

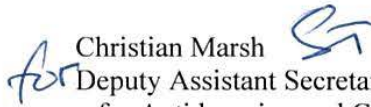


UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

C-580-879
Investigation
Public Document
E&C/Office VII: ML/JJZ/DN

DATE: May 24, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM:  Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of Certain Corrosion-
Resistant Steel Products from the Republic of Korea

I. SUMMARY

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain corrosion-resistant steel products (corrosion-resistant steel) from the Republic of Korea (Korea), within the meaning of section 705 of the Tariff Act of 1930, as amended (the Act).¹ Below is the complete list of issues in this investigation for which we received comments from interested parties.

Issues:

- Comment 1: Whether the Department Should Find the Provision of Electricity for Less Than Adequate Remuneration (LTAR) Countervailable Based on Adverse Facts Available
- Comment 2: Whether the Provision of Electricity provides a Benefit
- Comment 3: Whether the Department Should Use Other Submitted Data to Measure the Adequacy of Remuneration for Electricity
- Comment 4: Whether Benefits Received from Dongbu's Voluntary Debt Restructuring

¹ See also section 701(f) of the Act.



- Comment 5: Whether Benefits Should be Calculated for Loans and Bonds Which Were Issued to Dongbu by GOK-Owned Banks Prior to Its Voluntary Restructuring
- Comment 6: Whether Dongbu was Creditworthy in 2014 and Whether the Department Should Recalculate Benefits Using Creditworthy Benchmarks
- Comment 7: Whether Nonghyup Bank is an “Authority” and Loans Received from Nonghyup Bank are Countervailable
- Comment 8: Whether the Department Should Find That the Provision of Natural Gas for LTAR is Countervailable

II. BACKGROUND

A. Case History

The selected mandatory company respondents in this proceeding are Union Steel Manufacturing Co. Ltd./Dongkuk Steel Mill Co., Ltd. (Union/Dongkuk), and Dongbu Steel Co., Ltd./Dongbu Incheon Steel Co., Ltd. (collectively, Dongbu). On November 6, 2015, the Department published the *Preliminary Determination* in this proceeding.²

On November 20, 2015, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i), we aligned the final CVD determination with the final antidumping duty (AD) determination.³ Therefore, this final CVD determination is being issued on the same date as the final AD determination. Between November 9 and 24, 2015, we conducted verification of the questionnaire responses submitted by the Union/Dongkuk, Dongbu and the Government of Korea (GOK).⁴ Interested parties submitted case and rebuttal briefs in April 2016.

B. Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is January 1, 2014, through December 31, 2014.

² See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Affirmative Determination*, 80 FR 68842 (November 6, 2015) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

³ See *Countervailing Duty Investigations of Certain Corrosion-Resistant Steel Products From India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Alignment of Final Countervailing Duty Determinations With Final Antidumping Duty Determinations*, 80 FR 72685 (November 20, 2015).

⁴ See Memoranda, “Verification of Questionnaire Responses of Union Steel Manufacturing Co., Ltd. and Dongkuk Steel Mill Co., Ltd.,” March 31, 2016 (Union/Dongkuk Verification Report); “Verification of the Questionnaire Responses of Dongbu Steel Co., Ltd. and Dongbu Incheon Steel Co., Ltd.,” dated March 31, 2016 (Dongbu Verification Report); “Verification of the Questionnaire Responses of the Government of Korea Concerning Dongbu Steel Co. Ltd.’s Debt Restructuring Program,” dated March 31, 2016 (GOK Dongbu Debt Verification Report); and “Verification of Information Submitted by the Government of the Republic of Korea for the Alleged Provision of Electricity for Less Than Adequate Remuneration Program,” dated March 31, 2016 (Electricity Verification Report).

III. FINAL DETERMINATION OF CRITICAL CIRCUMSTANCES, IN PART

The Department preliminarily found that importers, exporters, and producers had reason to believe at some time prior to the filing of the petition, that a proceeding was likely. Specifically, the Department concluded that the factual information provided by Petitioners⁵ indicated that by March 2015, importers, exporters or producers had reason to believe that proceedings were likely.⁶ The Department preliminarily determined that critical circumstances existed for all other producers or exporters from Korea, but not for the mandatory respondents Union/Dongkuk or Dongbu.⁷

Based on the examination of the shipping data placed on the record by the respondents after the *Preliminary Determination*, as requested by the Department, we examined whether the increase in imports was massive by comparing shipments over the period of June 2014 through February 2015, with the period March 2015 through November 2015, the month the *Preliminary Determination* was published.⁸ For this final determination, the Department continues to find that critical circumstances do not exist for Union/Dongkuk and Dongbu, but exist for all other producers or exporters from Korea.

IV. SCOPE OF THE INVESTIGATION

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

⁵ Collectively, United States Steel Corporation, Nucor Corporation, ArcelorMittal USA, AK Steel Corporation, Steel Dynamics, Inc., and California Steel Industries, Inc.

⁶ See *Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products From India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 68504 (November 5, 2015).

⁷ *Id.*, 80 FR at 68507. Dongbu Incheon Steel Co., Ltd. (Dongbu Incheon) is not listed in this notice; however, we preliminarily determined that Dongbu Incheon is a wholly owned subsidiary of Dongbu Steel Co., Ltd. and calculated a single countervailing duty rate for both companies. Thus, we stated that the suspension of liquidation for both companies would begin on the date of publication of the *Preliminary Determination*. See *Preliminary Determination*, 80 FR at 68842.

⁸ See Memorandum, “Monthly Shipment Quantity and Value Analysis for Critical Circumstances Final Determination,” May 24, 2016.

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

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

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

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

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

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

merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

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

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

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

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

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

V. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

The Department has made no changes to the allocation period and the allocation methodology used in the *Preliminary Determination* and no issues were raised by interested parties in case briefs regarding the allocation period or the allocation methodology. For a description of the

allocation period and the methodology used for this final determination, *see* the *Preliminary Determination*.⁹

B. Attribution of Subsidies

The Department has made no changes to the methodologies used in the *Preliminary Determination* for attributing subsidies and no issues were raised by interested parties in case briefs regarding the attribution of subsidies.¹⁰ For descriptions of the methodologies used for this final determination, *see* the *Preliminary Determination*.¹¹

C. Denominators

In accordance with 19 CFR 351.525(b), the Department considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales, or portions thereof. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the final calculation memoranda prepared for this final determination.¹² As a result of verification, we have revised Union's 2014 total FOB sales value to exclude sales of certain products and the sales of services, in the calculation of subsidy rates for all of the programs used by Union for this final determination.

D. Creditworthiness

In accordance 19 CFR 351.505(a)(6)(i), the Department continues to find that Dongbu was uncreditworthy in 2014, the year in which it received countervailable long-term loans from the government policy banks and restructured long-term debt held by government policy banks. Parties have raised comments on this issue; *see* Comment 5 below. For a description of our analysis used for this final determination, *see* the *Preliminary Determination*.¹³

VI. BENCHMARKS AND DISCOUNT RATES

The Department has made no changes to the benchmarks and discount rates used in the *Preliminary Determination*. For a description of the benchmarks and discount rates used for this final determination, *see* the *Preliminary Determination* and the Final Calculation Memoranda. In addition, the Department continues to find that Dongbu was uncreditworthy in 2014, as discussed in the "Analysis of Comments" section in Comment 6, below.

⁹ *See* PDM at 7.

¹⁰ *Id.*

¹¹ *Id.*

¹² *See* Memoranda, "Final Determination Calculations for Dongkuk Steel Mill Co., Ltd./Union Steel Manufacturing Co., Ltd.," May 24, 2016 (Dongkuk Final Calculation Memorandum), "Final Determination Calculation for Dongbu Steel Co., Ltd.," May 24, 2016 (Dongbu Final Calculation Memorandum).

¹³ *See* PDM at 10.

VII. ANALYSIS OF PROGRAMS

A. Programs Determined To Be Countervailable

The Department made no changes to its *Preliminary Determination* with regard to the methodology used to calculate the subsidy rates for the following programs, except for the incorporation of Union's corrected denominator where appropriate, and a revised numerator in Dongbu's Debt Restructuring Program (Debt Restructuring Program).¹⁴ For the descriptions, analyses, and calculation methodologies of these programs, *see* the *Preliminary Determination*. Except where noted, no issues were raised by interested parties in case briefs regarding these programs. The final program rates are as follows.

1. Korea Export-Import (KEXIM) Bank Import Financing

Dongbu: 0.05 percent *ad valorem*

Union/Dongkuk: Less than 0.005 percent.

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

Dongbu: 0.01 percent *ad valorem*

Union/Dongkuk: Not used.

3. Dongbu's Debt Restructuring

We recalculated the benefit for Dongbu's restructured loans and bonds to only include Dongbu's interest payments made after June 30, 2015. *See* Comment 5, below. We have also continued to exclude loans from Nonghyup Bank from Dongbu's subsidy rate. *See* Comment 7, below. For all comments related to this restructuring, *see* Comments 4-7 below.

Dongbu: 1.13 percent *ad valorem*

Union/Dongkuk: Not used.

4. RSTA Article 25(2): Tax Deductions for Investments in Energy Economizing Facilities

Dongbu: Not used.

Union/Dongkuk: 0.01 percent *ad valorem*

5. RSTA Article 26: GOK Facilities Investment Support

Dongbu: Not used.

Union/Dongkuk: 0.71 percent *ad valorem*

¹⁴ *See* "Denominators" section above and Dongkuk and Dongbu Final Calculation Memoranda.

6. Restriction of Special Local Taxation Act (RSLTA) Article 78: Acquisition and Property Tax Benefits to Companies Located in Industrial Complexes

Dongbu: Less than 0.005 percent.

Union/Dongkuk: 0.01 percent *ad valorem*

B. Programs Determined To Be Not Countervailable

1. Provision of Electricity for Less Than Adequate Remuneration
See Comments 1 through 3.
2. VAT Exemptions for Purchases of Anthracite Coal

C. Programs Determined To Be Not Used, or to Not Confer a Measurable Benefit, During the POI

Provision of Inputs for Less Than Adequate Remuneration

1. Power Business Law Subsidies
2. Provision of Liquefied Natural Gas (LNG) for LTAR. *See* Comment 8.
3. Energy Savings Program: Electricity Savings for Designated Period Program
4. Energy Savings Program: Electricity Savings through the Bidding Process Program
5. Energy Savings Program: Electricity Savings upon an Emergent Reduction Program
6. Energy Savings Program: Electricity Savings through General Management Program
7. Energy Savings Program: Management of the Electricity Load Factor Program

KEXIM Countervailable Subsidy Programs

8. Short-Term Export Credits
9. Export Factoring
10. Export Loan Guarantees
11. Trade Bill Rediscounting Program
12. Overseas Investment Credit Program

KDB and IBF Loans

13. Loans under the Industrial Base Fund

Korea Trade Insurance Corporation (K-SURE) – Export Insurance and Export Credit Guarantees

14. Export Credit Guarantees
15. Short-Term Export Credit Insurance

Energy and Resource Subsidies

16. Long-Term Loans from the Korean Resources Corporation and the Korea National Oil Corporation
17. Special Accounts for Energy and Resources (SAER) Loans
18. Clean Coal Subsidies

Green Subsidies

19. GOK Subsidies for “Green Technology R&D” and its Commercialization
20. Support for SME “Green Partnerships”
21. Daewoo International Corporation Debt Work Out

Income Tax Programs

22. Research, Supply, or Workforce Development Investment Tax Deduction for “New Growth Engines” under RSTA Article 10(1)(1)
23. Research, Supply, or Workforce Development Expense Tax Deductions for “Core Technologies” under RSTA Article 10(1)(2)
24. Tax Reduction for Research and Human Resources Development under RSTA Article 10(1)(3)
25. Tax Credit for Investment in Facilities for Research and Manpower under RSTA Article 11
26. Tax Deduction for Investment in Environmental and Safety Facilities under RSTA Article 25(3)
27. Tax Program for Third-Party Logistics Operations under RSTA Article 104(14)
28. RSLTA Article 46
29. RSLTA Article 84

Subsidies to Companies Located in Certain Economic Zones

30. Tax Reductions and Exemptions in Free Economic Zones
31. Exemptions and Reductions of Lease Fees in Free Economic Zones
32. Grants and Financial Support in Free Economic Zones

Grants

33. Modal Shift Program
34. Sharing of Working Opportunities/Employment Creating Incentives
35. R&D Grants under Industrial Technology Innovation Promotion Act (ITIPA)
36. GOK Infrastructure Investment at Incheon North Harbor
37. Machinery & Equipment (KANIST R&D) Project
38. Grant for the Purchase of an Electric Vehicle

Purchases for More Than Adequate Remuneration (MTAR)

39. The GOK’s Purchases of Electricity from Corrosion-Resistant Steel Producers for MTAR

VIII. ANALYSIS OF COMMENTS

Comment 1: Whether the Department Should Find the Provision of Electricity for Less Than Adequate Remuneration (LTAR) Countervailable Based on Adverse Facts Available

Petitioners argue:

- The GOK has failed to provide full responses to the Department's questions and in the manner requested. Therefore, the Department must use facts available. Moreover, the Department should use adverse facts available because the GOK has failed to cooperate to the best of its ability. The Department has applied adverse facts available for similar circumstances in recent proceedings.¹⁵
- Specifically, the GOK failed to provide complete information on the process and documentation for developing and modifying the electricity tariff rate from KEPCO and other government entities. For example, Petitioners notes "Marketing (Sa) 81402-5122 (September 2013)" was not provided.
- Petitioners further cites to the Electricity Verification Report¹⁶ as support for incomplete responses and documentation regarding the development and modification of electricity tariff rates. Moreover, GOK officials directly involved in certain processes were not present at verification.
- Petitioners also notes several documents where the GOK did not provide full translations of documents submitted in response to the Department's requests despite the regulations and questionnaire instructions.¹⁷ The documents were critical to the analysis of the electricity tariff development and modification.
- Whether the GOK's actions were the result of intentional conduct, inadequate record-keeping or insufficient efforts is irrelevant, and the Department should apply adverse facts available because the GOK did not act to the best of its ability. The Federal Circuit has affirmed the Department's application of adverse facts available for more than only intentional conduct.¹⁸
- The Department should select an adverse rate to ensure the GOK does not benefit from its failure to cooperate in this investigation.¹⁹ As such, the Department should use the

¹⁵ See *Final Affirmative Countervailing Duty Determination: Boltless Shelving Units Prepackaged for Sales from the People's Republic of China*, 80 FR 51775 (August 26, 2015) (*Boltless Shelving Units*) and accompanying Issues and Decision Memorandum at 7-8. See also, *Final Results of Administrative Review: Certain Pasta from Italy*, 80 FR 11172 (March 2, 2015) (*Pasta from Italy*).

¹⁶ See Electricity Verification Report.

¹⁷ See 19 CFR 351.303(e). See, also, Letter from Thomas Gilgunn, Program Manager, to the Government of the Republic of Korea, Re: Certain Corrosion-Resistant Steel Products from the Republic of Korea: Countervailing Duty Questionnaire (July 24, 2015) at Section I, page 5, paragraph 3.

¹⁸ See *Ta Chen Stainless Pipe, Inc. v. United States*, 298 F.3d 1330, 1336 (Fed. Cir. 2002). See, also, *Peer Bearing Co.-Changshaw v. United States*, 766 F.3d 1396 (Fed. Cir. 2014).

¹⁹ See *Final Results of Administrative Review: Circular Welded Non-Alloy Steel Pipe from Mexico*, 76 FR 36086 (June 21, 2011) and accompanying Issues and Decision Memorandum at 18. See *Preliminary Negative Countervailing Duty Determination and Alignment with the Final Determination of Certain Cold-Rolled Steel Flat Products from the Republic of Korea*, 80 FR 79567 (December 22, 2015) (*Cold-Rolled from Korea*); and *Preliminary Negative Countervailing Duty Determination and Alignment with the Final Determination of Certain*

Italian electricity rate for industrial users in 2014, which is a contemporary and comparative benchmark.

GOK argues:

- The GOK fully cooperated with the investigation in terms of providing the requested information and participation in verification. Thus, adverse facts available should not be considered for the final determination.
- Petitioners' arguments are misplaced as the purportedly un-submitted documentation is either on the record or the GOK explained that no such documentation exists (*e.g.*, verbal or informal communication). Moreover, Marketing (Sa) 81402-5122 has nothing to do with the setting of tariff rates, but the GOK will provide it if requested.
- The GOK did its best to provide full and complete translations as soon as possible. Due to the voluminous amount of documents submitted, the GOK argues it acted to the best of its ability as it fully translated several relevant documents and partially translated (*e.g.*, headers and titles) documents not germane to the proceeding. The GOK would have fully translated any partially translated document if requested. As to the untranslated 2014 cost data sheet, the sheet has numbers and the language was similar to another exhibit.

Dongbu argues:

- Pursuant to sections 782(d) and 776(b) of the Act, the Department must inform the respondent of the nature of the deficiency and provide an opportunity to cure the deficiency if time permits and can apply an "adverse inference" if it determines that an interested party has failed to cooperate to the best of its ability. Dongbu notes that the Department's "discretion...is not unbounded"²⁰
- The GOK fully responded to the Department's requests and provided a voluminous amount of information on the electricity tariff setting process, costs, and participated in a comprehensive verification.
- Dongbu concedes the GOK had deficiencies in the initial questionnaire, but corrected the deficiencies by providing full responses in subsequent questionnaire responses. Petitioners cannot point to any failure to cooperate on the part of the GOK. Furthermore, citing *Borusan*, Dongbu argues the Department is obligated to ask follow-up questions before resorting to adverse facts available.²¹
- Nucor's reliance on factual statements made in the verification report as support for adverse facts available is misplaced. It is the Department's prerogative to determine whether it wants to see or take any of these referenced documents as verification exhibits. Moreover, Dongbu believes Petitioners' selected quotes from the Electricity Verification Report do not demonstrate non-cooperation when read in context of the entire report. Unlike *Nippon Steel*, *Ta Chen*, and *Peer Bearing*, there is no evidence that the GOK failed to cooperate.

Hot-Rolled Steel Flat Products from the Republic of Korea, 81 FR 2172 (January 15, 2016) (*Hot-Rolled from Korea*).

²⁰ See *F.Lii de Cecco di Flipppo Fara S. Martino S.p.A. v United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000).

²¹ See *Borusan Mannesmann Boru Sanayi ve Tacaret A.S. v. United States*, 61 F. Supp. 3d 1306, 1348 (CIT 2015).

- The untranslated documents are irrelevant and Dongbu points to the fact that neither the Department nor the Petitioners requested that they be fully translated. The absence of full translations cannot be seen as evidence of non-cooperation.
- If the Department believes adverse facts available are warranted, it should follow the methodology used in *Line Pipe from Korea Prelim*.²²

Dongkuk argues:

- Despite Petitioners' call for adverse facts available in its comments in advance of the *Preliminary Determination*, the Department did not resort to the use of adverse facts available. Thus, the Department already implicitly has rejected Petitioners' demand. Further, since the *Preliminary Determination*, the Department has not requested additional information. The record has not suddenly become less complete to warrant the application of adverse facts available.
- The Department's verification report reveals the GOK fully cooperated at verification and there was nothing contradictory found with regard to the information and documentation submitted by the GOK in its questionnaire responses.
- Petitioners raised similar arguments in *Line Pipe from Korea*,²³ which the Department rejected. In the instant investigation, the record is far more developed and the Department verified the alleged Provision of Electricity for LTAR program for an unusually long six-day period. Therefore, Petitioners' demand for adverse facts available is meritless and should be rejected.

Department's Position: Pursuant to section 776(a) of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available if necessary information is not available on the record of an interested party or any other person: (1) withholds information that has been requested; (2) fails to provide such information by the deadlines or in the form and manner requested, subject to sections 782(c)(1) and 782(e) of the Act; (3) significantly impedes the proceeding; or (4) provides such information but the information cannot be verified. Under section 776(b) of the Act, the Department may use facts available with adverse inferences only when it finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

In this investigation, the Department finds that the GOK did not withhold information that was requested of it, did not fail to meet deadlines, did not significantly impede the proceeding, and did not provide unverifiable information. Further, we find that the GOK has not failed to cooperate by not acting to the best of its ability. Accordingly, the use of facts available with adverse inferences is not warranted.

The analysis of whether electricity is provided to an enterprise or industry for LTAR is complicated, especially in situations where the government is the only electricity source

²² See *Welded Line Pipe from Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 14907 (March 20, 2015) (*Line Pipe from Korea Prelim*) and accompanying Preliminary Decision Memorandum at 20.

²³ See *Welded Line Pipe From the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015) (*Line Pipe from Korea*).

available to consumers in the country. Where the government is the sole provider of electricity, the Department will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government's price-setting philosophy, costs, or possible price discrimination.²⁴ In order to undertake the analysis required under 19 CFR 351.511, the Department asked extensive questions of the GOK regarding the electricity market in Korea, the provision of electricity within Korea, and the costs and methodology used in setting electricity prices and establishing electricity tariffs in Korea.

Petitioners' reliance on *Boltless Shelving Units*²⁵ and *Pasta from Italy*²⁶ is misplaced. Unlike the governments at issue in *Boltless Shelving Units* and *Pasta from Italy*, the GOK has timely submitted complete responses to all of the Department's extensive and detailed questions in its responses of September 14, 2015, October 15, 2015, and October 19, 2015. In particular, the GOK provided details on KEPCO's rate setting methodology, cost recovery rates, investment return and profit information. The GOK also provided usage data on all electricity users, including the top 100 industrial users of electricity. Therefore, we disagree with Petitioners' argument that the GOK has failed to provide full responses to our questions in the manner requested by the Department, and, in particular, with regard to the process and documentation for developing and modifying the electricity tariff rate.

We also find that the GOK provided adequate translations of the large and complicated documents submitted on the record. While Petitioners list several documents that were partially untranslated, we find that the GOK provided adequate translations for the documents. In this regard, the Department has the discretion to request additional translations if they are found to be relevant and necessary. Moreover, as noted in Electricity Verification Report, the Department conducted an extensive verification of this information, including the data underlying the calculations used by KEPCO to set the electricity prices in effect during the POI.²⁷ The Department also reviewed relevant documents at verification, obtaining translations where necessary. At verification, the Department was able to fully verify KEPCO's standard pricing mechanism and its application in the setting of industrial electricity tariffs. Finally, we were able to fully analyze this alleged program based upon the information provided by the GOK.²⁸ For all these reasons, the use of AFA, as advocated by Petitioners, is not warranted.

²⁴ See *Countervailing Duties; Final Rule*, 62 FR 65348, 65378 (November 25, 1998) (*CVD Preamble*).

²⁵ In *Boltless Shelving Units*, the Department twice asked the Government of China (GOC) to provide, for each province where the respondents were located, a detailed explanation of: (1) how increases in the cost elements in the price proposals led to retail price increases for electricity; (2) how increases in labor costs, capital expenses and transmission, and distribution costs are factored into the price proposals for increases in electricity rates; and (3) how the cost element increases in the price proposals and the final price increases were allocated across the province and across tariff end-user categories. The GOC provided no province-specific information in response to these questions in its initial questionnaire response and failed to provide the requested information in a supplemental questionnaire response.

²⁶ In *Pasta from Italy*, the Government of Italy failed to respond or submitted incomplete and untimely responses to the Department's supplemental questionnaires with respect to numerous programs. See *Issues and Decision Memorandum* at 11-12.

²⁷ See *Electricity Verification Report*.

²⁸ See *PDM* at 18-22.

Comment 2: Whether the Provision of Electricity Provides a Benefit

Petitioners argue:

- The Department's preliminary finding of no benefit under the program is inconsistent with the current statute and regulations.²⁹ In particular, the Department's reliance on *Magnesium from Canada*³⁰ is misplaced. *Magnesium from Canada* was guided by the old statute and focused on the provision of goods and services in terms of "preferential" treatment rather than whether the goods or services were provided for less than adequate remuneration.³¹
- *Softwood Lumber from Canada* established that there are several important differences between the discarded preferentiality standard and the current adequate remuneration standard.³² Preferentiality is a measure of price discrimination, *i.e.*, whether a government is favoring some buyers over others with lower prices. Thus, the first choice of benchmark under this methodology was to use another government price as a benchmark to determine whether the investigated program provides a benefit. This did not measure the adequacy of remuneration, and the price discrimination test was dropped with the adoption of the URAA. It is no longer sufficient to say that the government does not discriminate; rather, the Department must determine whether the government is receiving adequate remuneration, *i.e.*, a market-based price.
- Pursuant to 19 CFR 351.511, the Department's analysis should focus on market principles.³³ In the *Preliminary Determination*, the Department focused on "preferential treatment" rather than the current methodology articulated in *Softwood Lumber from Canada*.³⁴ Thus, the Department should analyze the tariff setting process in terms of market principles and whether the prices are market based.
- Consistent with *Wire Rod from Trinidad and Tobago*³⁵ and *Softwood Lumber from Canada*,³⁶ the Department should find that KEPCO's prices are not market-based because they do not allow for an appropriate recovery of costs. Substantial record evidence submitted by the GOK indicates that KEPCO does not cover its cost for providing

²⁹ Section 771(5)(E)(iv) of the Act states the provision of goods and services will have conferred a benefit if they are provided for less than adequate remuneration. Under the regulations, the Department "will normally measure the adequacy of remuneration by assessing whether the government price is consistent with market principles." See 19 CFR 351.511(a)(2) and *CVD Preamble* at 65360.

³⁰ See *Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946 (July 13, 1992) (*Magnesium from Canada*).

³¹ *Id.* and section 771(5)(a)(ii)(II) of the Act (1998).

³² See *Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Certain Softwood Lumber Products from Canada*, 66 FR 43186, 43196 (August 17, 2001) (*Softwood Lumber from Canada Prelim*). See also *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber from Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada Final*), and accompanying Issues and Decision Memorandum, at 42.

³³ See *CVD Preamble* at 65378.

³⁴ See *Final Rule: Countervailing Duties*, 54 FR 23366, 23372 (May 31, 1989). See also, *Softwood Lumber from Canada Prelim*, *Softwood Lumber from Canada Final* and accompanying Issues and Decision Memorandum at 42.

³⁵ See *Steel Wire Rod from Trinidad and Tobago*, 65 FR 55003 (October 22, 1997).

³⁶ See *In the Matter of Certain Softwood Lumber from Canada: Final Affirmative Countervailing Duty Determination*, Secretariat File No. USA-CDA-2002-1904-03 NAFTA Binational Panel Review at 9-10.

electricity to its customers. This case stands in contrast to the countervailing duty investigation of *Wire Rod from Trinidad and Tobago*, where the Department found no benefit where it requested and received studies indicating that the respondent's customer category was profitable and that marginal costs were covered.³⁷

- The Petition and record information, and specifically the industrial tariff schedule and the distribution of nuclear generated electricity, indicate that KEPCO's electricity tariff prices are not set in accordance with market principles.³⁸ All electricity in Korea is sold through the Korea Power Exchange (KPX), which charges a flat fee for costs (capacity price) and uses a merit system to assign a price for variable costs. The tariff prices charged to industrial companies provide a benefit because the prices do not cover the actual costs incurred by the nuclear generators.
- The Department should disregard KEPCO's comments concerning alleged defects in the National Assembly Report. Information on the record clearly demonstrates that the system assigns the same fixed costs and uses the merit system to favor generators using cheaper fuel sources. Thus, although nuclear energy is cheap to produce, its overall costs are the most expensive in comparison to industrial tariffs rates. However, KEPCO's own data and the National Assembly audit demonstrate that costs for other types of generation in Korea are also skewed. Moreover, the Korean National Assembly Report from 2012 (an examination of electricity usage of the 100 biggest corporations in Korea) demonstrates that "the government subsidizes and charges less-than-normal electricity cost to the steel industries for their exceeding use of electricity."³⁹

The GOK argues:

- The relevant data to examine is the 2012 and 2014 cost data, and the fact that industrial tariff rates have increased three times since August 2012. Additionally, Petitioners' argument on the system marginal price is misplaced as this price, the variable cost, is equally paid to all generators that generate and sell electricity at a certain time.
- In accordance with the *CVD Preamble*, the Department correctly applied the adequacy of remuneration standard and not the preferentiality standard under the tier "three" analysis.⁴⁰ The Department's analysis considered price setting philosophy, costs, and price discrimination.⁴¹
- The 2014 cost data sheet is accurate and is the basis to analyze costs, including the overall average cost and the industrial group B costs.⁴²
- The electricity system is set up so that KEPCO and its six subsidiaries will recover estimated electricity generation costs, estimated transmission costs, estimated distribution costs, other estimated operational costs, and an estimated fair amount of an investment return on capital. However, the actual and estimated costs may differ due to changes in

³⁷ See *Final Negative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*, 67 FR 55810 (August 30, 2002) and accompanying Issues and Decision Memorandum at Comment 6.

³⁸ See Petitioners' Case Brief at 19-23 and 26-27.

³⁹ See GOK Initial Questionnaire Response (IQR) at Exhibit E-8.

⁴⁰ See *CVD Preamble* at 65377 – 65378.

⁴¹ See PDM at 21 - 22.

⁴² See GOK Rebuttal Brief at 9.

fuel costs, foreign currency exchange rates and electricity demand. Thus, sometimes KEPCO makes a profit and sometimes a loss.

- Petitioners' assertion that the consideration of societal factors when setting electricity rates somehow favors industry is incorrect. Rather, consideration of those factors favors small- and medium-enterprises, schools, and the agricultural sector and may have the opposite effect on the rate charged to industry.
- Pursuant to Article 15 of the Power Business Act and Article 8(2) of the Notification on the power generating business approval criteria, electricity tariff calculation standard, the permitted error of the electric consumption measuring instrument, and scope of the business operations related to electricity, the GOK must maintain the electricity level to cover cost and the appropriate amount of investment return (Notification).⁴³
- The National Assembly Report and the reasoning behind its defective methodology were verified by the Department. Moreover, hidden rows were found in the data to further support its defective nature.⁴⁴
- Petitioners' statements about purchasing generated electricity are mistaken. There is not a one-to-one correlation between a generator and an end user. Electricity is purchased from all types of generators and provided to all users based on the specific tariff rate. The fact that the tariff decreases when the peak is low is truly a market oriented characteristic.⁴⁵
- The merit order system purchases electricity from the cheapest fuel source until it meets the market supply for that time period. There is no discretion and the pricing policy is neutral and does not favor any type of generation.

Dongbu argues:

- Section 771(5)(E)(iv) of the Act does not require any particular methodology in measuring the adequacy of remuneration. Under *Chevron*, the Department has adopted a reasonable method under 19 CFR 351.511(2)(a)(iii). The *Preamble* states the Department will analyze factors such as the government price setting philosophy, costs, and possible price discrimination to determine whether prices were set according to market principles.⁴⁶
- The Department's analysis is consistent with the statute, regulations, and *Preamble*, and Petitioners have not demonstrated the analysis is unreasonable under *Chevron*. Moreover, the Department did not treat the use of a standard pricing mechanism as "dispositive," but determined there was no price discrimination, consistent with the *Preamble*.
- The *Preamble* specifically cites to *Magnesium from Canada* and indicates that it would consider factors such as the government's price setting philosophy as part of its tier-three analysis. Moreover, in the *Samsung Remand*, the Department linked its standard pricing mechanism to the new LTAR statute.⁴⁷

⁴³ See GOK IQR at Exhibits E-5 and E-10. See also, GOK Rebuttal Brief at 13 – 14.

⁴⁴ See Electricity Verification Report at 20 – 21.

⁴⁵ See GOK Rebuttal Brief at 15 - 16.

⁴⁶ See *Preamble* at 63 FR 65348 at 65378.

⁴⁷ See *Final Results of Redetermination Pursuant to Court Order, Samsung Electronics Co., Ltd. v. United States*, 973 F. Supp. 2d 1321 (CIT 2014), *aff'd* 37 F. Supp. 3d 1320 (CIT 2014) (*Samsung Remand*) at 24.

- The 2012 cost data as verified by the Department and the 2014 cost data demonstrate that KEPCO covered its costs and enjoyed a reasonable return on investment. There is no indication those cost recovery rates are not accurate. Furthermore, KEPCO's 20-F filed with the U.S. Securities and Exchange Commission states that KEPCO was profitable in both 2013 and 2014 as well as in each segment of its business.⁴⁸
- The data provided in the National Assembly Report is from 2012. Petitioners have pointed to nothing on the record that supports its claims that KEPCO's criticisms of the report are incorrect.
- Petitioners' assertion that the price paid by KEPCO through KPX to nuclear facilities does not allow these generators to recover their costs is incorrect. The merit order system accounts for its lower costs to produce electricity and, thus, receives a higher premium on its purchase than other types of generators. Moreover, the capacity price must also cover the fixed costs of nuclear facilities as they continue to be built in Korea.⁴⁹
- Petitioners' argument that nuclear power is the most expensive form of energy is contradicted by the National Assembly Report, where it is described as "quite efficient" and a decrease in dependence would raise electricity prices.⁵⁰
- The fact Dongbu operates its production facilities 24 hours a day and consumes large amounts of electricity during the evening hours is more evidence of supply and demand than any preference. Additionally, the merit system is a rational and market based system and the fact that nuclear generators supply electricity at off-peak hours for low cost is not support for any preferential support to Dongbu or other large industrial users.

Dongkuk argues:

- The Department has considered the same program for the same time period in multiple proceedings⁵¹ and determined no benefit was conferred. All of these proceedings examined KEPCO's November 21, 2013 change to its tariff schedule and its cost calculations. Petitioners make the same arguments in this proceeding, which should be rejected.
- Petitioners' argument that KEPCO "fail{ed} to charge Korean steelmakers electricity that...cover{ed} their costs" is contradicted by record evidence. Petitioners have not distinguished the factual record in this investigation from that in *Line Pipe from Korea*, and thus there is no basis that the Department reach an opposite conclusion here.
- The Department has conducted a careful analysis in this investigation as explained in the *Preliminary Determination*, and during its extensive review during verification of KEPCO. Petitioners do not point to any information that the tariff schedule yielded prices during the POI that were below cost.
- KEPCO's cost data clearly show that the company not only covered its costs during the POI, it yielded a reasonable return on investment, and was subject to audit by an outside auditor. Hence it appears Petitioners do not understand the cost recovery calculation.
- Petitioners attempt to build an argument based on periods that pre-date the POI, which is not relevant to the prices charged during the POI. Petitioners provide no explanation to

⁴⁸ See GOK IQR, Exhibit E-3 at pages F-9 and F-41.

⁴⁹ *Id.* at 2015 – 2018 capital investment program.

⁵⁰ See GOK IQR, Exhibit E-8 at 2.

⁵¹ See *Line Pipe from Korea*; *Cold-Rolled from Korea*; *Hot-Rolled from Korea*.

justify its reliance on the 2012 cost data when actual audited data for 2014 POI is available.

- The National Assembly Report is an inappropriate basis to calculate KEPCO's POI costs because it is based on costs that predate the POI by two years, contains multiple defects, and prepared on an *ad hoc* basis in response to a request political in nature. Moreover, at verification the KEPCO official explained that this report had nothing to do with prices in Korea.
- The Department has made clear that it is KEPCO's purchase price of electricity from the KPX that is relevant to KEPCO's costs and not the cost of the electricity generators. Petitioners have not demonstrated why the costs of the electricity generators are now relevant.
- In the 2014 administrative review of *CTL from Korea*,⁵² the Department declined to initiate an investigation on the alleged "Provision of Electricity for LTAR" program based on its experience in *Line Pipe from Korea*. Petitioners have presented no information or argument that undermines the Department's conclusions in those cases.

Department's Position: Consistent with section 771(5)(E)(iv) of the Act and 19 CFR 351.511, we continue to determine that this program provides no benefit to Union/Dongkuk or Dongbu because the provision of electricity is not for less than adequate remuneration.

For purposes of this final determination, under our tier three Benchmark analysis, we assessed whether the prices charged by KEPCO are set in accordance with market principles through an analysis of KEPCO's price-setting method. With respect to KEPCO's price-setting method, the Department stated in *Magnesium from Canada* that we will examine the electricity rates charged to our investigated respondents to determine whether the price charged is consistent with the power company's standard pricing mechanism. If the rate charged is consistent with the standard pricing mechanism and the company under investigation is, in all other respects, essentially treated no differently than other companies and industries which purchase comparable amounts of electricity, then there is no benefit.⁵³

In the instant investigation, Union/Dongkuk and Dongbu purchased electricity from KEPCO. The GOK reported that a single tariff rate table applied throughout the POI, and that this tariff rate went into effect on November 21, 2013, and was applicable to the respondents in this investigation.⁵⁴ Further, the GOK provided its calculation of electricity costs as well as data showing its cost and investment return pertaining to the POI for the industrial users of electricity.⁵⁵ The GOK provided KEPCO's data that was submitted to the Ministry of Trade, Industry and Energy (MOTIE) in 2013 for the tariff in effect during the POI, as well as an explanation of its calculations and recovery costs.⁵⁶ The GOK stated that KEPCO applied this

⁵² *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review and New Shipper Review: Calendar Year 2014*, 81 FR 13330 (March 14, 2016) (*CTL from Korea*), New Subsidy Allegations Memorandum for Dongkuk Steel Mill Co., Ltd. and Hyundai Steel Co., Ltd dated December 16, 2015.

⁵³ See discussion of *Magnesium from Canada* in PDM at footnote 127.

⁵⁴ See GOK IQR at 10 and Exhibit E-13; and GOK 2nd Supplemental Questionnaire Response (SQR2) at 10.

⁵⁵ See GOK SQR2 at 6-11.

⁵⁶ See GOK IQR at 10-11 and GOK SQR2 at 8-9.

same price-setting method or standard pricing mechanism to determine the electricity tariffs for each tariff classification including the industrial tariff that was paid by the respondents during the POI.⁵⁷ In addition, there is no information on the record that Union/Dongkuk and Dongbu are treated differently from other industrial users of electricity that purchase comparable amounts of electricity because the rates paid were from the tariff schedule applicable to all industrial users. Therefore, consistent with 19 CFR 351.511 and *Magnesium from Canada*, we continue to find that this program provides no benefit to Union/Dongkuk and Dongbu because the prices charged to these respondents under the applicable industrial tariff were consistent with KEPCO's standard pricing mechanism.

The Standard Pricing Mechanism Developed in Magnesium from Canada Measures Adequacy of Remuneration

Section 771(5)(E) of the Act states that “the adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided...in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions for sale.” Adequate remuneration is defined in 19 CFR 351.511(a)(2). Under 19 CFR 351.511(a)(2)(iii), commonly called “tier three,” when there are no private prices, including import prices, for the good or service in the country under investigation, and when there are no available world market prices, the adequacy of remuneration will be measured “by assessing whether the government price is consistent with market principles.” Under 19 CFR 351.511(a)(2)(iii), the Department will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government's price-setting philosophy, cost, or possible price discrimination. These factors are not put in any hierarchy, and we may rely on one or more of these factors in any particular case.⁵⁸

Under 19 CFR 351.511(a)(2)(iii), the Department assessed KEPCO's tariffs for large industrial users, the tariff applicable to the respondents under investigation, through an analysis of KEPCO's price-setting philosophy, or standard pricing mechanism, the term used in *Magnesium from Canada*. Petitioners argue that the standard pricing mechanism set forth in *Magnesium from Canada* is not relevant because it focuses on “preferentiality” rather than adequate remuneration; however, this argument misunderstands the nature of adequate remuneration.

Petitioners contend that the Department's application of *Magnesium from Canada* is contrary to law because that administrative determination was made pursuant to a prior version of the U.S. countervailing duty law, under which subsidies included the provision of goods or services at preferential rates. Petitioners are incorrect, as demonstrated by the fact that the current CVD regulations that implemented the statutory changes as a result of the Uruguay Round Agreements Act (URAA), and in particular 19 CFR 351.511, regarding the provision of a good or service, were enacted with reference to the methodology developed in *Magnesium from Canada* to

⁵⁷ See GOK IQR at 12.

⁵⁸ See CVD Preamble at 65378.

analyze whether the provision of a good or service such as electricity is provided at adequate remuneration.⁵⁹

Indeed, when the *CVD Preamble* mentions the “government’s price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination” as factors the Department may consider under the new law to assess whether a government price is consistent with market principles, it cites *Magnesium from Canada* as a case that includes such analysis.⁶⁰ Accordingly, in a tier three analysis, if “the rate charged is consistent with the {utility company’s} standard pricing mechanism and the company under investigation is, in all other respects, essentially treated no differently than other industries which purchase comparable amounts of electricity,” then that fact is sufficient to support a finding that no benefit is conferred.⁶¹ The fact that KEPCO adhered to its standard pricing mechanism is significant. The application of a uniform price-setting philosophy is the first factor enumerated in assessing whether the government price was set in accordance with market principles.⁶²

Moreover, it is clear that with the concept of a standard pricing methodology, developed in *Magnesium from Canada*, the Department recognized the market conditions for the provision of electricity, which is that electricity tariffs are generally based upon the type and amount of consumption of electricity and that utility rates will vary depending on the size and classification of the electricity consumer. Therefore, the Department developed the standard pricing methodology, codified under 19 CFR 351.511(a)(2)(iii), to account for the commercial market conditions by which electricity is provided to consumers. As such, the standard pricing methodology ensures that adequacy of remuneration for the provision of a good or service is determined in relation to the prevailing market conditions for the good or service being provided as required under 771(5)(E) of the Act.

The URAA’s move away from preferentiality methodology flipped the regulatory hierarchy, with market prices from the country under investigation and world market prices moving up the hierarchy, and other considerations, including price discrimination, remaining potentially relevant only if the preferred data are unavailable.⁶³ However, Petitioners’ argument, citing

⁵⁹ *Id.* (“Paragraph (a)(2)(iii) provides that, in situations where the government is clearly the only source available to consumers in the country, we normally will assess whether the government price was established in accordance with market principles. Where the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government’s price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination. We are not putting these factors in any hierarchy, and we may rely on one or more of these factors in any particular case. In our experience, these types of analyses may be necessary for such goods or services as electricity, land leases, or water, and the circumstances of each case vary widely. *See, e.g., {Pure Magnesium from Canada} and Final Affirmative Countervailing Duty Determination: Venezuelan Wire Rod*, 62 FR 55014, 55021-22 (October 22, 1997).”)

⁶⁰ *Id.*

⁶¹ *See Magnesium from Canada*, 57 FR at 30949-50.

⁶² *See CVD Preamble* at 65378.

⁶³ As explained in *Certain Softwood Lumber Products from Canada Prelim*, the prior methodology that applied under the pre-URAA law provided that Commerce “would measure whether the government provided a good or service at a preferential rate based upon, in order of preference, the following benchmarks: (1) The price the government charges to other parties for the identical or similar good; (2) the price charged by other sellers within the

Softwood Lumber from Canada, that a preferentiality analysis cannot be sufficient to assess adequate remuneration is mistaken. In response to comments to its proposed regulation implementing the new law based on adequate remuneration, the Department addressed concerns “about potentially continuing the use of the preferentiality standard by shifting the focus of {its} inquiry toward whether the government employed market principles in setting prices.”⁶⁴ The Department clarified that a price discrimination analysis may still be appropriate under the new law because, in the context of a tier three analysis, “there may be instances where government prices are the most reasonable surrogate for market-determined prices.”⁶⁵

Cost Recovery as a Measure of Adequate Remuneration

Petitioners argue that cost recovery is the only basis to measure the adequacy of remuneration; however, this contention is incorrect as a matter of law. As clearly set forth under 19 CFR 351.511(a)(2)(iii), the Department will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government’s price-setting philosophy, cost, or possible price discrimination. These factors are not put in any hierarchy, and we may rely on one or more of these factors in any particular case.⁶⁶ Therefore, under the CVD law, the Department may determine the adequacy of remuneration by assessing whether the government price of electricity is in accordance with market prices by analyzing (1) the government’s price-setting philosophy; (2) cost; or (3) possible price discrimination. If the adequacy of remuneration could only be measured by an analysis of an utility company’s cost (or cost recovery), then the Department’s regulations would not have included an analysis of the government’s price-setting philosophy, or, for that matter, possible price discrimination in the description of a “tier three” benefit analysis. Neither section 771(5)(E)(iv) of the Act nor 19 CFR 351.511(a)(2)(iii) requires the Department to measure the adequacy of remuneration solely on an examination of cost and cost recovery.

As also made clear under 19 CFR 351.511(a)(2)(iii), the factors that may be used by the Department in determining whether a government price is consistent with market principles - the government’s price-setting philosophy, cost, or possible price discrimination - are not put in any hierarchy, and the Department may rely on one or more of these factors in any particular case.⁶⁷ Therefore, the argument by Petitioners that we may only use cost in assessing the adequacy of remuneration is clearly unsupported by the statute and the regulations governing the provision of a good or service.

In *Hot-Rolled from Thailand*, the Department found the Government of Thailand’s provision of electricity to respondents in certain regions outside the Bangkok Metropolitan area to provide a

same political jurisdiction (*i.e.*, country under investigation); (3) the government’s cost of providing the good or service; or (4) the price paid for that good outside the country under investigation.” This correctly emphasized the priority given to market prices under the new law, but nothing in that decision disturbs the Department’s practice, as set forth in the *CVD Preamble*, with respect to assessing a government price under a “tier three” analysis.

⁶⁴ *CVD Preamble* at 65378.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

countervailable subsidy.⁶⁸ In that case, which involved the application of facts available, the Department used the cost factor to analyze the adequacy of remuneration, based upon the facts on the record regarding the provision of electricity in Thailand. In Thailand, electricity was generated and transmitted through one entity, the Electricity Generating Authority of Thailand (EGAT), while two entities were responsible for distributing electricity: the Metropolitan Electricity Authority (MEA), which distributed electricity in Bangkok and the surrounding areas, and the Provincial Electricity Authority (PEA), which distributed electricity to the rest of the country. While the cost of distribution was greater for the PEA than for the MEA, the Government of Thailand maintained a uniform national tariff policy, whereby consumers in the same customer category would pay the same rate regardless of the area of distribution.⁶⁹ Therefore, there was no standard pricing mechanism in setting electricity tariffs because distribution expenses were accounted for in two different methods for electricity provided through the MEA and electricity provided through the PEA.

To maintain the government policy of charging consumers in the same customer category the identical rate, EGAT provided a discount to the PEA and charged the MEA a surcharge on the rates paid on electricity in order to cross-subsidize the higher distribution costs incurred by the PEA. Therefore, the Department determined that this practice constituted a regional subsidy. Accordingly, based on the facts of that case, the Department used the element of cost under 19 CFR 351.311(a)(2)(iii) to assess the adequacy of remuneration and considered the amount of the subsidy to be the amount of the cross-subsidization.⁷⁰ Thus, the facts on the record in *Hot-Rolled from Thailand* that led the Department to use the cost factor to assess the adequacy of remuneration are different from the facts of this investigation that support assessing the adequacy of remuneration using the government's price-setting philosophy.

Similarly, Petitioners' cite to *Wire Rod from Trinidad and Tobago* does not support an argument that we should disregard KEPCO's standard pricing methodology and apply a cost recovery standard. The final determination of *Wire Rod from Trinidad and Tobago* was made on October 22, 1997, before the enactment of 19 CFR 351.511 and our current CVD regulations which were implemented on November 25, 1998, and applicable to CVD investigations initiated on the basis of petitions filed after December 28, 1998.⁷¹ Therefore, the analysis of adequacy of remuneration cited by Petitioners in *Wire Rod from Trinidad and Tobago* did not involve the assessment of the adequacy of remuneration under 19 CFR 351.511. Moreover, subsequent to the enactment of 19 CFR 351.511, in measuring the adequacy of remuneration from the provision of electricity in *Melamine from Trinidad and Tobago*, the Department assessed the adequacy of remuneration using the government's price-setting methodology under 19 CFR 351.511(a)(2)(iii).⁷²

⁶⁸ See *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 50410 (October 3, 2001) (*Hot-Rolled from Thailand*) and accompanying Issues and Decision Memorandum at II.B. "Provision of Electricity for Less than Adequate Remuneration."

⁶⁹ *Id.*

⁷⁰ *Id.* and accompanying Issues and Decision Memorandum at Comment 12.

⁷¹ See *CVD Preamble* at 65348.

⁷² See *Melamine From Trinidad and Tobago: Final Affirmative Countervailing Duty Determination*, 80 FR 68849 (November 6, 2015) and accompanying Issues and Decision Memorandum at 13.

Petitioners also argue that electricity tariffs do not include the full cost of generation, including electricity from nuclear generators, because steel producers purchase electricity predominantly during off-hours where electricity is primarily generated from nuclear generation units. However, Petitioners have failed to provide any evidence that the prevailing market conditions for the provision of electricity in Korea are that utility companies have separate tariff rates that are differentiated based upon the manner in which the electricity is generated. The tariff schedule on the record of our investigation does not support this proposition. Petitioners have also failed to adequately support a claim that KEPCO's costs of electricity used in developing its tariff schedule do not fully reflect its actual costs of the electricity that it transmits and distributes to its customers in Korea. In addition, with respect to the costs of the generators, including the nuclear generators, the Department did not request these costs because the costs of electricity to KEPCO are determined by the KPX. Electricity generators sell electricity to the KPX, and KEPCO purchases the electricity it distributes to its customers through the KPX. Thus, the costs for electricity are based upon the purchase price of electricity from the KPX, and this is the cost that is relevant for KEPCO's industrial tariff schedule.⁷³

Finally, with regard to the "tier three" benchmark used to determine whether the provision of electricity was for adequate remuneration, KEPCO's standard pricing mechanism used to develop its tariff schedule was based upon its costs. To develop the electricity tariff schedules that were applicable during the POI, KEPCO first calculated its overall cost, including an amount for investment return. This cost includes the operational cost for generating and supplying electricity to the consumers as well as taxes. The cost for each electricity classification was calculated by (1) distributing the overall cost according to the stages of providing electricity (generation, transmission, distribution, and sales); (2) dividing each cost into fixed cost, variable cost, and the consumer management fee; and (3) then calculating the cost by applying the electricity load level, peak level, and the patterns of consuming electricity. Each cost was then distributed into the fixed charge and the variable charge. KEPCO then divided each cost taking into consideration the electricity load level, the usage pattern of electricity, and the volume of the electricity consumed. Costs were then distributed according to the number of consumers for each classification of electricity.⁷⁴ For the POI, KEPCO more than fully covered its cost for the industry tariff applicable to our respondents.⁷⁵

The National Assembly Report

Finally, Petitioners argue that the Department should rely on the National Assembly Report because it demonstrates that the steel industry is being charged "less-than-normal electricity costs" and that KEPCO uses the merit system to favor generators using cheaper fuel sources.

The National Assembly Report relied upon by Petitioners is not relevant to our analysis as to whether KEPCO provides electricity to our respondents for less than adequate remuneration. The National Assembly Report provides information on the electricity consumption pattern of Korea largest 100 corporations. While the losses incurred by KEPCO as shown in the Report are

⁷³ See *Line Pipe from Korea* and accompanying Issues and Decision Memorandum at 27.

⁷⁴ See GOK IQR at 13-14 and GOK SQR2 at 6-9. See also Electricity Verification Report at 12-18.

⁷⁵ See GOK SQR2 at 11.

flawed due to the methodology used to produce the data, *i.e.*, comparing company-specific revenue to aggregated cost, the more important flaw is that the information provided within the Report is from two years prior to our POI, 2014. Since the date of the Report, 2012, KEPCO electricity industrial tariffs have been increased three different times.⁷⁶

Under our regulations, we must determine whether the rates paid during the POI, 2014, are for adequate remuneration as set forth under 19 CFR 351.511. Therefore, our analysis was based upon KEPCO's industrial tariffs that were in effect during 2014, not the industrial tariffs that pre-dated the POI by at least two years. Therefore, the information in the National Assembly Report is outdated and not relevant to our POI.

Specificity Comments

We received comments from the interested parties on the issue of whether the provision of electricity is specific. Because we determined that the provision of electricity did not provide a benefit, the issue of specificity is moot.

Comment 3: Whether the Department Should Use Other Submitted Data to Measure the Adequacy of Remuneration for Electricity

Petitioners Argue:

- The Department's regulations set forth a hierarchy (*e.g.*, three tiers) for evaluating whether a good is provided for less than adequate remuneration, pursuant to 19 CFR 351.511(a)(2).
- There are no market-based prices in Korea to evaluate electricity prices, therefore tier "one" is not a viable option.⁷⁷
- The provision of electricity generally cannot be evaluated under tier "two" and the Department will measure the adequacy of remuneration under tier "three." However, the regulations do not specify how to conduct a market principles analysis under tier "three."
- In *Laminated Sacks from China*, the Department had a similar situation and used comparable market-based prices in a country "at a comparable level of economic development that is reasonably proximate to, but outside, of China."⁷⁸ The Department should use the same methodology for this program, using Japan as the comparable country.⁷⁹

⁷⁶ See GOK IQR, Exhibit E-3 at page 53.

⁷⁷ See Petitioners' Brief at 45 – 46.

⁷⁸ See *Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*Laminated Sacks from China*) and accompanying Issues and Decision Memorandum at 17.

⁷⁹ See Petitioners' Brief at 47 – 49.

Dongbu Argues:

- The record demonstrates that electricity prices from other countries are not reasonably available to purchasers in Korea as there is no cross-border transmission or distribution of electricity in Korea.⁸⁰ This is in line with the Department's past practice.⁸¹
- The Department's past practice has also been to resort to a tier three analysis when analyzing electricity.⁸² The Department found the electricity supplier did apply its standard pricing mechanism in *Magnesium from Canada* and *Supercalendered Paper from Canada*. Thus, only *Wire Rod from Venezuela* is similar.
- The Department needs to analyze the prevailing market conditions in the country under investigation pursuant to 771(5)(E).
- Petitioners' suggested use of KEPCO data provided for the National Assembly Report, in the alternative, should be rejected as it has been discredited by KEPCO and described as inaccurate.
- In the alternative, the Department should follow the methodology used in *Line Pipe from Korea*.

Department's Position: Petitioners have put forth two alternative benchmarks, the use of Japanese electricity prices and the use of "comparable" prices of electricity from countries outside of Korea, such as what we used for land benchmarks in *Laminated Sacks from China*.

The Department examines whether electricity was provided for "less than adequate remuneration" and a benefit was thereby conferred, under section 771(5)(E)(iv) of the Act pursuant to the governing regulation, 19 CFR 351.511(a)(2). This provision lists potential benchmarks in hierarchical order of preference: (1) market prices from actual transactions within the country under investigation; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles. A "tier one" benchmark, market prices from actual transactions within the country under investigation, was not available because KEPCO was the predominant provider of electricity in the Korean market. A "tier two" benchmark, world market prices, was not available because there was no cross-border transmission or distribution of electricity into Korea. Under 19 CFR 351.511(a)(2)(ii), the Department will only use world market prices if the good or service is actually available to the purchaser in the country under investigation.⁸³ With respect to electricity, the Department has stated that electricity prices from countries in the world market are not normally available to purchasers in the country under investigation.⁸⁴ Because there is no cross-border transmission or distribution of electricity into

⁸⁰ See GOK IQR at 8.

⁸¹ See *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela*, 62 FR 55104, 55021-22 (October 22, 1997) (*Wire Rod From Venezuela*).

⁸² *Id.* See, also, *Magnesium from Canada* and *Supercalendered Paper from Canada: Preliminary Affirmative Countervailing Duty Determination*, 80 FR 45951 (August 3, 2015) and accompanying Decision Memorandum at 32.

⁸³ 19 CFR 351.511(a)(2)(ii) explicitly states that "the Secretary will seek to measure the adequacy of remuneration by comparing the government price to a world market price *where it is reasonable to conclude that such price would be available to purchasers in the country in question.*" (Emphasis added).

⁸⁴ See CVD Preamble at 65378.

Korea, electricity from other countries, including from Japan, is not available to electricity consumers in Korea. Therefore, prices from Japan cannot be used as a benchmark.

In *Laminated Sacks from China*, we found under our analysis of the provision of land under 19 CFR 351.511(a)(2)(iii) that based upon the overwhelming presence of government involvement in the land-use rights market, as well as the widespread and documented deviation from the authorized methods of pricing and allocating land, the purchase of land use rights in China was not conducted in accordance with market principles.⁸⁵ Therefore, under our “tier three” analysis, we resorted to market-based land purchases in a country at a comparable level of economic development that is reasonably proximate to, but outside of China. However, the facts on the record in our investigation are different from the facts that were on the record in *Laminated Sacks from China*. In this investigation, we have verified information that the standard pricing mechanism used to determine KEPCO’s industrial tariff rates is in accord with market principles as defined under 19 CFR 351.511(a)(2)(iii). Furthermore, if the Department determined that the standard pricing mechanism used by KEPCO was not in accord with market principles, then the Department would still have on the record KEPCO’s full cost of providing electricity in order to assess the adequacy of remuneration.

Comment 4: Whether Benefits Received from Dongbu’s Voluntary Debt Restructuring are Countervailable

Dongbu argues:

- Dongbu’s voluntary Debt Restructuring Program did not provide Dongbu with a financial contribution because the Restructuring was not part of a GOK program and was not subject to GOK control or influence.
- Both Dongbu and its creditors chose the Voluntary Restructuring in lieu of corporate reorganization. The GOK-owned banks were not lenders of last resort but were, instead, creditors of Dongbu before it became distressed.
- This case differs from *Refrigerators from Korea* in several respects.⁸⁶ That case did not involve a Voluntary Restructuring, and there is no evidence in this case that the GOK had any role in putting GOK-owned banks in a position to become the largest shareholder in Dongbu or have the Voluntary Restructuring approved.
- This case also differs from *DRAMs from Korea*⁸⁷ because there is no evidence of any government policy to support Dongbu, and the Voluntary Restructuring was designed to help Dongbu’s creditors recover as much as possible.
- The Debt Restructuring Program is not specific. The Department’s finding that there are a limited number of users is too broad and would result in any voluntary restructuring being found to be specific. The Federal Circuit has previously affirmed that a debt restructuring program was not specific because “numerous and diverse industries were

⁸⁵ See *Laminated Sacks from China* and accompanying Decision Memorandum at 16.

⁸⁶ See *Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410 (March 16, 2012) (*Refrigerators from Korea*) and accompanying Issues and Decision Memorandum.

⁸⁷ See *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003) (*DRAMs from Korea*) as amended by 68 FR 44290; *Hynix Semiconductor Inc. v. United States*, 425 F. Supp. 2d 1287, 1295 (CIT 2006).

invited to participate in the debt restructuring program.”⁸⁸ The Voluntary Restructuring program is similarly available to all industries and companies under the Voluntary Creditor Bands Committee Agreement; the number of participants is only limited because only firms that are in distress will actually use the program.

Petitioners argue:

- The Department properly found that the GOK provided a direct financial contribution through Dongbu’s Debt Restructuring Program in the form of new loans and restructured debt issued by GOK controlled banks, which are “authorities” within the meaning of section 771(5)(B) of the Act.
- The Debt Restructuring Program is *de facto* specific because Dongbu was one of a very limited number of companies that utilized such a program during the period of investigation and the three preceding years.

Department’s Position: Based on an analysis of the information on the record and the comments submitted by the interested parties, we continue to find that Dongbu received countervailable subsidies from the Debt Restructuring Program during the POI because the restructuring involved a financial contribution from numerous “authorities” that conferred a benefit, and because that subsidy was specific.

The record of this investigation shows that the five GOK-controlled policy banks (*i.e.*, KDB, Korea Financial Corporation (KoFC), KEXIM, Woori Bank (Woori), and the Industrial Bank of Korea (IBK)) that participated in the Creditor Banks Committee (CBC) are authorities under section 771(5)(B) of the Act, with KDB being the largest creditor for Dongbu’s debt and loans, and taking the leading role in the Creditor Banks Committee.⁸⁹ Through the Debt Restructuring Program, these banks offered Dongbu new loans and refinanced previously issued loans after June 30, 2014. Thus, the record is clear that these authorities provided a financial contribution to Dongbu during its debt restructuring as defined under section 771(5)(D)(i) of the Act.

We note that although Dongbu distinguishes the Debt Restructuring Program from both *Refrigerators from Korea* and *DRAMS from Korea*, our *Preliminary Determination* and this *Final Determination* do not rely on those cases as support for our determination that the five GOK-controlled policy banks provided a financial contribution in this case.⁹⁰ Rather, we cited *Refrigerators from Korea* in the context of measuring the benefit resulting from that financial contribution (*see* Comment 5, below). Furthermore, our determination that these authorities provided a financial contribution does not necessitate a finding that there was a government policy to support Dongbu, as was the case in *DRAMS from Korea*, because we are relying on financial contributions from the authorities themselves, rather than analyzing whether those authorities entrusted or directed private entities to provide those financial contributions. Indeed, in this case, our countervailing duty determination is limited to the new and refinanced loans provided by the authorities, and we have excluded financing provided by private creditors from our benefit calculation (*see, e.g.*, Comment 6, below).

⁸⁸ *See Royal Thai Gov’t v. United States*, 436 F.3d 1330, 1333 (Fed. Cir. 2006).

⁸⁹ *See* PDM at 12-15.

⁹⁰ *Id.* at 12-14.

The Department also continues to find that this provision of assistance was specific pursuant to section 771(5A)(D)(iii)(I) of the Act because Dongbu was one of a very limited number of companies that went through such government-assisted restructuring during the POI and the immediate preceding three years.⁹¹ Dongbu's reliance on *Royal Thai* is misplaced. In the investigation underlying *Royal Thai*, the Department examined a nation-wide debt restructuring program that was part of the Thai government's broad effort at financial reforms in the aftermath of the Asian financial crisis of 1997.⁹² The Thai government's debt restructuring program ultimately applied to nearly 700 firms. Far fewer Korean companies entered into Debt Restructuring Program at issue here.⁹³ Therefore, this subsidy is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

We disagree with Dongbu that this specificity analysis is overly broad because a voluntary restructuring program is generally available but inherently limited in fact to those firms that are in distress. This is exactly the type of scenario that the *de facto* specificity provisions are designed to address.⁹⁴ The statutory standard is whether the "actual recipients" of the subsidy are limited in number, not whether the general availability of the subsidy is somehow limited. In this instance, the debt restructuring of Dongbu is led by state-owned policy banks, with the lead bank, the KDB, having the key government policy role of bailing-out or restructuring troubled or failed corporations.⁹⁵ Indeed, a similar restructuring of the paper company Poongam led by the KDB was found to be specific in *Coated Free Sheet Paper from Korea*.⁹⁶

Accordingly, we continue to find that the new and restructured loans provided by the five authorities identified above constitute a subsidy to the extent that they provide a benefit, and that the provision of that financing was specific. We address the calculation of that benefit in Comment 5, below.

⁹¹ *Id.* at 14.

⁹² See *Hot-Rolled from Thailand* and accompanying Issues and Decision Memorandum at section III.A.2 "Corporate Debt Restructuring Following the Baht's Collapse."

⁹³ See Letter from the GOK, "re: Countervailing Duty Investigation: Certain Corrosion-Resistant Steel Products (CORE) from the Republic of Korea: Response to Questionnaire (September 14, 2015)," at 55.

⁹⁴ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103rd Cong., 2d Session (1994) (SAA) at 930-931 ("The specificity test was intended to function as a rule of reason and to avoid the imposition of countervailing duties in situations where, because of the widespread availability *and use* of a subsidy, the benefit of the subsidy is spread throughout an economy. . . {W}here the number of enterprises or industries using a subsidy is not large, {section 771(5A)(D)(iii)(I)} alone would justify a finding of specificity{.}" (emphasis in original).

⁹⁵ See GOK IQR at Exhibit BANK-3 for KDB Annual Reports.

⁹⁶ See *Coated Free Sheet Paper from Korea* at 8-9.

Comment 5: Whether Benefits Should be Calculated for Loans and Bonds Which Were Issued to Dongbu by GOK-Owned Banks Prior to Its Voluntary Restructuring

Dongbu argues:

- There is no factual basis for finding that these benefits were specific as required by the countervailing duty statute.
- The Department should limit any benefit calculations to loans and bonds received after Dongbu applied for the debt restructuring on June 30, 2014.

Petitioners argue:

- The reduction in interest rates arising from the voluntary debt restructuring applied to outstanding loans and bonds from creditor banks that were issued prior to the restructuring but during the POI.
- Under the Department's practice, this type of refinancing constitutes a new financial contribution.
- Any loans disbursed or refinanced based on the restructuring are *de facto* specific.

Department's Position: The Department continues to calculate a benefit for new loans issued and for existing loans that were refinanced by the GOK-owned policy banks on the Credit Banks Committee after the Restructuring. As discussed above, the refinanced loans and bonds constituted new financial contributions, because these loans and bonds received new terms including interest rate reduction.⁹⁷ And, as discussed above, because Dongbu was one of the limited number of firms that went through the Debt Restructuring Program provided by the government-controlled banks, these new loans and bonds are specific pursuant to section 771(5A)(D)(iii)(I) of the Act.

However, because the interest reduction for the restructured loans and debts took effect only after June 30, 2014,⁹⁸ the Department determines that the benefit calculations for the existing, refinanced loans and bonds should be limited to the interest payments made after June 30, 2014, the date on which Dongbu entered the program under investigation. Record evidence shows that on and prior to June 30, 2014, Dongbu made interest payments on its existing loans and bonds based on the interest rates prior to the restructuring.⁹⁹ Therefore, the Department has revised its benefit calculation to include only the benefit for interest payments made on or after June 30, 2014.¹⁰⁰

⁹⁷ See, e.g., *DRAMs from Korea* Issues and Decision Memorandum at 21.

⁹⁸ See Dongbu's "Outstanding Loans and Bonds during the POI" Excel worksheet submitted in its IQR. See also Dongbu's Initial Questionnaire Response (IQR) submitted to the Department on September 11, 2015, at 41, and Exhibit DEBT-5.

⁹⁹ *Id.*

¹⁰⁰ See Dongbu Final Calculation Memorandum.

Comment 6: Whether Dongbu was Creditworthy in 2014 and Whether the Department Should Recalculate Benefits Using Creditworthy Benchmarks

Dongbu argues:

- Record evidence demonstrates that Dongbu was creditworthy during the POI.
- Participation of the private creditors in Dongbu's debt restructuring on the same terms proves that Dongbu was creditworthy during the POI. There is no regulatory or statutory requirement that those loans be "significant."
- Private financial institutions rolled-over Dongbu's corporate bonds at market rates during the POI.
- Dongbu received bridge loans at market rates during the POI. The Department disregarded 19 CFR 351.505(a)(2)(ii) and its own administrative precedent by disregarding those loans simply because they came from the KDB.¹⁰¹
- Dongbu sold public shares to new investors during the POI. The "extreme example" contemplated by the *CVD Preamble*, and cited by the Department in its *Preliminary Determination*, does not apply here.¹⁰²
- The Department should recalculate the benefits using the creditworthy benchmarks that are on the record.

Petitioners argue:

- Because private creditors only constitute a minority share of Dongbu's debt, and the Creditor Banks Committee was controlled by the GOK, the receipt of certain loans from private entities-regardless of whether they were comparable commercial loans-does not detract from the Department's determination that Dongbu was not creditworthy. Dongbu has provided no basis for the Department to reconsider its determination on this basis.
- The fact that Dongbu's bonds rolled-over prior to the bailout does not demonstrate that it was creditworthy, given that Dongbu's credit rating deteriorated and was downgraded to junk bond status during the POI. Dongbu's financial ratios were all below the Department's creditworthiness analysis benchmark.
- KDB, a special purpose government-controlled policy bank, issued emergency bridge loans to Dongbu. These loans were not issued at commercial rates and Dongbu's receipt of such bridge loans does not demonstrate that it was creditworthy during the POI.
- The *CVD Preamble* states that the issuance of public shares is not necessarily dispositive evidence that a company is creditworthy. Dongbu did not provide a basis to demonstrate that its May 2014 issuance of public shares made it creditworthy.

Department's Position: The Department continues to find Dongbu to be uncreditworthy during the POI and continues to use the uncreditworthiness benchmark to measure the benefits Dongbu received from this program for the final determination.

¹⁰¹ See *Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From Brazil*, 67 FR 62128, 62130 (October 3, 2002) (*Cold-Rolled from Brazil*).

¹⁰² See *CVD Preamble* at 65367.

In accordance with 19 CFR 351.505(a)(4)(i)(A)-(D), our creditworthy analysis examines four types of information: 1) receipt by the firm of comparable commercial long-term loans; 2) present and past indicators of the firm's financial health; 3) present and past indicators of the firm's ability to meet its costs and fixed financial obligations with its cash flow; and 4) evidence of the firm's future financial position. In the *Preliminary Determination*, we found that, in 2014, Dongbu's financial ratios (*i.e.*, current and quick ratios), negative cash flows, and debt-to-equity ratios indicated that it did not have sufficient liquid assets to cover its short-term debt obligations, and had to resort to the Corporate Voluntary Restructuring Program under the Creditor Banks' Committee Agreement in order to cover its short-term debt.¹⁰³ We also found that Dongbu received no comparable long-term commercial loans during 2014.¹⁰⁴

Dongbu has not pointed to any information on the record that would cause us to reconsider any aspect of our preliminary finding. Contrary to its claims, there is no information on the record which shows that Dongbu received comparable commercial loans from private banks. Although some private commercial banks were involved in the debt restructuring of Dongbu, these banks were part of the Creditor Banks Committee, which was controlled by the GOK banks. Consistent with *Refrigerators from Korea*,¹⁰⁵ we continue to determine that the loans from private creditors on the Creditor Banks Committee cannot be construed to be "comparable commercial loans."

As an initial matter, we disagree with Dongbu that our findings in *Refrigerators from Korea* have no direct application in the context of a creditworthiness analysis. Although we recognize that we made those findings in *Refrigerators from Korea* in the context of determining whether private loans could serve as a benchmark pursuant to section 771(5)(E)(ii) of the Act and 19 CFR 351.505(c)(2), our definition of the term "comparable commercial loan" is set out in 19 CFR 351.505(a)(2), and we see no reason to interpret that term differently with respect to our analysis of Dongbu's creditworthiness under 19 CFR 351.505(a)(4)(ii). Regarding the definition in general, the *Preamble* notes that when a financing package includes both government loans and private loans, "we intend to examine the package closely to determine whether the commercial bank loans should in fact be viewed as 'commercial' for benchmark purposes."¹⁰⁶

Receipt of "comparable long-term commercial loans" are normally dispositive evidence of creditworthiness if they are unaccompanied by a government-provided guarantee.¹⁰⁷ In past cases, we have disqualified such loans where they reflected a relatively small portion of a company's overall restructuring and took into account the behavior of the banks acting as authorities.¹⁰⁸ The CIT has upheld this approach as reasonable, finding that the Department need not find that a private entity was entrusted or directed by a government to be influenced by that government's actions when making investment decisions.¹⁰⁹

¹⁰³ See Memorandum to Edward Yang, Director, AD/CVD Operations, Office VII, "Analysis of Dongbu Steel Co., Ltd.'s Uncreditworthiness and Preliminary Uncreditworthiness Determination," dated November 2, 2015.

¹⁰⁴ *Id.*

¹⁰⁵ See *Refrigerators from Korea*, and accompanying Issues and Decision Memorandum at 111-114.

¹⁰⁶ See *CVD Preamble* at 65363-64.

¹⁰⁷ See 19 CFR 351.505(a)(4)(ii).

¹⁰⁸ See *Hynix*, 425 F. Supp. 2d at 1292.

¹⁰⁹ *Id.* at 1308.

In this case, Petitioners did not make an allegation of entrustment or direction with respect to the private commercial banks, and therefore, we have made no finding that the private commercial banks that were part of the Creditor Bank Committee were entrusted or directed by the GOK to provide loans and refinancing to Dongbu. Nevertheless, we find that it is not appropriate to consider the loans provided by these banks to be “comparable commercial loans” because those loans constituted only a small percentage of Dongbu’s debt,¹¹⁰ and because the record demonstrates that those banks took into account the actions of the government-owned banks when setting the terms for those loans. In addition, Nonghyup Bank, which we determined was not an authority for the purposes of this restructuring, is nevertheless, a policy bank established to channel government policy loans to agricultural sector. Policy lending does not constitute commercial lending.

Specifically, the record indicates that the GOK-controlled banks provided the largest share of financing provided through the Creditor Bank Committee, with the KDB accounting for the largest share of that financing.¹¹¹ Conversely, the private banks on the Committee accounted for a relatively small share of the financing. Accordingly, the GOK-controlled banks, and the KDB in particular, held the highest number of votes on the Creditor Bank Committee in proportion to the amount of credit extended.¹¹² Given this dominant position, we find that the GOK-controlled banks were in a position to pass and implement resolutions regarding the debt restructuring terms.¹¹³

We do not find that the dominant voting position of GOK-controlled banks indicates that the private lenders on the Creditor Banks Committee were entrusted or directed to accept the terms of the restructuring package, and we recognize that those private banks accepted those terms voluntarily based on their own risk assessments and commercial analyses. However, we find that, given the influence of the GOK-controlled banks in setting those terms, the private banks necessarily took into account the behavior of the GOK-controlled banks when evaluating the terms of their own loans, and that those private loans do not reflect credit that would have been available to Dongbu in the market outside of the Credit Banks Committee.¹¹⁴ Accordingly, the refinanced loans provided by the private banks through the restructuring program are not dispositive evidence of Dongbu’s creditworthiness in 2014, and cannot be used as a commercial benchmark when measuring the benefit conferred by the restructuring program.¹¹⁵

In addition, the bonds that Dongbu rolled over cannot not be considered to be a receipt of comparable commercial long-term loans, because these bonds were “refinanced” and “rolled over” from Dongbu’s pre-existing bonds from prior years.¹¹⁶ The reason these bonds were rolled

¹¹⁰ See the GOK IQR at 49-54 for the relative percentages of Dongbu’s debts held by the GOK-controlled and private banks.

¹¹¹ *Id.* at 49-50.

¹¹² *Id.* at 50.

¹¹³ *Id.* at 50, 51 and 54.

¹¹⁴ See *Hynix*, 425 F. Supp. 2d at 1308.

¹¹⁵ *Id.* at 1308-10.

¹¹⁶ See Dongbu’s IQR at 51.

over was that Dongbu could not make payments on those bonds when they became due, which again indicated Dongbu's deteriorating financial status during the POI.¹¹⁷

The bridge loans cited by Dongbu were provided by the KDB, a large GOK-controlled policy bank that controls the Creditor Banks Committee, either in the same month or two months prior to Dongbu's entrance into the Corporate Voluntary Restructuring Program.¹¹⁸ As Dongbu notes, 19 CFR 351.505(a)(2)(ii) states that we will treat a loan from a government-owned bank as a commercial loan unless we have evidence that the loan is provided on non-commercial terms or at the direction of the government. The regulation also states that the Department will not consider a loan provided under a government program or by a government-owned special purpose bank to be a commercial loan. The Department has further explained that it will not use loans from government-owned special purpose banks, such as development banks, "because such loans are similar to loans provided under a government program or at the direction of the government."¹¹⁹

In this investigation, we have determined that the KDB "is a wholly government-owned policy bank" that was "created by a government in order to implement government industrial policies through the provision of financing to industries and enterprises."¹²⁰ In short, the KDB is, by definition, a "development bank" and a "special purpose bank," and we will not consider loans from the KDB to be "commercial" pursuant to 19 CFR 351.505(a)(2)(ii). We disagree with Dongbu that we have not established that the KDB was a special purpose bank in 2014 because the KDB is inherently a special purpose bank, and that status does not change year-to-year.¹²¹ As such, these loans do not provide dispositive evidence that that Dongbu is creditworthy.

In the *Preliminary Determination*, after examining the present and past indicators of Dongbu's financial health and ability to meet its costs and fixed financial obligations with its cash flow, we concluded that Dongbu could not meet its short-term obligations without resorting to additional short-term borrowing, as indicated by Dongbu's deteriorating current ratios, quick ratios, negative cash flows and debt-to-equity ratios between 2012 and 2014. All these benchmarks were well below the Department's creditworthiness benchmarks under 19 CFR 351.505(a)(4)(i)(B)-(C).¹²² Dongbu has not commented on these analyses.

We also disagree with Dongbu's argument that the company's issuance of public shares could be evidence that the company was creditworthy during the POI. As explained in *Solar Cells from*

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 36-39.

¹¹⁹ See *CVD Preamble* at 65363.

¹²⁰ See section VII.A.2 (Korea Development Bank (KDB) and Industrial Base Fund (IBF) Short-Term Discounted Loans for Export Receivables), above, and PDM at 12.

¹²¹ See, Memorandum to the File, "Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Factual Information on Certain Banks," dated November 2, 2015 (Banking Information Memo) at Att. 20 and GOK IQR at Exhibit BANK-3 (KDB Annual Reports).

¹²² See Memorandum to Edward Yang, Director, AD/CVD Operations, Office VII, "Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Analysis of Dongbu Steel Co., Ltd.'s Uncreditworthiness and Preliminary Uncreditworthiness Determination," dated November 2, 2015 (Uncreditworthiness Memorandum).

China,¹²³ the issuance of new shares is not dispositive evidence of the company's creditworthiness because it is a form of equity infusion and financing.¹²⁴ Furthermore, as discussed in the Uncreditworthiness Memo, that public share offering occurred prior to the failure of Dongbu's planned sale of several subsidiaries to POSCO and Dongbu's subsequent application for a Corporate Voluntary Restructuring Program.¹²⁵ We disagree that the timing of this offering prior to the restructuring weighs in favor of Dongbu's creditworthiness; rather, we continue to find that its probative value is undermined by Dongbu's subsequent financial deterioration. Accordingly, as in *Solar Cells from China*, we do not find that Dongbu's issuance of public shares outweighs the other evidence on the record that indicates that Dongbu was uncreditworthy.

Finally, Dongbu's 2014 financial statements cast significant doubt on the company's ability to continue as a going concern,¹²⁶ and the downgraded credit rating from BBB to BBB- were all direct evidence of the firm's deteriorating financial position within the meaning of 19 CFR 351.505(a)(4)(i)(D). Therefore, the Department finds no reason to change its preliminary finding of Dongbu's uncreditworthiness during the POI, and continues to use the uncreditworthy benchmark that the Department developed in the *Preliminary Determination* to measure the benefits Dongbu received during the POI for this final determination.¹²⁷

Comment 7: Whether Nonghyup Bank is an "Authority" and Loans Received from Nonghyup Bank are Countervailable

Petitioners argue:

- The record demonstrates that Nonghyup Bank is a policy bank and pursues governmental policies and interests. The Department has recognized that a policy bank, by its very nature, is an authority under section 771(5)(B) of the Act.
- The record demonstrates that the GOK is able to exercise control over Nonghyup Bank and use Nonghyup Bank to implement government policy and thus demonstrates that Nonghyup Bank is an authority.
- The Department should calculate a subsidy rate for loans provided by Nonghyup Bank.

Dongbu argues:

- Nonghyup Bank is not a government authority nor is it owned by any government entity.
- Nonghyup Bank has no role in deciding or furthering the GOK's policies with respect to the steel industry. Moreover, it does not fall into the same category as KDB, KEXIM, and the IBK that have previously been identified as policy banks by the Department.

¹²³ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63,788 (October 17, 2012) and accompanying Issues and Decision Memorandum at Comment 17.

¹²⁴ See *CVD Preamble* at 65367.

¹²⁵ See *Uncreditworthiness Memorandum* at 3.

¹²⁶ See *Dongbu IQR* at Exhibit 9, 2014 Financial Statement at 90.

¹²⁷ See *Dongbu Final Calculation Memorandum*.

- There is no evidence that the GOK meaningfully controls Nonghyup Bank. The Department's five-factor analysis demonstrates that there is no meaningful government control of Nonghyup Bank.
- In the final determination, the Department should continue to find that Nonghyup Bank is not a government authority and should not include any loans from it as part of any benefit calculations.

GOK argues:

- Nonghyup Bank is wholly owned by the National Agricultural Co-operative Federation (NACF), which is ultimately owned by 2.4 million farmers and the GOK does not have any share.
- Neither the CEO nor any of the directors of the Nonghyup Bank are appointed by or associated with the GOK.
- Nonghyup Bank does not report to the GOK except for the status of agricultural financing upon the request of the government agency. Agricultural financing is an agricultural policy loan extended to farmers and the agricultural industry on behalf of the GOK and is irrelevant to the subject merchandise of this investigation.

Department's Position: Based on an analysis of the information on the record and the comments submitted by the interested parties, we have determined that Nonghyup Bank is not an authority as defined by section 771(5)(B) of the Act.

Nonghyup Bank was established as a spin-off of the credit and banking unit of the NACF in March 2012, when NACF was reorganized and took a holding company structure.¹²⁸ Nonghyup Bank is governed by the Agricultural Co-operative Law and the Banking Act of Korea.¹²⁹ Further, NACF was established in 1961 under the Agricultural Co-operative Law, and operates under the directive of the Ministry for Food, Agriculture, Forestry, and Fisheries.¹³⁰ NACF's principal role is to act as an umbrella organization for agricultural and livestock co-ops which represent almost all farmers in Korea.¹³¹ Information on the record indicates that NACF, consisting of 1,167 co-operatives,¹³² is ultimately owned by 2.4 million farmers and the GOK does not have any share.¹³³ In addition, the CEO of Nonghyup Bank is not appointed by the GOK and none of Nonghyup Bank's directors are associated with the GOK.¹³⁴ Information on the record shows that Nonghyup Bank was established as a specialized (*i.e.*, policy) bank to provide policy loans to the agricultural sector.

To determine whether an entity is an "authority," in recent cases we have analyzed a number of factors, including government ownership or control, to determine whether an entity possesses or

¹²⁸ See Memorandum to the File "Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Factual Information on Certain Banks," November 2, 2015, at Attachment 14.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ See GOK Dongbu Debt Verification Report at Exhibit 7.

¹³⁴ *Id.* at Exhibit 6 and 8.

exercises governmental authority or pursues governmental objectives.¹³⁵ Government ownership remains an important element of our analysis. For example, the Department found KEPCO to be an authority in *Line Pipe from Korea* because the GOK controlled the majority ownership of KEPCO and pursued government objectives through KEPCO's business operations;¹³⁶ we found the Salalah Free Zone Company SAOC to be an authority in *PET Resin from Oman* because it was a government-owned company that pursued the government's economic development objectives;¹³⁷ and, of course, in this current investigation, we have found the KDB, KEXIM, and the IBK to be authorities under the statute because they are each government owned and implement government industrial policies through the provision of financing to industries and enterprises.

The Department has also analyzed whether certain manufacturers providing a good or service are authorities within the meaning of section 771(5)(B) of the Act. The Department has determined that enterprises with little or no formal government ownership can still be considered an authority if the government exercises meaningful control over them such that they possess or exercise governmental authority.¹³⁸ For example, in *OCTG from Turkey*, the Department determined that a steel manufacture was an authority because the government exercised meaning control of the manufacture due to its (1) majority ownership; (2) power over the manufacturer's decisions on closure and capacity adjustments; (3) presence on the company's Board of Directors; and (4) implementation of policies by the manufacturer.¹³⁹

As established by the information on the record, Nonghyup Bank has no government ownership but is ultimately owned by 2.4 million Korean farmers. In addition, the CEO and the directors of Nonghyup Bank are not appointed or associated with the GOK. Therefore, there is no control exercised by the GOK over Nonghyup Bank through either ownership and/or appointment of the managing directors of the bank. Nonghyup Bank was established by the GOK as a specialized bank to improve farmers' economic, social, and cultural status and to improve farmers' quality of life.¹⁴⁰ Therefore, the policy role of Nonghyup Bank is limited to the provision of agricultural policy loans to farmers and to the agricultural industry.¹⁴¹ The policy role of Nonghyup Bank, based on the information on the record, demonstrates that it is limited to government policies related to farm and agricultural loans, wholly unrelated to the industry under investigation. The

¹³⁵ See *Certain Uncoated Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 81 FR 3110 (January 20, 2016) and accompanying Issues and Decision Memorandum at Comment 1; *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2013*, 80 FR 77318 (December 14, 2015) and accompanying Issues and Decision Memorandum at Comment 3.

¹³⁶ See *Line Pipe from Korea Prelim* and accompanying Issues and Decision Memorandum at 15.

¹³⁷ See *Certain Polyethylene Terephthalate Resin from the Sultanate of Oman: Final Negative Countervailing Duty Determination*, 81 FR 13321 (March 14, 2016) (*PET Resin from Oman*) and accompanying Issues and Decision Memorandum at 6.

¹³⁸ See *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) (*OCTG from Turkey*) and accompanying Issues and Decision Memorandum at 22 (citing to *Section 129 Determination*).

¹³⁹ See *OCTG from Turkey* at 32-34.

¹⁴⁰ See Article 1 of the *National Agricultural Cooperative Federation Act* provided as GOK Dongbu Debt Verification Report, Exhibit 5.

¹⁴¹ See Article 2 of the *Articles of Incorporation of Nonghyup Bank* provide as Verification Exhibit EX-4, and *Nonghyup Bank Annual Report 2014* at 37 provided at Verification Exhibit EX-6.

role of the Bank as a channel of providing policy loans to farmers and the agricultural sector is not sufficient in this case to determine that Nonghyup Bank is an authority within the meaning of section 771(5)(B) of the Act.

Because the Department finds that Nonghyup Bank is not an authority under section 771(5)(B) of the Act, the Department is not calculating a benefit for the loans provided to Dongbu by Nonghyup Bank under Dongbu's Debt Restructuring Program, similar to other non-GOK controlled banks.

Comment 8: Whether the Department Should Find That the Provision of Natural Gas for LTAR is Countervailable

Petitioners argue:

- Given the structure of the original allegation, the investigation of liquefied natural gas (LNG) for LTAR also includes natural gases in gaseous form. Both products have the same chemical composition and are essentially the same commodity. LNG is simply natural gas that has been liquefied for transport.
- The GOK's state-owned monopoly wholesale gas supplier, Korea Gas Corporation (KOGAS), defines natural gas to include LNG as well as other gaseous natural gases.
- In prior cases, the Department has not limited its investigation based on different forms or grades of the same commodity and should not do so here, as a similar fact pattern exists in this case.¹⁴²
- The GOK provides a financial contribution because KOGAS is a government authority that imports LNG and then sells and distributes that gas in gaseous form in Korea at a loss.
- KOGAS is responsible for all wholesale sales of natural gas in Korea. KOGAS sells to urban gas suppliers who serve designated regions and effectively have a monopoly on gas supply in their respective regions.
- Prices charged by the urban gas suppliers are also controlled by the GOK through approvals by the regional governments. Therefore, as the Department explained in *Supercalendered Paper from Canada*,¹⁴³ the suppliers are entrusted or directed to provide a financial contribution when providing natural gases to their customers. Thus, the provision of LNG or natural gas in gaseous form is a financial contribution within the meaning of section 771(5)(D)(iii) of the Act.
- In measuring the benefit, the use of a "tier two" benchmark is warranted and an average of UN Comtrade data should be used to construct the world market price. Alternatively, a "tier three" benchmark should be used.

¹⁴² See *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2011 (79 FR 108, dated January 2, 2014) (*Citric Acid from China*) and accompanying Issues and Decision Memorandum at Comment 11.

¹⁴³ See *Supercalendered Paper From Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 20, 2015) (*Supercalendered Paper from Canada*), and accompanying Issues and Decision Memorandum at 36.

- The provision of natural gas for LTAR is specific because the GOK's information indicates that gas distributors favor large-scale customers and specifically target steel producers.

GOK argues:

- All material submitted by Petitioners is either outdated or inappropriate for the purpose of recognizing financial contribution.
- UN Comtrade data should not be used as the "tier two" benchmark because it is not available to Korean customers and not in accordance with 19 CFR 351.511(a)(2).
- Petitioners' allegation that gas distributors favor large-scale customers and specifically steel producers is unsupported and should be rejected.

Dongbu argues:

- Petitioners' allegation in the petition was with regard to LNG and the Department's initiation and investigation of this program was with regard to the provision of LNG by KOGAS to LNG gas distribution and private power generation companies for LTAR. Now Petitioners are recasting their allegation to be the provision of natural gas in gaseous form by regional gas distribution companies (RGDs) based on an entrusts-or-directs theory.
- Dongbu does not purchase LNG or natural gas from KOGAS but rather from RGDs, and thus there is no basis for a financial contribution.
- The Department never investigated whether KOGAS or any government entity entrusted or directed the RGDs to provide natural gas for LTAR, and therefore there is no factual basis now to find that Dongbu received a subsidy from the RGDs.
- Further, Petitioners' allegation and the Department's initiation was specific to private power companies. Dongbu is not a private power generation company or an LNG gas distribution company, and there is no basis for finding this program specific to Dongbu.
- There is no useable "tier two" benchmark on the record. UN Comtrade data on the record pertains to LNG, not natural gas in gaseous form, and Petitioners have not articulated a basis for any "tier three" benchmark.
- The allegation and initiation of this program was limited to LNG, and not natural gas. Allegations regarding the provision of natural gas in gaseous form were never sufficiently supported to merit initiation and were never investigated by the Department.

Dongkuk argues:

- The record is clear that Dongkuk/Union did not purchase or consume liquid natural gas that was the subject of this investigation.
- For the first time Petitioners now claim that LNG for LTAR also includes natural gas in gaseous form, and alleges private regional gas companies were entrusted or directed to provide a financial contribution when providing natural gas to customers. These allegations are untimely.
- Further, in other cases the Department has declined to initiate on similar allegations because of insufficient evidence or because Petitioners did not allege any entrustment or direction of private entities by KOGAS.

- Not only did Petitioners limit their initial allegation specifically to LNG, but also noted the particular channel through which the LNG was provided to electricity generators, naming only POSCO Power.
- Petitioners' citation of *Supercalendered Paper from Canada* is misplaced because that case involves an investigation into entrustment or direction based on a specific allegation in that proceeding; here, the Department has not collected any information from, or conducted any verification of, the RGDs.
- Using UN Comtrade data on LNG as a "tier two" benchmark for vaporized natural gas is inappropriate. Moreover, Korean consumers of vaporized natural gas cannot obtain gas from foreign suppliers.
- Regarding Petitioners' proposal for the "tier three" benchmark, there is no evidence on the record that the private suppliers do not set their prices in accordance with market principles or engage in price discrimination. Thus, there would be no benefit to Dongkuk/Union.
- The Petition alleged specificity on the basis that there were a limited number of private power companies in Korea and private power generation companies comprise almost fifty percent of KOGAS' customer base. Petitioners' argument now that gas distributors favor large-scale customers and specifically target steel producers lacks support in the record.

Department's Position: We continue to find that the LNG for LTAR program was not used for this final determination. In addition, we will not initiate a new subsidy investigation into whether other forms of natural gas were provided at LTAR, as Petitioners did not make the allegation until its case brief, well after the deadline for alleging new subsidies under our regulations.¹⁴⁴

As noted in the Initiation Checklist and the *Preliminary Determination*, the program under investigation is whether the state-owned entity KOGAS provides LNG to Korean power generation companies and gas distribution companies at LTAR.¹⁴⁵ In the *Preliminary Determination*, the Department determined that this program was not used.¹⁴⁶ There is no information on the record that warrants our reconsideration of this finding. Unlike *Supercalendered Paper from Canada*, in the instant proceeding there is no specific allegation on whether the GOK entrusted or directed the urban gas suppliers to provide natural gas at LTAR, nor did the Department conduct such an investigation.

Petitioners further contend that the provision of natural gas in other forms at LTAR must be found countervailable because, for example, urban gas suppliers have a monopoly on gas supply, are controlled by the GOK and regional governments, and are entrusted or directed to provide a financial contribution when providing gas to customers. However, as noted above, the Department did not investigate whether the urban gas suppliers were entrusted or directed by the GOK. Instead, the allegation in the petition and the program under investigation solely concerned the provision of natural gas by the state-owned entity, KOGAS, which, in contrast to

¹⁴⁴ See 19 CFR 351.301(c)(2)(iv).

¹⁴⁵ See PDM at 27; see also Initiation Checklist dated June 23, 2015 at 9.

¹⁴⁶ See PDM at 27.

the facts in *Citric Acid from China*, provided LNG to the urban gas suppliers, but not directly to the respondents. Therefore, it is immaterial to examine the forms of natural gas that these urban gas suppliers then provided to their customers.

Furthermore, Petitioners did not timely submit a new subsidy allegation¹⁴⁶ for this program, nor have they argued good cause for accepting an untimely allegation. Therefore, we will not initiate a new subsidy investigation into whether the GOK entrusted or directed the urban gas suppliers through the regional governments to provide natural gas at LTAR (regardless of the form in which that gas is sold), and we do not need to address Petitioners' arguments on the other forms of Natural Gas that were supplied by these urban gas suppliers.


IX. RECOMMENDATION

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



Agree

Disagree



Paul Piquado
Assistant Secretary
For Enforcement and Compliance



Date

¹⁴⁶ Pursuant to 19 CFR 351.301(c)(2)(iv)(A), new subsidy allegations were due 40 days before the preliminary determination in an countervailing duty investigation.