C-580-884
Administrative Review
POR: 1/1/2018 – 12/31/2018
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August 20, 2021

MEMORANDUM TO: Ryan Majerus
Deputy Assistant Secretary
for Policy and Negotiations

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 Hot-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 order on certain hot-rolled steel flat products (hot-rolled steel) from the Republic of Korea (Korea) covering the period of review (POR) January 1, 2018, through December 31, 2018. We have made no changes to the *Preliminary Results*[1] or our Post-Preliminary Analysis,[2] but have addressed the issues raised in the parties' case briefs. 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 (LTAR) Confers a Benefit
Comment 2: Whether Commerce Properly Countervailed the Port Usage Rights Program
Comment 3: Whether the Reduction for Sewerage Usage Fees Program is Countervailable

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[1] *See Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2018*, 86 FR 10533 (February 22, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, "Countervailing Duty Administrative Review of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Post-Preliminary Analysis Memorandum – Electricity for Less Than Adequate Remuneration," dated June 24, 2021 (Post-Preliminary Analysis Memorandum).

III. BACKGROUND

On February 22, 2021, Commerce published the *Preliminary Results* of this review.[3] In the *Preliminary Results*, we noted that we initiated an investigation into the provision of electricity for LTAR based on a new subsidy allegation (NSA) filed by the United States Steel Corporation (U.S. Steel) and Nucor Corporation (Nucor) (collectively, the petitioners).[4]

Between April 8, and May 4, 2021, we issued supplemental questionnaires regarding the NSA to the GOK and the GOK timely responded.[5] On June 8, 2021, Commerce extended the final results of review to August 20, 2021.[6] On June 24, 2021, Commerce issued its post-preliminary analysis on the provision of electricity for LTAR.[7]

On July 2, 2021, the petitioners and Hyundai Steel timely filed case briefs.[8] On July 9, 2021, the petitioners and Hyundai Steel timely filed rebuttal briefs.[9]

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

IV. SCOPE OF THE ORDER

The products covered by this order are certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and 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

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[3] *See Preliminary Results.*

[4] *See* Memorandum, "New Subsidy Allegation – Electricity," dated January 25, 2021. We solicited information from the Government of Korea (GOK) and Hyundai Steel Co., Ltd. (Hyundai Steel) regarding this program prior to publication of our *Preliminary Results*. *See also* GOK's Letter, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea, 01/01/2018 -12/31/2018 Administrative Review, Case No. C-580-884: The Republic of Korea's Response to the Electricity New Subsidy Allegation Questionnaire," dated February 2, 2021 (GOK February 2, 2021 NSA IQR); and Hyundai Steel's Letter, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-884: Hyundai Steel's Electricity NSA Questionnaire Response," dated February 2, 2021.

[5] *See* GOK's Letters, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea, 01/01/2018 – 12/31/2018 Administrative Review, Case No. C-580-884: The Republic of Korea's Response to the Electricity New Subsidy Allegation Supplemental Questionnaire," dated April 19, 2021 (GOK April 19, 2021 SQR); "Certain Hot-Rolled Steel Flat Products from the Republic of Korea, 01/01/2018 – 12/31/2018 Administrative Review, Case No. C-580-884: The Republic of Korea's Response to the Electricity New Subsidy Allegation Supplemental Questionnaire," dated May 3, 2021; and "Certain Hot-Rolled Steel Flat Products from the Republic of Korea, 01/01/2018 – 12/31/2018 Administrative Review, Case No. C-580-884: The Republic of Korea's Response to the Electricity New Subsidy Allegation Supplemental Questionnaire," dated May 10, 2021 (GOK May 10, 2021 SQR).

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

[7] *See* Post-Preliminary Analysis Memorandum.

[8] *See* Petitioners' Letter, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Case Brief," dated July 2, 2021 (Petitioners Case Brief); and Hyundai Steel's Letter, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-884: Hyundai Steel Case Brief," dated July 2, 2021 (Hyundai Steel Case Brief).

[9] *See* Petitioner's Letter, "Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Nucor's Rebuttal Brief regarding Hyundai Steel," dated July 9, 2021 (Petitioners Rebuttal Brief); and Hyundai Steel's Letter, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-884: Hyundai Steel Rebuttal Brief," dated July 9, 2021 (Hyundai Steel Rebuttal Brief).

lateral measurement ("width") of 12.7 mm or greater, regardless of thickness, and 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 of 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 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 unless the resulting measurement makes the product covered by the existing antidumping[10] or countervailing duty[11] orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products from the Republic of Korea (A-580-836; C-580-837), 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, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

[10] *See Notice of Amendment of Final Determinations of Sales at Less than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products from France, India, Indonesia, Italy, Japan and the Republic of Korea*, 65 FR 6585 (February 10, 2000).

[11] *See Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate from India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea*, 65 FR 6587 (February 10, 2000).

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, the substrate for 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. The substrate for motor lamination steels contains 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 hot-rolled steel that has been further processed in a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the hot-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:

- Universal mill plates (*i.e.*, hot-rolled, flat-rolled products not in coils that have been rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, of a thickness not less than 4.0 mm, and without patterns in relief);
- Products that have been cold-rolled (cold-reduced) after hot-rolling;[12]
- Ball bearing steels;[13]
- Tool steels;[14] and

[12] For purposes of this scope exclusion, rolling operations such as a skin pass, levelling, temper rolling or other minor rolling operations after the hot-rolling process for purposes of surface finish, flatness, shape control, or gauge control do not constitute cold-rolling sufficient to meet this exclusion.

[13] 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.

[14] 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.

- Silico-manganese steels;[15]

The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.10.1500, 7208.10.3000, 7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7208.90.0000, 7210.70.3000, 7211.14.0030, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.11.0000, 7225.19.0000, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.5000, 7226.91.7000, and 7226.91.8000. The products subject to the order may also enter under the following HTSUS numbers: 7210.90.9000, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.5000, 7226.99.0180, and 7228.60.6000.

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

V. PERIOD OF REVIEW

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

VI. 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. For a description of allocation period and the methodology used for these final results, *see* the *Preliminary Results* PDM at 6-7.

B. Attribution of Subsidies

We 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 7-8.

[15] 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.

C. Benchmark Interest Rates

We made no changes to benchmarks or discount rates used in the *Preliminary Results*. For a description of the benchmarks and discount rates used for these final results, *see* the *Preliminary Results* PDM at 8.

D. Denominators

We made no changes to the denominators used in the *Preliminary Results*. No issues were raised by interested parties in case briefs that would lead us to reconsider our preliminary finding regarding the appropriate denominators. For a description of the denominators used for these final results, *see* the *Preliminary Results* PDM at 8-9.

VII. ANALYSIS OF PROGRAMS

A. Programs Determined to be Countervailable

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

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

Hyundai Steel: 0.02 percent *ad valorem*

2. Restriction of Special Taxation Act (RSTA) 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*

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

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

Hyundai Steel: 0.09 percent *ad valorem*

4. Tax Deduction Under RSTA Article 26

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

Hyundai Steel: 0.27 percent *ad valorem*

5. 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*

6. Modal Shift Program

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

Hyundai Steel: 0.01 percent *ad valorem*

7. 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*

8. Provision of Port Usage Rights at the Port of Incheon/GOK Infrastructure Investment at Incheon North Harbor

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

Hyundai Steel: 0.01 percent *ad valorem*

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

Hyundai Steel

1. Korea Export-Import Bank (KEXIM) Short-Term Export Credits
2. KEXIM Export Factoring
3. KEXIM Export Loan Guarantees
4. KEXIM Loan Guarantees for Domestic Facility Loans
5. KEXIM Trade Bill Rediscounting Program
6. KEXIM Overseas Investment Credit Program
7. KDB and IBK Short-Term Discounted Loans for Export Receivables
8. Loans under the Industrial Base Fund
9. K-SURE Export Credit Guarantees
10. K-SURE Short-Term Export Credit Insurance
11. Long-Terms Loans from KORES and KNOC
12. Clean Coal Subsidies
13. GOK Subsidies for "Green Technology R&D" and its Commercialization

14. Support for SME "Green Partnerships"
15. Tax Deduction under RSTA Article 10(1)(1)
16. Various Research and Development Grants Provided Under the Industrial Technology Innovation Promotion Act
17. RSTA Article 10(1)(2)
18. RSTA Article 11
19. RSTA 104(14)
20. RSLTA Articles 19, 31, 46, 84, LTA 109, 112, and 137
21. Tax Reductions and Exemptions in Free Economic Zones
22. Grants and Financial Support in Free Economic Zones
23. Sharing of Working Opportunities/Employment Creating Incentives
24. Machinery & Equipment (KANIST R&D) Project
25. Grant for Purchase of Electrical Vehicle
26. Power Business Law Subsidies
27. Provision of Liquefied Natural Gas for LTAR
28. Energy Savings Programs
    a. Electricity Savings for Designated Period Program
    b. Electricity Savings through the Bidding Process Program
    c. Electricity Savings upon an Emergent Reduction Program
    d. Electricity Savings through General Management Program
    e. Management of the Electricity Load Factor Program
29. The GOK's Purchases of Electricity for More Than Adequate Remuneration
30. Incentives for Compounding and Prescription Cost Reduction
31. Incentives for Usage of Yeongil Harbor in Pohang City
32. Value Added Tax Exemptions on Imported Goods
33. Incentives for Usage of Gwangyang Port
34. Incentives for Natural Gas Facilities
35. Subsidies for Construction and Operation of Workplace Nursery
36. Subsidies for Hyundai Steel Red Angels Women's Football Club
37. Suncheon Harbor Port Usage Fee Exemptions
38. Seoul Guarantee Insurance
39. Subsidies for Pohang Art Festival
40. Other Transactions with Government Entities
41. Fast-Track Restructuring Program
42. Energy Savings Program Subsidies – Demand Adjustment Program of Emergency Reduction
43. Industrial Technology Innovation Promotion Act Grants
44. Provision of Electricity for LTAR

VIII. DISCUSSION OF COMMENTS

Comment 1: Whether Electricity for LTAR Confers a Benefit

In our Post-Preliminary Analysis Memorandum, we determined that Hyundai Steel did not receive a benefit under this program, because Korea Electric Power Corporation (KEPCO) either

fully recovered costs for the tariff rate in question, or any benefit from the tariff rate in question was non-measurable, based on our Tier 3 benchmark analysis.[16]

Petitioners' Comments:

- The prevailing market conditions for electricity in Korea are established through a monopoly by the government-owned KEPCO and its six wholly owned generation facilities (GENCOs). KEPCO transmits and distributes almost all of 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 conditions into consideration when establishing a benchmark under 19 CFR 351.511(a)(2). Commerce makes scant reference to this market reality in its benefit analysis and, thus, Commerce's decision is unlawful.[17]
- The U.S. Court of Appeals for the Federal Circuit (CAFC) determined that the prevailing market conditions for electricity in Korea demonstrate that a major component of KEPCO's total cost related to the acquisition of electricity through Korea Power Exchange (KPX) from the GENCOs.[18] As such, Commerce must understand the costs associated with generating and acquiring electricity from these wholly-owned subsidiaries. Commerce did not follow this binding precedent in its benefit analysis.
- Although Commerce states it did not need to evaluate the GENCOs' costs, as it did not initiate on an upstream subsidy allegation, *POSCO CAFC* makes clear the GENCOs' costs should be analyzed in the context of the LTAR allegation, and Commerce must make a determination as to whether the price from the GENCOs to KEPCO was supported by adequate remuneration.[19]
- The term "adequate remuneration" is not defined in the Act, but Commerce has stated that 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.[20]
- 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 select 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.[21]

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[16] *See* Post-Preliminary Analysis Memorandum at 3-8.
[17] *See* Petitioners Case Brief at 6-9.
[18] *Id*. at 10 (citing *POSCO v. United States*, 977 F.3d 1369 (Fed. Cir. 2020) (*POSCO CAFC*)).
[19] *Id*. at 11 – 12.
[20] *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*)).
[21] *Id*. at 18 – 21.

- With respect to its finding that the GENCOs recovered costs, Commerce cannot rely on the finding from *CTL Plate from Korea 2018* 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 Form 20-F submitted to the U.S. Securities and Exchange Commission to support the proposition that 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.[22]
- The audit reports cited by Commerce are flawed. First, the GOK provided only income statements, without identifying the GENCO in question, and these statements were not provided as 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 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.[23]
- 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 a result, 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.[24]
- Commerce erroneously and unlawfully departed from its practice and did not establish a benchmark to compare to Hyundai Steel's 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 respondent(s) being examined. The petitioners provide a calculated benchmark that may be compared to the respondent's purchase of electricity from KEPCO.[25]

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[22] *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 Issues and Decision Memorandum (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).

[23] *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) (*TRBs from China*), and accompanying IDM at Comment 10).

[24] *Id*. at 29 – 30.

[25] *Id.* at 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

Hyundai Steel Rebuttal:

- Commerce recently rejected all of the petitioners' arguments concerning electricity for LTAR in *CORE from Korea 2018*, relying on the same facts over the same review period as the instant review.[26] For the reasons described in *CORE from Korea 2018*, Commerce should reject the petitioners' arguments.
- In a Tier 3 analysis, Commerce has wide latitude as to which method it applies, as affirmed in *Nucor CAFC*.[27] Moreover, the petitioners' argument that Commerce must examine the GENCOs' costs, either based on its NSAs or on the CAFC's finding in *POSCO CAFC*, is misplaced; in its preliminary analysis, Commerce followed *POSCO CAFC* by examining the impact of KPX's prices on KEPCO and, thus, met the statutory requirement.[28]
- The petitioners' argument that the GENCO-related analysis conducted in *CTL Plate from Korea 2018* was under a different statutory framework (*e.g.*, upstream vs. LTAR), and thus is distinct from the analysis here, is contradicted by its own arguments that the analysis would be the same no matter which part of the Act it is examined.[29]
- Commerce did consider the prevailing market conditions as part of its analysis under 19 CFR 351.511(a)(2). In fact, that is why 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.[30]
- 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 Commerce conducted a market principles analysis based on cost recovery and a reasonable rate of return. Moreover, the CAFC has not stated that "just competition" must be determined based on reference to competitive pricing.[31]

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).

[26] *See* Hyundai Steel 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).

[27] *Id*. at 5 (citing *Nucor CAFC*, 927 F.3d at 1254-55).

[28] *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); and *Wire Rod from Trinidad and Tobago*, 62 FR at 55007).

[29] *Id.* at 8.

[30] *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; *Nucor CAFC*, 927 F.3d at 1375 and *Maverick Tube Corp. v. United States*, 273 F. Supp. 3d 1293, 1309-10 (CIT 2017)).

[31] *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*,

- The petitioners' citation to *Solar Cells from China* is misplaced, as that case involved the offsetting of negative benefits when compared to a benchmark in an LTAR calculation. It does not establish a requirement that Commerce determine a benchmark to measure adequate remuneration in all instances. In this proceeding, Commerce lawfully conducted a Tier 3 analysis that measured whether KEPCO prices were consistent with market principles.[32]
- *Supercalendered Paper from Canada Inv*, also cited by the petitioners, 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, *i.e.*, to distinguish the *Supercalendered Paper from Canada Inv* case based on its unique facts, in *Carbon & Alloy CTL Plate from Korea 2018*.[33]
- 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.[34] Based on the record information, the GOK responded to Commerce's requests, cooperated to the best of its ability, and corrected deficiencies identified by Commerce. Moreover, Commerce relied on the information in its preliminary analysis. Thus, there is no support for applying FA or AFA in this instance.
- The petitioners' calculation of a benchmark to compare to the respondents' electricity purchases is not supported because the petitioners 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 values on an aggregate basis is warranted in some cases and not others; why the petitioners' benchmark focuses on losses from certain GENCOs and KEPCO; and, how the benchmark would more accurately reflect KEPCO's cost as it applies to the respondent's tariff classification, which is the appropriate level of examination.[35]

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 respondent because KEPCO's prices for electricity to the respondent were based on market principles.

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469 U.S. 24, 29 (1984)); and *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))).

[32] *Id.* at 16 – 17 (citing *Solar Cells from China* IDM at Comment 10; and *Supercalendered Paper from Canada Expedited Review* IDM at Comment 26).

[33] *Id.* at 17 – 18 (citing *Supercalendered Paper from Canada Inv* IDM at 32; 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).

[34] *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)).

[35] *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).

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.[36]

In the Post-Preliminary Analysis Memorandum, Commerce described the Korean electricity market,[37] determined a financial contribution was provided,[38] and then proceeded to apply 19 CFR 351.511(a) to determine the adequacy of remuneration.[39] 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).[40]

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."[41] In the Post-Preliminary Analysis Memorandum, Commerce described KPX and the process by which electricity is sold through this market operator.[42] In this system, the electricity price contains a marginal and capacity price component and an adjusted coefficient for certain fuel type and the GENCOs.[43] 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."[44]

The petitioners refer to KEPCO's acquisition price as an internal affiliated price or transfer price.[45] As explained in the Post-Preliminary Analysis Memorandum, there are additional

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[36] *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").
[37] *See* Post-Preliminary Analysis Memorandum at 2 – 3 (section "Overview of the Korean Electricity Market").
[38] *Id*. at 3 – 4. We note Commerce stated that "KEPCO also wholly owns the six GENCOs and KPX," in its financial contribution analysis. *Id.*
[39] *Id*. at 4 – 8.
[40] *Id*.
[41] *See POSCO CAFC*, 977 F. 3d at 1378.
[42] *See* Post-Preliminary Analysis Memorandum at 2 – 3 (section "Electricity Market Operator – Korea Power Exchange (KPX)").
[43] *Id*.
[44] *Id*. at 4.
[45] *See* Petitioners Case Brief at 10 and 12.

generators that provide electricity to KEPCO through KPX.[46] Moreover, KPX has established a standardized pricing system that applies to all electricity generators in Korea.[47] As a result, 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.[48] Therefore, the record of this proceeding established how KEPCO's electricity acquisition price is determined and the additional factors that are considered with regard to the GENCOs in KPX's pricing system.

The petitioners' argument regarding our decision not to collect cost information for the GENCOs based on our determination not to initiate on an upstream allegation is also misplaced. As noted above, Commerce's prior evaluation of KPX's electricity prices and record information demonstrates that there is a pricing mechanism in place for KEPCO to acquire electricity that does not confer a benefit. Our reference to the upstream allegation supported the preliminary analysis that no new information has been placed on this record that would lead us to reexamine our prior finding on KPX's pricing system.[49]

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.[50] 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.[51] In a subsequent supplemental questionnaire, the GOK stated that KPX considers each GENCO's profits and losses in relation to the adjusted coefficient.[52] The GOK then submitted data in relation to profits and losses and tied certain reported amounts to the GENCOs' unconsolidated financial statements.[53] In the GOK May 10, 2021 SQR 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.[54] The information demonstrates, for all GENCOs, that costs were recovered and there was operating profit.[55] Moreover, for the GENCOs that were not individually profitable overall, the income statements also show that financial costs and/or currency fluctuations were

[46] *See* Post-Preliminary Analysis Memorandum at 2 (section "Electricity Generators").
[47] *Id*. at 2–3; *see also* GOK February 2, 2021 NSA IQR at 20 – 25.
[48] *See* GOK April 19, 2021 SQR at 16.
[49] *See* Post-Preliminary Analysis Memorandum at 6 ("Further, we declined to initiate an upstream subsidy alleging the provision of electricity for LTAR through KPX prices to KEPCO and then passed through to subject merchandise producers, because there was no new information provided in the allegation since *CORE from Korea 2017*").
[50] *See* GOK February 2, 2021 NSA IQR at 23.
[51] *See* GOK April 19, 2021 SQR at 18.
[52] *See* GOK May 10, 2021 SQR at 9.
[53] *Id*.
[54] *Id*. at Exhibit E-31.
[55] *Id*.

contributing factors, as opposed to the electricity operations. This was the same conclusion reached in *CTL Plate from Korea 2018*.[56] 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 above submitted unconsolidated information, citing to *TRBs from China*, the petitioners also argue that the data should not be considered as only select parts of the financials statement were submitted. First, the petitioners cite to an antidumping proceeding that addressed the use of financial statements when assigning surrogate values.[57] 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."[58] Thus, in the selection of financial statements for assigning surrogate values, Commerce has a preference for complete financial statements. However, in the instant proceeding, the GOK submitted the financial information in response to Commerce requesting that specific data be tied to the unconsolidated financial statements.[59] 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 our questions, the GOK provided clarification or other information. For example, although the GOK was unable to respond to questions on generation costs or include them in Exhibit E-17, the GOK alternatively stated that KEPCO records the acquisition costs from its electricity purchases on the KPX.[60] Additionally, although the GOK did not provide subsidiary payments for KPX-adjusted prices, the GOK stated KPX will modify the adjusted coefficient.[61] The other examples cited by the petitioners also involve clarifications by the GOK on requests for data or information that explain why the question cannot be answered or the relevant data and information that pertain to Commerce's request cannot be provided. Thus, we find no basis to conclude that the GOK has not cooperated to the best of its ability in answering questions regarding the electricity for LTAR program and an application of FA or AFA is not warranted.

Lastly, Commerce did not depart from its practice. Under a Tier 3 market principles analysis, Commerce will assess whether the government price is consistent with market principles.[62] In instances where the government is the sole provider of a good, Commerce will determine this through an analysis of factors such as the government's price-setting philosophy, costs (including rates of return sufficient to ensure future returns) or possible price discrimination.[63] In the Post-Preliminary Analysis Memorandum, Commerce conducted this analysis to determine

[56] *Id*. and *CTL Plate from Korea 2018* at 24.
[57] *See TRBs from China* IDM at 53.
[58] *Id*.
[59] *See* GOK May 10, 2021 SQR at question 4b.
[60] *See* GOK February 2, 2021 NSA IQR at 13.
[61] *See* GOK April 19, 2021 SQR at 17.
[62] *See* 19 CFR 351.511(a)(2)(iii).
[63] *See CVD Preamble*, 63 FR at 65378.

that KEPCO either fully recovered costs or resulted in a non-measurable benefit for electricity sold to the respondents.[64] 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 electricity operations were profitable and recovered costs. As a result, 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.[65]

The petitioners assert that market principles equate to full value or a market-based price and that Commerce should use a reasonable or reliable benchmark in measuring adequate remuneration. Although *Nucor CAFC* does tie market principles to fair value under section 771(18) of the Act, the CAFC also noted the regulated rates and the methodologies available to Commerce to measure value.[66] Here, the market principles analysis utilized to evaluate this program considered the price-setting mechanism in Korea as well as cost recovery. The petitioners' citation 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.[67] The petitioners' citation to *Solar Cells from China* is also misplaced because the benchmark utilized in the case was based on AFA and Commerce did not apply 19 CFR 351.511, unlike the situation here.[68] Moreover, the portion of the proceeding cited by the petitioners involved offsetting of electricity purchases above the benchmark.[69] Finally, the petitioners cite *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.[70] In contrast, the respondent in this proceeding pays rates from KEPCO's industrial tariff schedule. Therefore, Commerce will continue to use its methodology from the Post-Preliminary Analysis

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[64] *See* Post-Preliminary Analysis Memorandum at 6 – 8.
[65] *Id*. at 7 – 8.
[66] *See Nucor CAFC*, 927 F.3d at 1254 – 1255 ("In our analysis rejecting the government's broad position, we have decided that nonpreferentiality of the sort the government stresses is insufficient to meet the statutory standard of adequate remuneration, which, along with its implementing regulation, requires ensuring that the government authority's price is not too low considering what the authority is selling. That ruling is significant but limited in constraining Commerce. We readily recognize that such a standard, while excluding the government's broad preferentiality position potential, leaves a large range of potential implementation choices. One need only look outside the present statutory context to the familiar rate-regulation context to see the great variety of methodologies used over time to ensure that rates of a monopoly provider are not too low, some directly focused on value (such as 'fair value'). some on various measures of 'cost' (which may reflect value). 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") (internal citations omitted).
[67] *See Wire Rod from Trinidad and Tobago*, 62 FR at 55007.
[68] *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").
[69] *Id*. at Comment 10.
[70] *See Supercalendered Paper from Canada Inv* IDM at 47-48.

Memorandum and will continue to analyze the KEPCO tariff schedule for industrial users under a market principles analysis.

Comment 2: Whether Commerce Properly Countervailed the Port Usage Rights Program

In the *Preliminary Results*, we determined that this program provides a financial contribution in the form of revenue forgone to Hyundai Steel because the GOK gave Hyundai Steel the right to collect berthing income and harbor facility usage fees, which otherwise would have been collected by the GOK. Further, we found the program to be specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients were limited in number, and determined that a benefit existed under section 771(5)(E) of the Act in the amount of the fees exempted that were reported by Hyundai Steel.[71]

Hyundai Steel Comments:

- 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 by providing vague references to prior decisions.[72] To the extent Commerce relies on prior determinations, it must describe how those determinations apply, and not merely cite to them.[73]
- Additionally, although Commerce cited cases to support its decision that the program is a "recurring grant program," these cases actually stand for the proposition that repayments for the construction of the port facilities are only countervailable to the extent they are excessive, and Commerce has offered no support that port usage rights provided to Hyundai Steel were excessive. In fact, Hyundai Steel was granted port usage rights for the Incheon Harbor facility for 41 years and 8 months, which is well short of even the U.S. Internal Revenue Service average useful life period.[74]
- The GOK has explained, in detail, that the port usage rights period, and its very structure, is set up to avoid excessive reimbursements to Hyundai Steel. Accordingly, in contrast to the prior cases, this period is not excessive.[75]
- 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.[76]

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[71] *See Preliminary Results* at 17-18.
[72] *See* Hyundai Steel Case Brief at 4.
[73] *Id*.
[74] *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) (*CRS 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) (*CORE from Korea 2011 Preliminary Results*), and accompanying PDM).
[75] *Id*. at 6-8.
[76] *Id*. at 8-10.

- The port usage rights the GOK provided are part of Hyundai Steel's just compensation, similar to obligations imposed by the Fifth Amendment of the U.S. Constitution, which requires the government to provide just compensation prior to obtaining ownership of private property intended for public use.[77]
- In *GOSL v. United States*, the CIT found that repayment of a debt is distinct from payments through grants, loans, or equity infusions.[78] In that case, the CIT concluded that the reimbursement program at issue "did not constitute a gift-like transfer, but rather the interest-free repayment of a debt."[79] 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."[80] These principles make clear that port usage rights, provided in repayment for construction, are similarly not countervailable.[81]
- 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.[82] This conclusion ignores the record evidence that Hyundai Steel paid huge sums and incurred all direct costs to build the port.[83]
- The GOK port 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 Accordingly, Commerce's finding should be reversed in the final results.[84]
- 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 2018 POR.[85]

Petitioners' Rebuttal:

- Commerce should follow its practice and find this program countervailable, as it has done in other cases.[86]
- In *HRS from Korea 2017*, concerning the same respondent, *i.e.*, Hyundai Steel, Commerce concluded that the income in question was revenue forgone by the GOK and that Hyundai received a benefit. Similarly, in *CORE from Korea 2018*, Commerce rejected nearly identical arguments by Hyundai Steel and countervailed both the berthing income and the harbor facility usage fees as revenue forgone by the GOK, as Hyundai

[77] *Id*. at 10-11.
[78] *Id.* at 12-13 (citing *Government of Sri Lanka v. United States*, 308 F. Supp. 3d 1373, 1381 (CIT 2018) (*GOSL v. United States*)).
[79] *Id.* at 12 (citing *GOSL v. United States*, 308 F. Supp. 3d at 1381).
[80] *Id.* at 13 (citing *GOSL v. United States*, 308 F. Supp. 3d at 1383).
[81] *Id.* (citing *GOSL v. United States*, 308 F. Supp. 3d at 1384).
[82] *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).
[83] *Id*.
[84] *Id*. at 15-17.
[85] *Id*. at 17-18.
[86] *See* Petitioners Rebuttal Brief at 2-3.

Steel did not pay the GOK the fees it collected from other parties.[87] Consistent with these findings, Commerce should continue to countervail the berthing income and harbor facility usage fees.[88]

- Hyundai Steel ignores the fact that it was in a position to collect fees because it acquired the rights from the GOK to operate and use the port. Absent these rights, Hyundai Steel would have to pay fees to the GOK. Therefore, 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.[89]
- 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.[90]

Commerce's Position: For the reasons discussed below, we continue to find this program to be countervailable. Additionally, consistent with other proceedings, as well as prior segments of this proceeding, we have treated this program as a recurring program[91] for the reasons explained below.

Hyundai Steel does not deny that it received the right to collect fees for about 41 years because it had incurred construction costs for building the port.[92] The record is also clear that Hyundai Steel uses the port to transport raw materials for steel production.[93] In other words, Hyundai Steel agreed to build the port. Once the port was built, Hyundai Steel used the port to transport inputs for free of charge. Further, Hyundai Steel had the right to collect port usage fees to compensate it for the costs it incurred. Commerce has consistently countervailed these types of programs, which lower the cost of production for a company. For example, in *Supercalendered Paper from Canada Inv*, Commerce countervailed the total amount of benefit conferred, without any offsets, under the Federal Pulp and Paper Green Transformation Program, as well as the Ontario Forest Sector Prosperity Fund program, because both programs involved the governments' provision of funds to respondent companies against costs incurred for capital investment.[94] Similarly, in *Quartz Surface Product from Turkey*, Commerce countervailed the total amount of benefit conferred, without any offsets, under the Foreign Fair Support program,

[87] *Id*. at 3 (citing *HRS from Korea 2017* IDM at 29-30; and *CORE from Korea 2018* IDM at 21).
[88] *Id*. at 3-4.
[89] *Id*. at 6.
[90] *Id*. at 7.
[91] *See HRS from Korea 2017* IDM at Comment 6; *see also CTL Plate Korea 2005* IDM at 6-7 and Comment 1; *CORE 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 *CRS from Korea 2000* IDM at 20 and Comment 11.
[92] *See* Hyundai Steel Case Brief at 3.
[93] *See* GOK's Letters, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea, 01/01/2018 – 12/31/2018 Administrative Review, Case No. C-580-884: The Republic of Korea's Response to the Countervailing Duty Second Supplemental Questionnaire," dated January 21, 2021 (GOK January 21, 2021 SQR) at 14-17.
[94] *See Supercalendered Paper from Canada: Preliminary Affirmative Countervailing Duty Determination*, 80 FR 45952, and accompanying PDM at 25, unchanged in *Supercalendered Paper from Canada Inv* IDM at 26-27 and 28-29.

which involved the government providing reimbursements for expenses incurred related to a respondent's participation in international fairs.[95]

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.[96] However, the record is clear that the GOK is not collecting fees that it is entitled to collect,[97] and the record does not demonstrate that the main purpose of building the port was for public good or any governmental functions.[98] Instead, the record shows that Hyundai Steel has the right to use the port for free for about 41 years. 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's construction.[99]

In fact, when faced with a similar issue, the CAFC previously upheld Commerce's determination to treat the exemption from dockyard fees as a countervailable benefit under a similar program.[100] In *AK Steel*, Commerce determined that a countervailable benefit was conferred on POSCO by the exemption from dockyard fess regardless of whether the port berths used by POSCO were built by the GOK or by POSCO. In doing so, Commerce rejected similar arguments that the exemptions granted by the GOK to POSCO were a form of reimbursement for building and paying for the port berths that POSCO was required to cede back to the GOK.[101] The CAFC agreed and upheld Commerce's determination that the exemption provided POSCO a countervailable benefit.[102] In that case, we stated that, "even if we viewed the non-payment of dockyard fees as repayment by the government for POSCO's assumption of the costs of constructing the berths, we should still find the exemption to be countervailable."[103] We find *AK Steel* directly applicable to Hyundai Steel's argument that the non-payment of port usage fees are repayment for the cost of construction of the port, which Hyundai Steel was required to cede back to the GOK by law. Hence, consistent with that determination, as upheld by the CAFC, we continue to find that non-payment of port usage fees constitutes a countervailable benefit.

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[95] *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.

[96] *See* Hyundai Steel Case Brief at 10-11.

[97] *See* GOK January 21, 2021 SQR at 7-8 and 16-17.

[98] *See* Hyundai Steel's Letter, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea, Case No. C-580-884: Hyundai Steel's Initial Questionnaire Response," dated April 9, 2020 (Hyundai Steel April 9, 2020 IQR) at Exhibit G-1.

[99] *Id*. at Exhibit G-1, Article 48 to Article 54.

[100] *See AK Steel Corp. v. United States*, 192 F.3d 1367, 1379 (CAFC 1999) (*AK Steel*)

[101] *Id.*, 192 F.3d 1367 at 1382.

[102] *Id.*

[103] *See Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea*, 58 FR 37338 (July 9, 1993) (*Certain Steel Products from Korea Final*), and accompanying IDM at 16.

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*,[104] we cited to the GOK Infrastructure Investment at Inchon Harbor program, under which the respondent participating 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."[105] 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.[106] Similarly, in *CRS from Korea 2000*, Commerce found the Exemption of Port Fees under the Harbor Act to be an excessive period.[107] Further, in *HRS from Korea 2017*, Commerce treated the benefits received from the berthing income and harbor facility usage fees as a recurring subsidy.[108] Thus, we provided numerous examples of how Commerce has treated similar programs in prior proceedings, and illustrations of where we determined 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,[109] 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. Our determination in the instant review is consistent with the determinations in 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.[110] We further clarify that the treatment of the benefit received here is further supported by Commerce's regulations at 19 CFR 351.503(b), which states that for other government programs, Commerce 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 transmit those fees to the GOK. Thus, a benefit was conferred under 19 CFR 351.503(b) under this program.

We disagree with Hyundai Steel that Commerce should compute the benefit using only income to Hyundai Steel which exceeded the cost incurred by Hyundai Steel in constructing the port of North Incheon. For the reasons we have provided in past cases, Commerce has consistently declined to offset the cost of constructing the port in its benefit analysis. As stated in *Certain*

[104] *See CTL Plate from Korea 2005* IDM at 7.
[105] *Id.*
[106] *See CORE from Korea 2011 Preliminary Results* PDM at 11.
[107] *See CRS from Korea 2000* IDM at 31.
[108] *See Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 2017, 85 FR 64122 (October 9, 2020) (*HRS from Korea 2017*), and accompanying IDM at Comment 6
[109] *See* Hyundai Steel Case Brief at 7.
[110] *Id*. at 9.

Steel from Korea Final, we found that similar exemptions are not "offset."[111] As noted in *HRS Steel Korea 2017*,[112] we continue to find that the essence of this program is that the GOK helped Hyundai Steel build a port for its own use for an extended period of time. The GOK provided the benefit for this program through reimbursements as well as forgoing revenue that the GOK was otherwise entitled to collect, such as berthing fees and other user fees.[113] 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, it is only under very limited circumstances that Commerce is to offset a subsidy rate, and those conditions are not met here.[114]

We also disagree with Hyundai Steel that *GOSL v. United States* is applicable here. The facts in *GOSL v. United States* are distinguishable from the facts in this case. In *GOSL v. United States*, the CIT characterized payments under the Guaranteed Price Scheme for Rubber (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.[115] In the underlying *Tires Sri Lanka Final*,[116] 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 input producer as irrelevant).[117] 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.[118]

We find that the Harbor Act program in this review is not comparable to the GPS program that the CIT analyzed in *GOSL v. United States.* In *GOSL v. United States*, the program at issue, the Rubber Guarantee Price Scheme, was implemented to support small-scale rubber farmers.[119] The Government of Sri Lanka (GOS) stated that it used buyers of natural rubber such as respondent, Camso Inc., Camso Loadstar (Private) Ltd., and Camso USA Inc. (Camso), to facilitate payments to these small-scale rubber farmers. The Rubber Guarantee Price Scheme was set up with the specific purposes of benefiting the small-scale farmers rather than respondent Camso. In this review, neither Hyundai Steel nor the GOK argue that the program at issue here was implemented for the purpose of supporting other beneficiaries. In *GOSL v.*

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[111] *See Certain Steel Products from Korea Final* at 16-17.
[112] *See HRS from Korea 2017* at 29-32.
[113] *Id*.
[114] *See* section 771(6) of the Act.
[115] *See GOSL v. United States*, 308 F. Supp. 3d at 1381.
[116] *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.
[117] *Id.* at Comment 4.
[118] *See GOSL v. United States*, 308 F. Supp. 3d at 1380-83.
[119] *See* Memorandum, "2018 Administrative Review of the Countervailing Duty Order on Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Placement of Document on Record," dated August 9, 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) at 2).

United States, the CIT characterized the transaction at issue as resulting in a detriment, rather than a benefit, to the respondent in that case.[120] In this review, as explained above, the transaction at issue is not a detriment to Hyundai Steel. A key feature of the GPS is that the GOS *required* Camso to pay a guarantee rubber price for natural rubber when purchasing natural rubber from small farmers.[121] Because Camso was required to buy natural rubber at a guarantee price for the benefit of the small farmers, the GOS reimbursed Camso for the difference between the guarantee price Camso paid and the average rubber price. Such a feature does not exist in the program at issue in 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 v. United States* is inapposite and does not support its request that Commerce provide offsets to its benefit calculations.

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

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

In the *Preliminary Results*, we countervailed this program, and determined that the program was specific, represented a financial contribution in the form of revenue forgone, and provided a benefit to Hyundai Steel. Specifically, with respect to the benefit, we found that the benefit under this program is the difference between the amount of water fees paid by Hyundai Steel and the amount of water fees that it would have paid in the absence of this program.[122]

Hyundai Steel Comments:

- 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.[123]
- 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.[124]
- 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

[120] *See GOSL v. United States*, 308 F. Supp. 3d at 1382.
[121] *See* OTR Tires from Sri Lanka Post-Preliminary Memorandum at 3.
[122] *See Preliminary Results* at 14-16.
[123] *See* Hyundai Steel Case Brief at 18.
[124] *Id*. at 19.

reduction is based on actual water and sewerage usage and directly related to the lower volume of wastewater that needs to be purified. This cannot be considered a benefit.[125]

- 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.[126]
- 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. Therefore, Commerce's preliminary finding is inconsistent with the Act, as there are no fees that would have "otherwise" been due and no financial contribution.[127]
- There is also no benefit conferred, pursuant to section 771(5)(E) of the Act, as Hyundai Steel did not owe the government any more fees than the fees that it paid.[128]
- Even if Commerce erroneously continues to treat the program as countervailable, it should find the subsidy is tied to non-subject merchandise.[129] The CIT has stated that, "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."[130] 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.

Petitioners' Rebuttal:

- The *Preliminary Results* are consistent with *CTL Plate from Korea 2018* and *CORE from Korea 2018*, where Commerce found this program countervailable.[131]
- 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 were permitted to claim a reduction in their overall water bill based on the amount of sewage water discharged.[132]
- 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 a result, Commerce should continue to find that this program represented a financial contribution in the form of revenue forgone.[133]

[125] *Id*. at 19-22.
[126] *Id*. at 22.
[127] *Id*. at 23-24.
[128] *Id*. at 24-25.
[129] *Id*. at 25.
[130] *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.*)).
[131] *See* Petitioners Rebuttal Brief at 7-8.
[132] *Id*. at 9.
[133] *Id*. at 10.

- 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.[134]
- 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; there, the CIT found that "Commerce's practice is not to *post hoc* 'trace the use of subsidies' through records" for the tying analysis.[135]
- 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.[136]

Commerce's Position: For the reasons described below, we continue to find this program countervailable.

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.[137] 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 purposes without discharging unclean water into the public sewerage system.[138] The GOK further explained that the execution of this program is delegated to regional level governments. In this instance, the Incheon Metropolitan City was the regional level government charged with administering the public sewerage system utilized by Hyundai Steel during the POR.[139]

In its initial questionnaire response, Hyundai Steel stated that its Incheon Plant received reductions from monthly fees incurred for usage of a sewerage system for purification of sewage from Incheon City because it reduced the volume of wastewater that requires sewage treatment

[134] *Id*. at 11.
[135] *Id*. at 11-12.
[136] *Id*. at 12.
[137] *See* GOK's Letter, "Certain Hot-Rolled Steel Flat Products from the Republic of Korea, 01/01/2017- 12/31/2017 Administrative Review, Case No. C-580-884: The Republic of Korea's Response to the Countervailing Duty Initial Questionnaire," dated March 30, 2020 (GOK March 30, 2020 IQR) at 133-156; *see also* Hyundai Steel April 9, 2020 IQR at 56-57 and Exhibits G-21, G-22 and G-23.
[138] *See* GOK March 30, 2020 IQR at 139.
[139] *Id*. at 135.

by a purification facility operated by Incheon City.[140] Hyundai Steel noted that its application for reduction for sewerage usage fees also included underlying research demonstrating its reduced water usage rate.[141] Further, Hyundai Steel provided the GOK's approval of its application for reduction of sewerage fees.[142]

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

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

This review pertains to the same program, the same respondent, *i.e*., Hyundai Steel, and the identical POR, 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

[140] *See* Hyundai Steel April 9, 2020 at 56-57.
[141] *Id*. at Exhibit G-23.
[142] *Id*. at Exhibit G-22.
[143] *See CTL Plate from Korea 2018* IDM at Comment 6.

in a disaster area.[144] Therefore, based on these facts we continue to find this program countervailable and disagree with Hyundai Steel that the *Preliminary Results* are based on a fundamental misunderstanding because the reductions in 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, which led the administering authority to apply a reduced sewage rate to Hyundai Steel. However, as noted above, the amount of the fee reduction that Hyundai Steel received on its overall water bill significantly exceeds the rate adjustments that are specified in the ordinance, with the exception of certain special conditions not applicable here, such as being located in a disaster area.[145]

Hyundai Steel claims that the program did not result in revenue forgone by the GOK and there was no benefit conferred on Hyundai Steel. As noted in *CTL Plate from Korea 2018*, Article 21, the legal provision relating to the Incheon Metropolitan City Ordinance on Sewerage System Usages, does 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.[146] Thus, under our tying practice, a subsidy is tied to particular products or operations only if the bestowal documents (*e.g.*, the application, contract or approval) explicitly indicate that an intended link to the particular products or operations was known to the government authority and was acknowledged prior to, or concurrently with, conferral of the subsidy.[147] 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.[148] Moreover, Hyundai Steel reported in its initial questionnaire response that the reduction in sewerage fees is not tied to any particular product.[149] For these reasons, we continue to allocate the benefit from this program to Hyundai Steel's total sales during the POR.

[144] *See* GOK March 30, 2020 IQR at Exhibit SEWER-1 ("Sewerage Usage Fee Adjustment Criteria").
[145] *Id*.
[146] *See CVD Preamble*, 63 FR at 65403.
[147] *Id*., 63 FR at 65402.
[148] *See* GOK March 30, 2020 IQR at Exhibit SEWER-4 *see also* Hyundai Steel April 9, 2020 IQR at Exhibit G-24.
[149] *See* Hyundai Steel April 9, 2020 IQR at Exhibit G-24 at 2.

IX. RECOMMENDATION

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

☒	☐
Agree	Disagree

8/20/2021

X 

Signed by: RYAN MAJERUS

Ryan Majerus
Deputy Assistant Secretary
for Policy and Negotiations