application and approval documents do not show the reduction Hyundai Steel received was linked to the production of a particular product.[155] Moreover, Hyundai Steel reported in its initial questionnaire response that the reduction in sewerage fees is not tied to any particular product.[156] For these reasons, we continue to allocate the benefit from this program to Hyundai Steel's total sales during the POR.

Comment 4: Whether the Restructuring of Dongbu's Existing Loans by GOK-Controlled Financial Institutions Constitutes a Financial Contribution and Benefit to Dongbu

Dongbu Case Brief

- Commerce erred in countervailing bonds and loans ("existing financing") that were issued prior to the voluntary restructuring in July 2014. The existing financing was provided based on ordinary commercial consideration. Dongbu's creditors also acted in a commercially reasonable manner in agreeing to restructure the existing financing and this decision was consistent with the goal of seeking to minimize their losses and maximize their recovery.[157]
- The restructuring of existing financing by Dongbu's creditors in 2014 provided neither a new financial contribution nor a benefit to Dongbu. The fact that the terms of the existing financing were modified in the context of the voluntary restructuring does not result in a new

[152] *Id*.
[153] *See CVD Preamble*, 63 FR at 65403.
[154] *Id*. at 65402.
[155] *See* GOK IQR at Exhibit SEWER;-4 *see also* Hyundai Steel IQR at Exhibit G-33.
[156] *See* Hyundai Steel IQR at Exhibit G-32 at 2.
[157] *See* Dongbu Case Brief at 1-2.

financial contribution. Moreover, the original loans from both GOK and private financial institutions were provided on ordinary commercial terms.[158]

Petitioners Rebuttal Brief re Dongbu

- Commerce's established practice is to treat revisions to the terms of existing loans as new financial contributions. Consistent with its practice, Commerce should continue to find that the restructuring of existing loans in Dongbu's debt restructuring program constitute new loans and, thus, new financial contributions.[159]
- Commerce correctly preliminarily determined that Dongbu was not creditworthy during the POR. Commerce's rules provide a methodology that must be used to calculate the benefit for uncreditworthy companies. Commerce may not use comparable commercial loans to determine the benefit, even if such loans existed. Moreover, the loans provided by non-government financial institutions on the creditors' committees are not comparable commercial loans and thus should not be used as a benchmark even if this were permitted by Commerce's regulations.[160]
- Limited participation by commercial financial institutions in a restructuring program dominated by government policy financial institutions in no way supports a determination that the government policy financial institutions' financial contributions did not confer a benefit.[161]

Commerce's Position: We continue to find that restructured loans from GOK-controlled financial institutions constitute a financial contribution and benefit to Dongbu. We note that Dongbu made identical arguments concerning this issue in the investigation and prior administrative reviews in the countervailing duty proceeding regarding certain corrosion-resistant steel products (CORE) from Korea.[162] In the CORE from Korea proceeding, where Commerce was presented with an identical set of facts, Commerce has consistently found Dongbu's restructuring constituted a financial contribution and a benefit to Dongbu within the meanings of sections 771(5A)(D)(iii)(I) of the Act.[163]

As an initial matter, we find that the GOK-controlled policy financial institutions (*i.e.*, the KDB, Korea Export-Import Bank (KEXIM), Woori Bank (Woori), Industrial Bank of Korea (IBK), Korean Corporate Bond Stabilization Fund (CBSF); and, Korea Financial Corporation (KoFC))

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[158] *Id.* at 4-5.
[159] *See* Petitioners Rebuttal Brief re Dongbu at 1.
[160] *Id.* at 1.
[161] *Id.* at 9.
[162] *See CORE from Korea Inv* IDM at "Debt Restructuring Program"; *see also Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, Rescission of Review, In Part, and Intent to Rescind, In Part; 2015-16*, 83 FR 39671 (August 10, 2018), and accompanying PDM, unchanged in *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2015–2016*, 84 FR 11749 (March 28, 2019) (*CORE from Korea 2015-2016*), and accompanying IDM at Comment 8; *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, and Rescission of Review, in Part; 2017*, 84 FR 48107 (September 12, 2019), and accompanying PDM, unchanged in *CORE from Korea 2017* IDM at Comment 8; and *CORE from Korea 2018* IDM at Comment 4.
[163] *See CORE from Korea Inv* IDM at "Debt Restructuring Program"; *see also CORE from Korea 2015-2016* IDM at Comment 8; and *CORE from Korea 2017* IDM at Comment 8.

are authorities within the meaning of section 771(5)(B) of the Act.[164] Also, Dongbu's argument that the original financing was arranged on commercial terms is not relevant, as we are examining the restructuring of "existing financing" as new loans containing new terms.[165] The new terms of the loans provided by the GOK-controlled financial institutions did not just include the extension of repayment terms and early settlement, but also included a reduction of the interest rates charged by the financial institutions.[166] Commerce has a long-standing practice of treating restructured loans as "new loans," because the state-owned policy banks and a respondent company agreed on new loan terms, thus, providing new financial contributions.[167] With respect to benefit, the *Preamble* states that "when a firm receives a financial package including loans *from both commercial banks and from the government*, we intend to examine the package closely to determine whether the commercial bank loans should, in fact, be viewed as 'commercial' for benchmark purposes. In particular, we look to whether there any special features of the package that would lead to the commercial lender to offer lower, more favorable terms than would be offered absent the government/commercial package" (emphasis added).[168] We continue to find that the benefit exists where the government-controlled policy banks provided lower interest rates on the restructured loans than a private commercial bank that is outside of the creditor committee would offer. For further analysis on benefit, please also see Comment 6 below.

Thus, following our regulation and the *Preamble*, Commerce examined the record evidence concerning the debt restructuring and we continue to find that these restructured loans constitute new financial contributions as these loans involved new terms including interest rate reductions.[169] Also consistent with Commerce's past decisions in CORE from Korea, we continue to find that under this debt restructuring these six authorities provided a financial contribution to Dongbu, as defined under section 771(5)(D)(i) of the Act.[170]

[164] *See Preliminary Results* PDM at 20.
[165] *See CORE from Korea Inv* at Comment 5; *see also Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 FR 60639 (October 17, 2007) (*CFS Paper*), and accompanying IDM at 38; and *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003) (*DRAM from Korea*), and accompanying IDM at 20-21.
[166] *Id*. at 19-20.
[167] *See DRAM from Korea* IDM at 21-22; *see also CFS Paper* IDM at 39; and *Final Affirmative Countervailing Duty Determination: Certain Steel Products from France*, 58 FR 37304, 37311 (July 3, 1993).
[168] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65364 (November 25, 1998) (*Preamble*).
[169] *See CORE from Korea Inv* IDM at Comment 5; *see also CFS Paper* IDM at 38; and *DRAM from Korea* IDM at 20-21.
[170] *See Preliminary Results* PDM at 20-21; *see also CORE from Korea Inv*; *CORE from Korea 2015-2016* IDM at Comment 8; *CORE from Korea 2017* IDM at Comment 8; and *CORE from Korea 2018* IDM at Comment 4.

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

Dongbu Case Brief

- The voluntary restructuring operates in a similar manner as formal bankruptcy proceedings, and it is well settled that Commerce does not treat concessions made by creditors in the context of a formal bankruptcy as specific and countervailable.[171]
- Dongbu's choice of going through a voluntary restructuring, as opposed to a formal bankruptcy or corporate workout procedure, was not motivated or influenced by the GOK, but was based on commercial considerations and the recommendations of an independent auditor. There was no GOK program that was specific to Dongbu or to the steel industry.[172]
- The voluntary restructuring is generally available to a wide array of debtors from all industries.[173]
- Commerce's interpretation of section 771(5A)(D)(iii)(I) of the Act is much too broad and results in any voluntary restructuring being found to be specific because the number of distressed companies that would be availing themselves of any of the three types of corporate restructuring in Korea is necessarily going to be limited.[174] The purpose of the specificity requirement is "to differentiate between those subsidies that distort trade by aiding a specific company or industry, and those that benefit society generally... and thus minimally distort trade, if at all."[175]
- Absent evidence that the manner in which a voluntary restructuring was carried out was done in a way to provide specific recipients with access to its benefits, there is no reasonable basis for treating concessions made by creditors in the context of a bankruptcy proceeding differently than when such concessions are made in the context of a voluntary restructuring.[176]

Petitioners' Rebuttal Brief re Dongbu

- Commerce has consistently found the debt restructuring program is *de facto* specific because the actual recipients of subsidies under the program are limited in number, and the same is true in this review as well.[177]
- Dongbu's comparisons to Commerce's analyses of bankruptcy proceedings are inapplicable because the debt restructuring program is not and does not resemble a formal bankruptcy proceeding.[178]

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[171] *See* Dongbu Case Brief at 3-14-23 (citing *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of the Countervailing Duty Administrative Review; 2010*, 78 FR 19210 (March 29, 2013), and accompanying Issues and Decision Memorandum at 21; *Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 69 FR 2113 (January 14, 2004), and accompanying Issues and Decision Memorandum at 13 and 21; and *Al Tech Specialty Steel Corp. v. United States*, 661 F. Supp. 1206, 1212 (Ct. Int'l Trade 1987)).
[172] *Id*. at 17-18
[173] *Id*. at 17-18
[174] *Id*. at 18-19
[175] *Id*. at 20.
[176] *Id*. at 22-23.
[177] *See* Petitioners Rebuttal Brief re Dongbu at 2 and 14-16.
[178] *Id*. at 2 and 11-14.

Commerce's Position: We continue to find that that restructured loans are specific. We note that Dongbu made identical arguments concerning this issue in the investigation and prior administrative reviews in the countervailing duty proceeding regarding CORE from Korea.[179] In the CORE from Korea proceeding, where Commerce was presented with an identical set of facts, Commerce has consistently found Dongbu's restructuring was *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.[180]

Further, the CIT affirmed Commerce's specificity finding for this program in *Nucor Corp. v. United States*, which was litigation stemming from the first administrative review of CORE from Korea.[181] Dongbu has presented no evidence or argument in this proceeding that was not present in the countervailing duty proceeding regarding CORE from Korea.

As explained in the *Preliminary Results*, Dongbu was one of a very limited number of companies that went through such a government-assisted restructuring program.[182] Thus, the debt restructuring program is specific to Dongbu within the meaning of section 771(5A)(D)(iii)(I) of the Act, as the actual recipients of financing pursuant to restructurings by creditors' councils are limited in number.[183] Dongbu's debt restructurings cannot be compared to a bankruptcy proceeding, as Dongbu did not operate in a similar manner as a bankruptcy proceeding, nor did Dongbu go through a formal bankruptcy proceeding over the debt restructuring and corporate debt workout. Further, the restructuring of Dongbu's debt was not overseen by an independent party.[184] Instead, Dongbu's debt restructuring was controlled by the Creditor Bank Committee, which in turn was controlled by GOK policy banks such as the KDB. The CIT has also affirmed, in the context of the countervailing duty proceeding regarding CORE from Korea, that Dongbu's restructuring was a specific subsidy that did not operate as a bankruptcy proceeding.[185] Accordingly, we continue to find that because the actual recipients of financing pursuant to restructurings by creditors' councils are limited in number, this subsidy is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

[179] *See CORE from Korea Inv* IDM at Comment 4; *CORE from Korea 2015-2016* IDM at Comment 9; *CORE from Korea 2017* IDM at Comment 9; and *CORE from Korea 2018* IDM at Comment 5.
[180] *Id.*
[181] *See Nucor Corp. v. United States*, 494 F. Supp. 3d 1377 (CIT 2021) (*Nucor Corp.*).
[182] *See Preliminary Results* PDM at 20 (citing GOK IQR at 162).
[183] *Id*.
[184] *See Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2010*, 78 FR 19210, 19212 (March 29, 2013) (Commerce distinguished between a bankruptcy proceeding, which Commerce characterized as "essentially a liquidation process" and other types of "debt workouts" in Korean CVD proceedings that "involved out-of-court corporate restructuring agreements implemented by a body of creditors dominated by government-owned or controlled entities.")
[185] *See Nucor Corp. v. United States*, 494 F. Supp. 3d 1377, 1383 (CIT 2021).

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

Dongbu Case Brief

- The GOK and private banks agreed to restructure these existing loans on the same material terms.[186]
- Citing to World Trade Organization's (WTO's) Panel report in *Korea-Measures Affecting Trade in Commercial Vessels*, Commerce should examine the financing in the context of the financial distress that Dongbu was going through and whether the existing creditors were acting in a commercially reasonable manner.[187]
- To facilitate the Voluntary Restructuring, Dongbu and its creditors hired an independent auditor, PriceWaterhouseCoopers (PWC), who recommended the terms of Dongbu's Voluntary Restructuring, which the Creditors' Council adopted. As part of its report, PWC concluded that the going-concern value of Dongbu was greater than the liquidation value and thus it made commercial sense for the creditors to participate in the Voluntary Restructuring in order to try and maximize their recovery on the existing financing. All the creditors – GOK financial institutions and private banks alike – agreed to restructure the existing financing on the same terms.[188]
- Commerce erroneously disregarded Dongbu Steel's loans from private creditors as "comparable commercial loans" for purposes of a benchmark under 19 CFR 351.505(c)(2) on the grounds that these loans were made by banks that were part of the Creditor Bank Committee that was controlled by the GOK-controlled financial institutions. However, there is nothing in the statute or regulations to prevent loans from private banks from meeting the "comparable commercial loans" standard for use as a benchmark.[189]
- As in *CFS Paper*, there is no basis to exclude the loans that Dongbu received from private creditor banks as comparable commercial loans.[190] There is no lawful basis for Commerce's rejection of the interest rates from these private loans as benchmarks. These loans constitute comparable commercial loans that Dongbu actually received from private banks and should be used as the benchmark for measuring any benefit in the final results.[191]

Petitioners' Rebuttal Brief re Dongbu

- Commerce should reject Dongbu's argument that the loans from non-government financial institutions on the government-controlled creditors' committee may serve as comparable commercial loans for benchmarking purposes.[192]

Commerce's Position: We continue to find that the interest rates from private banks are not usable as benchmarks. We note that Dongbu made identical arguments concerning this issue in the investigation and prior administrative reviews in the countervailing duty proceeding

[186] *See* Dongbu Case Brief at 2 and 4-5 (citing Section 771(5)(D)(i) & (5)(E)(ii) of the Act and 19 CFR 351.505(a)(3)(i)).
[187] *Id*. at 5-6 (citing Panel Report, *Korea-Measures Affecting Trade in Commercial Vessels*, WTO Doc. WT/DS273/R (adopted April 11, 2005) (*Korea-Measures Affecting Trade in Commercial Vessels*)).
[188] *Id*. at 2 and 6.
[189] *Id*. at 7-8.
[190] *Id*. at 13-14 (citing *CFS Paper* IDM).
[191] *Id*. at 14.
[192] *See* Petitioners Rebuttal Brief re Dongbu at 8-11.

regarding CORE from the Korea.[193] In the CORE from Korea proceeding, where Commerce was presented with an identical set of facts, Commerce did not use restructured loans provided by private banks making up the Creditors' Committees as benchmarks.[194] The CIT in *Nucor Corp.* affirmed our determination not to use the restructured loans provided by private banks as benchmarks in the first administrative review.[195] In this review, Dongbu has presented no new evidence that would lead us to conclude that the restructured loans provided by private banks are "comparable commercial loans."

The record demonstrates that Dongbu did not obtain any new long-term loans from conventional commercial sources in 2018, other than Dongbu's existing restructured loans from government-controlled and private banks. Similar to our findings in CORE from Korea, we have not used restructured loans provided by commercial banks on the Creditor Bank Committee either as benchmarks or as dispositive evidence of creditworthiness, as we found that these private banks' decisions and interest rates were influenced by the GOK-controlled financial institutions, and that these private loans do not reflect credit that would have been available to Dongbu in the marketplace.[196] Furthermore, 19 CFR 351.505(a)(3)(iii) states that when an uncreditworthy firm receives government-provided long-term loans, Commerce normally will calculate the interest differential by using an uncreditworthy benchmark. This regulation is applicable here, as Commerce continues to find Dongbu to be uncreditworthy during the POR, pursuant to 19 CFR 351.505(a)(4). Commerce's regulation does not provide that Commerce will calculate the benefit for an uncreditworthy company by using comparable commercial loans. Therefore, Commerce used an uncreditworthiness benchmark that includes a risk premium, in accordance with 19 CFR 351.505(a)(3)(iii), to measure the benefits from Dongbu's countervailable long-term debts/loans during the POR.

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

Even if Dongbu were creditworthy, its loans from private banks could not be used as benchmarks. These loans were part of the financial package offered by the KDB, provided for under the government's debt restructuring program and, thus, unsuitable for benchmark

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[193] *See CORE from Korea Inv* IDM at "Debt Restructuring Program"; *see also Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, Rescission of Review, In Part, and Intent to Rescind, In Part; 2015-16*, 83 FR 39671 (August 10, 2018), and accompanying PDM, unchanged in *CORE from Korea 2015-2016*; *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, and Rescission of Review, in Part; 2017*, 84 FR 48107 (September 12, 2019), and accompanying PDM, unchanged in *CORE from Korea 2017* IDM at Comment 10; and *CORE from Korea 2018* IDM at Comment 6.
[194] *Id.*
[195] *See Nucor Corp.*, 494 F. Supp. 3d at 1381-82.
[196] *Id.*

purposes. These loans from the private banks to Dongbu do not constitute "comparable commercial loans" under 19 CFR 351.505(a)(2), because of the substantial government influence and the fact that they were part of a government program to restructure Dongbu's debt.

Furthermore, Dongbu's reliance on *Korea-Measures Affecting Trade in Commercial Vessels*[197] to argue that Commerce must determine whether the terms of the restructured loans provided by private banks were "commercially reasonable" before disregarding them as potential benchmarks is misplaced. The WTO report cited did not involve the United States. Even if the United States were a party to that dispute, findings of the WTO are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements. As is clear from the discretionary nature of this scheme, Commerce did not intend for WTO reports to trump, automatically replace, or override the exercise of Commerce's discretion in applying the statute. Moreover, it is the Act and Commerce's regulations that have direct legal effect under U.S. law, not the WTO Agreements or WTO reports.

The facts on the record of this review differ from the facts in *CFS Paper*. In *CFS Paper*, Commerce did not find the evidence of GOK influence over the decision-making ability of the Korean respondent's Creditors Council at issue.[198] Here, we found Dongbu's Creditor Banks Committee was dominated by GOK-controlled policy banks, which are authorities under section 771(5)(B) of the Act. There is no basis on this record to find that the GOK-controlled and private banks on the Creditor Bank Committee acted in a "commercially reasonable" manner (*i.e.*, seeking to maximize interest income) on the restructured loans without comparing the terms of the renegotiated loans to those of a similar loan provided by a private bank. In CORE from Korea, after reviewing the PWC report, we still found the restructuring of Dongbu's existing loans provided a financial contribution and benefit to Dongbu.[199] While the PWC report on this record might have evaluated the assets of Dongbu at the time of restructuring, the final terms of the loans were not reflected in the PWC report. Thus, we cannot determine that the terms of restructured loans offered by private banks on the Creditor Bank Committee are commercially reasonable simply based on the fact that an outside auditor was involved in the restructuring process.

Comment 7: Whether Dongbu Steel's Debt-to-Equity Conversions Should are Countervailable

Dongbu Case Brief

- The facts do not support the conclusion that the debt-to-equity swaps provided a countervailable benefit to Dongbu Steel.[200]
- Commerce's post-preliminary finding that Dongbu Steel received countervailable benefits from the debt-to-equity swaps that occurred as part of its debt restructuring workout program is entirely inconsistent with Commerce's latest reaffirmation that these debt-to equity swaps were not countervailable in the CORE from Korea proceeding, where the facts are essentially

[197] *See* Dongbu Case Brief at 5-6 (citing *Korea-Measures Affecting Trade in Commercial Vessels*).
[198] *See CFS Paper* IDM at 43.
[199] *Id.* at 43.
[200] *See* Dongbu Case Brief at 23-31.

the same and where for the third consecutive administrative review, Commerce found that the debt-to-equity swaps by Dongbu Steel's creditors do not provide a countervailable benefit to Dongbu Steel.[201]

- Commerce did not acknowledge this contradiction, make an effort to distinguish its new position from prior case precedence, nor cite to any reasoning or precedence for finding the debt-equity swaps countervailable.[202]
- In the Post-Preliminary Decision Memorandum, Commerce incorrectly claimed that KDB became Dongbu Steel's majority Shareholder, that the private investors had no alternative but to accept the terms imposed by the KDB and other GOK policy banks, and that private investors' purchases of Dongbu Steel's shares were not significant.[203]
- Commerce's reliance on the 2013 Agreement for Corporate Bond Refinancing Issuance (Special Agreement) with KDB is misplaced because the Special Agreement was superseded by Dongbu Steel's voluntary workout program.[204]
- There is no evidence that decisions by Dongbu Steel's private creditors were subject to GOK control as a result of the dominant position of the GOK-owned creditors on the creditors' committee.[205]
- Actual private investor prices were available and Commerce should have used them as a benchmark to find that Dongbu received no benefit from the debt-to-equity swaps. [206]
- Commerce's preliminary determination that prices paid by minority private creditors cannot serve as "private investor prices" is not supported by Commerce's past practice. In *CFS Paper*, Commerce found in the context of a voluntary restructuring proceeding similar to here, that even though the government financial institutions on the creditors' committee accounted for more than 75 percent of the voting rights, the debt-to-equity swaps and loans provided by the private creditors could serve as benchmarks.[207]

Petitioners Rebuttal Brief re Dongbu

- Commerce properly determined that Dongbu was not equityworthy and that the debt-to-equity swaps conferred countervailable benefits.[208]
- Each of Commerce's proceedings is *sui generis*, and the agency is free to reconsider previous analyses of similar issues as long as its determinations are adequately explained, and Department's post-preliminary analysis of Dongbu's debt-to-equity swaps in this review is thoroughly explained, and in far greater depth and detail than the cursory analysis in the *CORE from Korea 2018 Final Results*.[209]

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[201] *Id.* at 24 (citing *CORE from Korea 2018* IDM at Comment 7).
[202] *See* Dongbu Case Brief at 25.
[203] *See* Dongbu Case Brief at 25 (citing Dongbu's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-882: Dongbu's Initial Questionnaire Response," dated February 28, 2020 (Dongbu IQR) at Exhibit 3-A and Post-Preliminary Analysis Memorandum at 27).
[204] *See* Dongbu Case Brief at 26 (citing Dongbu IQR at Exhibit G-2 at 4-6, 8, 11, and 13; exhibit G-3; and Exhibit G-4).
[205] *See* Dongbu Case Brief at 27-31.
[206] *Id.* at 31-34.
[207] *Id.* at 33-34 (citing *CFS Paper* IDM at 43. *See also* 19 CFR 351.507(a)(2)(i)).
[208] *See* Petitioners Rebuttal Brief re Dongbu at 17.
[209] *Id.* (citing *CORE from Korea 2018* IDM at 37-38).

- Dongbu does not challenge Commerce's analysis of Dongbu's actual financial indicators as evidence that it was not equityworthy. Instead, it focuses solely on whether "actual private investor prices" were available and "significant" for the purpose of use as a benchmark.[210]
- Commerce explained that the non-government banks on the creditor committees are not "actual private investors" at all as that term is used in the regulations. Rather, they are "existing private creditors who were members of DSCBC and DSCFC by virtue of holding Dongbu Steel loans that Dongbu Steel was unable to repay."[211]
- Because the KDB and other Korean government banks effectively controlled the actions of the creditor committees through their super-majority voting position, Commerce concluded that "the prices paid by{the} private creditors are not reliable for purposes of determining a benchmark market rate."[212]
- Commerce did not "rely on" the Special Agreement. The analysis discussed the agreement as context for the early stages of the KDB's attempts to rescue Dongbu and to control the process of doing so.[213]
- Whether the non-government banks participated "voluntarily" is irrelevant to the benchmark issue. The question is not whether the non-government banks were entrusted or directed to participate in any aspect of the restructuring. It is whether the actions of the government banks were "inconsistent with the usual investment practice of private investors." However, because the Korean government banks held a veto-proof supermajority of the creditor committee's voting rights at each stage of the process, the non-government banks had no way to influence the terms on which they participated.[214]
- Commerce's Determination in *CFS Paper from Korea* is inapplicable. In *CFS Paper*, Commerce considered the supermajority position of "creditors with GOK ownership levels of at least 25 percent" during a single phase of a multi-phase debt restructuring, while two of the three phases of the restructuring, those banks held less than a supermajority of the voting rights. Here, in contrast, creditors that were majority owned and thus controlled by the GOK held a supermajority of the voting rights in each phase of Dongbu's debt restructuring.[215]

Commerce's Position: We continue to find that the equity infusion program provided a financial contribution to Dongbu Steel and we have not revised our benefit methodology with respect to the Dongbu Steel equity infusions. With respect to Dongbu's argument that our finding here is not consistent with the *CORE from Korea 2018*, Commerce's decisions in each proceeding stand on their own, and are made on a fact specific basis.[216] Further, in *CORE from Korea 2018*, we stated that

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[210] *See* Petitioners Rebuttal Brief re Dongbu at 17 (citing Dongbu Case Brief at 23-34 and Post-Preliminary Analysis Memorandum at 17-19).
[211] *Id.* at 17-18 (citing Post-Preliminary Analysis Memorandum at 17).
[212] *Id.* at 18 (citing Post-Preliminary Analysis Memorandum at 17-19).
[213] *Id.* at 19 (citing Post-Preliminary Analysis Memorandum at 18).
[214] *Id.* at 20 (citing Dongbu Case Brief at 26; and 19 CFR 351.507(a)(1)).
[215] *Id.* at 23-24 (citing *CFS Paper* IDM at 43).
[216] *See Hyundai Steel Co. v. United States,* 319 F. Supp. 3d 1327, 1342 n.13 (CIT 2018) (citing *Yama Ribbons & Bows Co. v. United States,* 865 F. Supp. 2d 1294, 1298 (CIT 2012) ("Commerce must base its decisions on the record before it in each individual investigation."); *U.S. Steel Corp. v. U.S.*, 637 F. Supp. 2d 1199, 1218 (CIT 2009) ("{E}ach agency determination is *sui generis*, involving a unique combination and interaction of many variables, and therefore a prior administrative determination is not legally binding on other reviews before this court.")

> We also note that the facts on the instant review differ from the facts in *Cold-Rolled Steel from Korea*, which is an ongoing administrative review that covers the same POR. While we are not making an unequityworthiness finding and continue to find the equity infusions provided no benefit to Dongbu for the instant administrative review, we may re-examine this issue for the next administrative review if new record evidence requires such an examination.[217]

In *CORE from Korea 2019 Preliminary Results*, Commerce preliminarily found the debt to equity swap program conferred a benefit to Dongbu and Dongbu was unequityworthy between 2014 and 2018. In the Preliminary Results, we stated that

> 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." 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).[218]

As explained in detail in our Post-Preliminary Memorandum, Dongbu Steel participated in three debt-equity swaps (conversions) which occurred as part of the first, second, and third debt restructuring administered by the Dongbu Steel Creditor Bank Committee (under the authority of the Creditor Banks' Committee Agreement) and the Dongbu Steel Creditor Financial Institution Committee (under the authority of the Succession Agreement of the Agreement for Compliance of Business Normalization Plan and the Corporate Restructuring Promotion Act).[219] As 19 CFR 351.507(a)(l) provides, "{i}n the case of a government-provided equity infusion, a benefit exists to the extent that the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion is made."

Dongbu argues that the participation of Dongbu's private creditors in these debt-equity swaps represents the existence of "private investor prices" within the meaning of 19 CFR 351.507(a)(2)(i).[220] However, as explained in detail in the Post-Preliminary Decision Memorandum, the majority government creditors on the creditors' committees, which after the first debt-equity conversion were also Dongbu Steel's majority shareholders, controlled the

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[217] *See CORE from Korea 2018* IDM at38.
[218] *See Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, 2019*, 86 FR 37740 (July 16, 2021) (*CORE from Korea 2019 Preliminary Results*), and accompanying PDM at 16. In 2019, Dongbu changed its name to "KD Dongbu Steel Co. Ltd." *See CORE from Korea 2019 Preliminary Results* at FR 37740.
[219] *See* Post-Preliminary Analysis Memorandum at 10-15; *see also* Dongbu IQR at Exhibit G-2, 8-28.
[220] *See* Dongbu Case Brief at 33-34 (citing *CFS Paper* IDM at 43); *see also* 19 CFR 351.507(a)(2)(i).

decisions of the creditors' committees by virtue of their majority voting rights on the committees.[221] Thus the private creditors, even if they all voted in concert, were not in a position to overrule the government-controlled creditors on the creditors' committees.

Furthermore, as explained in detail in the Post-Preliminary Decision Memorandum, the terms of the Creditor Banks Committee Agreement and the Succession Agreement of the Agreement for Compliance of Business Normalization Plan gave KDB significant influence over the debt restructurings.[222] As Dongbu Steel went through the various debt restructuring programs, the KDB continued to dictate how Dongbu Steel would use its assets and manage its production to generate revenue, by which the KDB also was able to dictate how Dongbu Steel would repay its creditors.[223] As also explained in the Post-Preliminary Decision Memorandum, private creditors had no alternative but to accept the terms imposed by KDB and other GOK-owned policy banks.[224] Finally, as explained in the Post-Preliminary Decision Memorandum, the private creditors were not evaluating the reasonableness of the rate of return on any equity they were considering investing in the company in each debt to equity conversion. Rather, they were considering how best to limit their losses and maximize the recovery.[225] As such, the prices paid by these private creditors are not reliable for purposes of determining a benchmark market rate. Thus, the prices under which shares were purchased under all three debt-equity conversions were effectively determined by Dongbu Steel's government-controlled creditors. Accordingly, the prices paid under the three debt-equity conversions were not "private investor prices" within the meaning of 19 CFR 351.507(a)(2)(i).

Dongbu's argues that there is no evidence that decisions by Dongbu Steel's private creditors were subject to GOK control as a result of the dominant position of the GOK-owned creditors on the creditors' committee.[226] However, Commerce never made any preliminary findings that the position of the GOK with respect to the private creditors is one of direct control. Commerce merely found that GOK-controlled financial institution creditors controlled the decisions of the creditors' committees.[227] Thus, the private creditors had no decision-making control over the creditors' committees, and were always in a position to be overruled by the majority of government creditor members of the committees when it came to any negotiations between the Dongbu Steel's majority creditors and Dongbu Steel.

Dongbu correctly points out that, in the Post-Preliminary Decision Memorandum, Commerce erroneously stated that KDB became Dongbu Steel's majority shareholder.[228] As Commerce stated in the Post-Preliminary Decision Memorandum, and as the record shows, KDB became Dongbu Steel's largest shareholder as a result of the first debt-equity conversion which took place in 2015, KDB remained Dongbu Steel's largest shareholder after the second and third debt-

[221] *See* Post-Preliminary Analysis Memorandum at 12-15, and 19 (citing Dongbu IQR at Exhibit G-2 at 9, 23, 25-28, and 33).
[222] *See* Post-Preliminary Analysis Memorandum at 18-19 (citing Dongbu IQR at Exhibit G-4 at 1 (Article 4), GOK IQR at 146, Exhibit Debt Restructuring-4 at 3, and Exhibit Debt Restructuring-6 at 8).
[223] *Id.*
[224] *Id.*
[225] *See* Post-Preliminary Analysis Memorandum at 12-14, 17 and 27 (citing Dongbu IQR at Exhibit G-2).
[226] *See* Dongbu Case Brief at 27-31.
[227] *See* Post-Preliminary Analysis Memorandum at 17-19 and 27.
[228] *See* Dongbu Case Brief at 25 (citing Post-Preliminary Analysis Memorandum at 27).

equity conversions which took place in 2016 and 2018, and KDB together with other GOK-controlled financial institutions, collectively owned a majority of Dongbu Steel's shares.[229] However, despite Commerce's statement to the contrary at page 27 of the Post-Preliminary Decision Memorandum, KDB itself was not Dongbu Steel's majority shareholder.

Notwithstanding this misstatement by Commerce, the fact remains that KDB exercised significant influence over the debt restructuring. The government banks controlled a majority of Dongbu Steel's shares after the first debt-equity conversion, and a majority of the voting rights on both creditors' committees; moreover, KDB alone controlled the largest share of debt, equity, and voting rights on both creditors' committees, and enjoyed significant influence over the debt restructurings under the terms of the Creditor Banks' Committee Agreement and the Succession Agreement of the Agreement for Compliance of Business Normalization Plan.[230]

While the position which KDB held before the Creditor Banks' Committee Agreement did not continue unchanged under the Creditor Banks' Committee Agreement, KDB continued to have the largest voting right as the largest creditor, and KDB and other government-controlled financial institution creditors held a majority of the voting rights on both the Dongbu Steel Creditor Banks Committee and the successor Dongbu Steel Creditor Financial Institution Committee. Furthermore, as explained above, the terms of the Creditor Banks' Committee Agreement and the Succession Agreement of the Agreement for Compliance of Business Normalization Plan gave KDB significant influence over the debt restructurings.[231]

Dongbu argues that Commerce erroneously concluded that the private investors had no alternative but to accept the terms imposed by KDB and other GOK policy banks. However, in the Post-Preliminary Decision Memorandum, Commerce reasonably summarized the situation from the time Dongbu Steel entered into the Special Agreement with KDB through the subsequent three debt-equity conversions. Prior to the first restructuring, the Special Agreement left KDB with significant control over the company's decisions. The record clearly shows that the Special Agreement[232] to repay its creditors, which included the KDB Creditor Banks Committee Agreement and the Succession Agreement of the Agreement for Compliance of Business Normalization Plan, gave KDB significant influence over the debt restructurings themselves.[233] Finally, as explained in the Post-Preliminary Decision Memorandum, the majority government creditors on the creditors' committees, which after the first debt-equity conversion were also Dongbu Steel's majority shareholders, controlled the decisions of the creditors' committees by virtue of their majority voting rights on the committees. [234]

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[229] *See* Post-Preliminary Analysis Memorandum at 12-15 and 19 (citing GOK IQR at Exhibit G-2 at 12 and 26-27; and Dongbu IQR at Exhibit G-2 at 25-27).
[230] *Id.* at 12-15 and 18-19 (citing Dongbu IQR at Exhibit G-2 at 9, 23, 25-28, and 33, Exhibit G-4 at 1 (Article 4); GOK IQR at 146, Exhibit Debt Restructuring-4 at 3, and Exhibit Debt Restructuring-6 at 8).
[231] *Id.* at 18-19 (citing Dongbu IQR at Exhibit G-4 at 1 (Article 4), GOK IQR at 146, Exhibit Debt Restructuring-4 at 3, and Exhibit Debt Restructuring-6 at 8).
[232] *See* Post-Preliminary Analysis Memorandum at 18 (citing Dongbu IQR at Exhibit G-4 at 1 (Article 4)).
[233] *Id.* at 18-19 (citing Dongbu IQR at Exhibit G-4 at 1 (Article 4), GOK IQR at 146, Exhibit Debt Restructuring-4 at 3, and Exhibit Debt Resttucturing-6 at 8).
[234] *See* Post-Preliminary Decision Memorandum at 10-15, and 19 (citing Dongbu IQR at Exhibit G-2 at 9, 23, 25-28, and 33). The members of the Dongbu Steel Creditor Banks Committee included KDB; the Export-Import Bank of

As provided in 19 CFR 35I.507(a)(2)(i), there is an exception for the situation where private investor prices are available such that, even in the case where private investor prices exist, Commerce will not use them as benchmarks to determine benefit under a government equity infusion scheme unless such private investor purchases are "significant." Dongbu Steel argues that private investors' purchases of Dongbu Steel's shares were significant within the meaning of 19 CFR 35I.507(a)(2)(i).

As an initial matter, as explained above, the purchases by private creditors were not independent of the creditors committee's decisions, and the creditor committees' decisions were dictated by the collective decisions of the government-controlled financial institutions which held the majority of the voting rights, as explained above.[235] Furthermore, as explained above, these government-controlled financial institutions also had controlling interest of Dongbu Steel's shares after the conclusion of the first equity conversion as part of the first restructuring.[236] Furthermore, under the terms of the Creditor Banks' Committee Agreement and the Succession Agreement of the Agreement for Compliance of Business Normalization Plan, KDB had significant influence over the debt restructurings.[237] Finally, as explained in the Post-Preliminary Decision Memorandum, the private creditors were not evaluating the reasonableness of the rate of return on any equity they were considering investing in the company in each debt to equity conversion. Rather, they were considering how best to limit their losses and maximize the recovery.[238] Thus, the private creditors purchases do not constitute "private investor prices," within the meaning of 19 CFR 351.507(a)(2)(i) or private investor purchases within the meaning of 19 CFR 35I.507(a)(2)(i). Accordingly, there were no significant private investor purchases within the meaning of 19 CFR 35I.507(a)(2)(i).

Dongbu's argument that the Special Agreement was superseded by Dongbu Steel's Voluntary Workout Program, and therefore that Commerce' reliance on it is misplaced does not contradict Commerce's conclusions in the Post-Preliminary Decision Memorandum. Commerce' reliance on the Special Agreement speaks to the role KDB had, through the Special Agreement, over the company's assets and decisions regarding payment of debt, among other provisions, from the time that Dongbu Steel entered into the Special Agreement, through the June 2014 Creditor

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Korea (KEXIM); and Industrial Bank of Korea (IBK), with KDB as the principal creditor and the Korean state-owned banks together holding the largest share of the of voting rights. The Members of the Dongbu Steel Creditor Financial Institutions Committee included KDB; KEXIM; Woori; Nonghyup Bank (NH Bank); Shinhan; Hana; Korea Credit Guarantee Fund (KODIT); Corporate Bond Stabilization Fund (CBSF);, and K Savings Bank (KSAVING). *Id.* at 10-11 (citing Dongbu IQR at Exhibit G-2 at 5-6). Commerce has also previously found in this proceeding that IBK KDB; and KEXIM are policy banks. *See Preliminary Results* PDM at 20 (citing *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Preliminary Negative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 80 FR 79567 (December 22, 2015), and accompanying PDM at 27, unchanged in *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49943 (July 29, 2016)).

[235] *See* Post-Preliminary Analysis Memorandum at 12-15, and 19 (citing Dongbu IQR at Exhibit G-2 at 9, 23, 25-28, and 33).

[236] *Id.* at 10-12; *see also* Dongbu IQR at Exhibit G-2 at 28-29.

[237] *See* Post-Preliminary Analysis Memorandum at 12-15 and 18-19 (citing Dongbu IQR at Exhibit G-2 at 9, 23, 25-28, and 33, Exhibit G-4 at 1 (Article 4); and GOK IQR at 146, Exhibit Debt Restructuring-4 at 3, and Exhibit Debt Restructuring-6 at 8).

[238] *Id.* at 12-14, 17, and 27 (citing Dongbu IQR at Exhibit G-2).

Banks' Committee Agreement and the three subsequent debt-equity conversions. The Special Agreement was succeeded by the June 2014 Creditor Banks' Committee Agreement, which was, in turn, superseded by the October 2014 Creditors' Co-Management Program Agreement with Creditor's Association. However, Commerce's conclusion that "{o}nce Dongbu Steel {entered} restructuring, the terms of the Special Agreement allowed the KDB to dictate how Dongbu Steel would manage its assets to repay its creditors" is accurate. As explained above, the terms of the Creditor Banks Committee Agreement and the Succession Agreement of the Agreement for Compliance of Business Normalization Plan also gave KDB significant influence over the debt restructurings, including the three debt-equity conversions.[239] As Commerce went on to explain in detail in the Post-Preliminary Decision Memorandum, these facts also speak to the role of KDB in the entire process leading up the first debt restructuring and indeed through all three debt-equity conversions. As explained in the Post-Preliminary Decision Memorandum, "KDB did not simply act as a lender throughout this process. After the Special Agreement was reached, the KDB tried to sell Dongbu Incheon and DDPT as a package deal to POSCO. Because the deal was unsuccessful, Dongbu Steel had no other option but to apply for the GOK's debt restructuring programs."[240]

Subsequent to the Special Agreement, Dongbu Steel entered into the first restructuring which included the first debt-equity conversion. Under this first restructuring, rather than wresting control of the company from KDB's influence under the Special Agreement, the company was largely sold to its creditors, and a majority of its shares sold to government-controlled financial institutions, including KDB, meaning Dongbu Steel's existing shareholders' share ownership and control of the company were almost completely diluted.[241] Further, the record clearly shows that government banks, through their voting rights alone, controlled the creditors' committees.[242] Moreover, as explained above, Dongbu's private creditors held a minority of the voting rights and a minority of Dongbu Steel's shares and were not in any position to vote to prevent the creditors' committees from accepting the terms of the debt-equity conversions or to prevent Dongbu Steel from accepting the terms of the three debt-equity conversions dictated by the majority government creditors on the creditors' committees. Rather, through the control which the government-controlled financial institutions, and principally KDB, gained over the company under the special agreement and the three subsequent debt restructurings, government-controlled financial institutions were able to dictate terms to Dongbu Steel' minority creditors.

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[239] *See* Post-Preliminary Analysis Memorandum at 18-19 (citing Dongbu IQR at Exhibit G-4 at 1 (Article 4), GOK IQR at 146, Exhibit Debt Restructuring-4 at 3, and Exhibit Debt Restructuring-6 at 8).
[240] *Id.* at 18 (citing GOK IQR at 146, Exhibit Debt Restructuring-4 at 3, and Exhibit Debt Restructuring-6 at 8).
[241] *See, e.g.*, Post-Preliminary Analysis Memorandum at 10-12; *see also* Dongbu IQR at Exhibit G-2 at 28-29.
[242] *Id.* at 10 ("The members of DSCBC include KDB, Korean Finance Corporation (KoFC), the Export-Import Bank of Korea (KEXIM), Nonghyup Bank, Shihan Bank, Hana Bank, Woori Bank, Korea Exchange Bank (KEB), and Industrial Bank of Korea (IBK), with KDB as the principal creditor and the Korean state-owned banks together holding the largest share of the of voting rights."), 11-13, and 15 (citing Dongbu IQR at Exhibit G-2 at 9, 27, 28, and 33, Exhibit G-12 at Attachment 1, and Exhibit G-13 at Attachment l; and GOK IQR at Exhibit Debt Restrncturing-8 at "Minutes of the 1st Dongbu Steel's Creditor Financial Institutions' Committee" at Attachment 1; GOK IQR at Exhibit Debt Restructuring-9 at Attachment 1, Exhibit Debt Restrncturing-10 at Attachment 1, Exhibit Debt Restructuring-11 at Attachment 1, and Exhibit Debt Resturcturing-14 at Annex 1) *see also 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), and accompanying IDM at 13-14.

Finally, Dongbu's reliance on *CFS Paper* is misplaced. Commerce has countervailed debt restructuring programs conducted under CRPA in past cases.[243] Each debt restructuring is unique and distinct because the terms of debt restructuring are company-specific, depend on the composition of the creditors, and vary with the financial situation of each company. In *DRAMs from Korea*[244] and *Refrigerators from Korea*,[245] Commerce analyzed facts on the debt restructurings in detail and found the GOK-owned banks had the ability to influence the creditors council on the debt restructurings at issue. In *CFS Paper*, after analyzing the facts on that record, Commerce found that the GOK owned banks did not have the ability to exercise influence over the creditors' council on Shinho's debt restructurings. In each case, Commerce analyzed the facts for each debt restructuring in detail and made a case-specific decision on whether the GOK-owned banks had ability to influence the creditors' council. As explained above and in our Post-Preliminary Analysis Memorandum, we analyzed the facts on Dongbu's debt restructuring and continued to determine the GOK-owned banks had ability to influence the creditors' council.

Further, in contrast to *CFS Paper*, the question of whether these private creditors are entrusted or directed to provide benefits to Dongbu Steel is not at issue here. Thus, Commerce continues to find that the GOK-controlled creditor financial institutions (which were in most cases also Dongbu Steel's majority shareholders) controlled the creditors' council, and thus, controlled share prices arising from the decisions of the creditors' council and negotiations between the creditors' council and Donggu Steel, and thus the share prices established through this process do not constitute "private investor prices," within the meaning of 19 CFR 351.507(a)(2)(i) or private investor purchases within the meaning of 19 CFR 35I.507(a)(2)(i).

Comment 8: Whether Commerce Incorrectly Calculated the Discount Rate for Allocating the Benefits from the Debt-to-Equity Conversion

Dongbu Case Brief

- Since the AUL period for the subject merchandise is 15 years, Commerce allocated the amounts of the 2015, 2016 and 2018 government equity infusions over a 15-year period pursuant to 19 CFR 351.507(c) and 19 CFR 351.524(b) and (d).[246]
- To calculate the discount rates, Commerce used the formula provided in 19 CFR 351.505(a)(3)(iii) which is the same formula used to calculate uncreditworthy benchmarks pursuant to 19 CFR 351.524(c)(3)(ii). [247]
- Based on the formula in 19 CFR 351.524(c)(3)(ii), Commerce selected long-term creditworthy rates for the years of each equity infusion based on interest rates for AA- rated corporate bonds published by the Bank of Korea. For the default rates of creditworthy and uncreditworthy companies Commerce used the 3-year default rates from Moody's Investors Service. But, since the amounts of the government equity infusions are being allocated over

[243] *See, e.g.*, *DRAM from Korea* IDM at 19-22; and *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410 (March 26, 2012) (*Refrigerators*), and accompanying IDM at Comment 25.
[244] *See DRAM from Korea* IDM at 21-22.
[245] *See Refrigerators* IDM at Comment 25.
[246] See Dongbu Case brief at 34-35
[247] *Id.* at 35.

the 15-year AUL period, the "n" variable (number of years) in the formula for calculating the unequityworthy discount rates should match the 15-year allocation period.[248]

Petitioners Rebuttal Brief re Dongbu

- Dongbu argues that Commerce improperly calculated the discount rate used to allocate the benefits of the debt-to-equity swaps over the average unit life (AUL) period. Specifically, Dongbu argues that, because the AUL is 15 years, Commerce should have used 15-year default rates from Moody's Investors Service to calculate the discount rate. The starting point for Commerce's calculation, however, was the three-year AA-corporate bond rate reported by the Bank of Korea.[249]
- Commerce should continue to use a default rate that is consistent with the maturity of the bonds associated with the creditworthy interest rate used in the calculation.[250]

Commerce's Position: We are not changing the calculation of the discount rate for these final results of review. As stated above, we continue to find Dongbu to be uncreditworthy. Under 19 CFR 351.351.507(c), the benefit conferred by an equity infusion shall be allocated over the same period as a non-recurring subsidy; 19 CFR351.524(d) describes how Commerce should allocate a non-recuring subsidy and 19 CFR 351.351.524(d)(3) describes selection of a discount rate when allocating a non-recurring subsidy. Specifically, 19 CFR 351.524(d)(3)(ii) contains an exception for uncreditworthy firms and states that Commerce will use as a discount rate the interest rate described in 19 CFR 351.505(a)(3)(iii), which is the formula for calculating the uncreditworthy interest rate.

The formula has four variables: 1) the term of the loan in question (*n*); 2) the long-term interest rate paid by a creditworthy company; 3) the probability of default of a creditworthy company in *n* years; and 4) the probability of default of an uncreditworthy company in *n* years. Because it is the only long-term interest rate on the record, Commerce used a 3-year AA- rated Korean Won interest rate as the long-term interest rate paid by a creditworthy company. No other long-term Korean Won interest rates were provided by parties; this three-year AA-interest rate is published by the Bank of Korea. Therefore, to be consistent, Commerce used three years for the term of the loan variable, and used the three-year creditworthy default rates and three -year uncreditworthy default rates. Thus, the calculation Commerce used is the correct calculation for a three-year uncreditworthy discount rate, based on the formula specified by 19 CFR 351.505(a)(3)(iii). It is not possible to calculate a 15-year uncreditworthy interest rate based on the regulatory formula, because there is no information regarding a 15-year creditworthy interest rate available on the record. Dongbu argues that we should simply use 15 years for the "term of the loan in question" variable, as well as 15-year creditworthy and uncreditworthy default rates, in combination with the 3-year interest rate used in the *Preliminary Results*. However, this change would not result in a 15-year uncreditworthy discount rate. It would instead be an inconsistent mixing of three-year and 15-year variables, including the three-year creditworthy benchmark interest rate, default rates from 15-year creditworthy and uncreditworthy bonds and loans, and a 15-year loan term variable. Thus, Dongbu's proposed modification does not solve any existing problem, or come closer to reaching an accurate 15-year uncreditworthy discount

[248] *See* Dongbu's Case Brief at 33-35.
[249] *See* Petitioners Case Brief re Dongbu at 24-25.
[250] *Id.*

rate. For this reason, we have continued to use the same calculation for the uncreditworthy discount rate which we used in the *Preliminary Results*.

Comment 9: Whether Commerce Made a Ministerial Error in Its Calculation of the Benefit Conferred by Dongbu's Debt Restructuring Program by Omitting Certain Benefit Amounts

Petitioners Case Brief re Dongbu

- Commerce inadvertently omitted bond financing from the benefit calculation. Commerce should correct this error.[251]

Commerce's Position: We agree with the petitioners. We have changed our calculations for the final results to include benefits from the bond financing referenced by the petitioners.[252]

XI. RECOMMENDATION

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

☒ Agree ☐ Disagree

7/22/2021

X 

Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

[251] *See* Petitioners Case Brief re Dongbu at 1-2.

[252] Details regarding the financial institution which provided the bond financing at issue are business proprietary. Therefore, *see* Memorandum, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Results Calculation Memorandum for Dongbu Steel Co. Ltd.," dated concurrently with the final results.