Slip Op. 22-116

UNITED STATES COURT OF INTERNATIONAL TRADE

NUCOR CORPORATION, Plaintiff, v. UNITED STATES, Defendant, and POSCO, Defendant-Intervenor.	Before: Mark A. Barnett, Chief Judge Court No. 21-00182 **PUBLIC VERSION**

OPINION AND ORDER

[Sustaining in part and remanding in part the U.S. Department of Commerce's final results in the 2018 administrative review of the countervailing duty order on certain carbon and alloy steel cut-to-length plate from the Republic of Korea.]

Dated: October 5, 2022

Maureen E. Thorson, Wiley Rein LLP, of Washington, DC, argued for Plaintiff. On the brief were Alan H. Price, Christopher B. Weld, Derick G. Holt, Adam M. Teslik, and Theodore P. Brackemyre.

Kelly A. Krystyniak, Trial Attorney, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, argued for Defendant. With her on the brief were Brian M. Boynton, Principal Deputy Assistant Attorney General, Patricia M. McCarthy, Director, and Tara K. Hogan, Assistant Director. Of counsel on the brief was Reza Karamloo, Assistant Chief Counsel, Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, of Washington, DC.

Donald B. Cameron, Morris, Manning & Martin, LLP, of Washington, DC, argued for Defendant-Intervenor. With him on the brief were Brady W. Mills, Julie C. Mendoza, R. Will Planert, Mary S. Hodgins, Eugene Degnan, Edward J. Thomas III, Jordan L. Fleischer, and Nicholas C. Duffy.

Barnett, Chief Judge: Plaintiff Nucor Corporation ("Nucor") challenges the U.S. Department of Commerce's ("Commerce" or "the agency") final results in the 2018 administrative review of the countervailing duty ("CVD") order on certain carbon and alloy steel cut-to-length plate ("CTL plate") from the Republic of Korea ("Korea"). Compl., ECF No. 5; *Certain Carbon and Alloy Steel Cut-to-Length Plate From the Republic of Korea*, 86 Fed. Reg. 15,184 (Dep't Commerce Mar. 22, 2021) (final results and partial rescission of [CVD] admin. review, 2018) ("*Final Results*"), ECF No. 18-4, and accompanying Issues and Decision Mem., C-580-888 (Mar. 16, 2021) ("I&D Mem."), ECF No. 18-5.[1]

Nucor challenges Commerce's determination not to initiate an investigation into the alleged provision of off-peak electricity for less than adequate remuneration (sometimes referred to as "LTAR") and Commerce's determination that mandatory respondent POSCO and its affiliate POSCO Plantec ("Plantec") do not meet the requirements necessary to find a cross-owned input supplier relationship. Confid. [Nucor's] Rule 56.2 Mot. for J. on the Agency R. and accompanying Mem. in Supp. of its Rule 56.2 Mot. for J. on the Agency R. ("Nucor's Mem.") at 18–45, ECF No. 22; Confid. [Nucor's] Reply Br. ("Nucor's Reply") at 1–14, ECF No. 41. Defendant United States ("the Government") and Defendant-Intervenor POSCO urge the court to sustain the

[1] The administrative record for the *Final Results* is contained in a Public Administrative Record ("PR"), ECF No. 18-1, and a Confidential Administrative Record ("CR"), ECF No. 18-2. The parties submitted joint appendices containing record documents cited in their briefs. *See* Confid. J.A. ("CJA"), ECF No. 43; Public J.A., ECF No. 44; Confid. Suppl. J.A., ECF No 50; Public Suppl. J.A., ECF No. 51. The court references the confidential record documents unless otherwise specified.

Final Results. Confid. Def.'s Resp. to Pl.'s Mot. for J. on the Agency R. ("Def.'s Resp.") at 6–25, ECF No. 31; Confid. Def.-Int. POSCO's Br. in Resp. to Pl.'s Mot. for J. on the Agency R. ("POSCO's Resp.") at 8–23, ECF No. 36.

For the following reasons, the court sustains in part and remands in part Commerce's *Final Results.*

BACKGROUND

I. CVD Overview

A countervailable subsidy "exists when . . . a foreign government provides a financial contribution . . . to a specific industry" that confers "a benefit" on "a recipient within the industry." *Fine Furniture (Shanghai) Ltd. v. United States*, 748 F.3d 1365, 1369 (Fed. Cir. 2014) (citing 19 U.S.C. § 1677(5)(B)). A countervailable benefit includes the provision of goods or services "for less than adequate remuneration." 19 U.S.C. § 1677(5)(E)(iv) (2018).[2] The statute directs Commerce to determine the adequacy of remuneration "in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the [subject] country" and explains that "[p]revailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale." *Id.*

Commerce's regulations prescribe a three-tiered approach for determining the adequacy of remuneration. *See* 19 C.F.R. § 351.511. When, as here, both an in-

[2] Further citations to the Tariff Act of 1930, as amended, are to Title 19 of the U.S. Code, and all references to the U.S. Code are to the 2018 edition, unless otherwise specified.

country market-based price and a world market price are unavailable, Commerce examines "whether the government price is consistent with market principles." *Id*. § 351.511(a)(2)(iii).[3] Commerce's analysis considers "such factors as the government's price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination." *Countervailing Duties*, 63 Fed. Reg. 65,348, 65,378 (Dep't Commerce Nov. 25, 1998) ("*CVD Preamble*"). Those factors are not "in any hierarchy," and Commerce "may rely on one or more of these factors in any particular case." *Id.*

II. Proceedings Before Commerce

On May 25, 2017, Commerce published the CVD order on CTL plate from Korea. *Certain Carbon and Alloy Steel Cut-to-Length Plate From the Republic of Korea*, 82 Fed. Reg. 24,103 (Dep't Commerce May 25, 2017) ([CVD] order) ("*Korea CTL Order*"). On July 15, 2019, Commerce initiated the second administrative review of the *Korea CTL Order* for the 2018 period of review ("POR"). *Initiation of Antidumping and Countervailing Duty Admin. Reviews*, 84 Fed. Reg. 33,739, 33,749 (Dep't Commerce July 15, 2019), PR 4, CJA Tab 3. Commerce selected POSCO as the sole mandatory respondent for the review. Respondent Selection Mem. (Aug. 2, 2019) at 4, CR 3, PR 14, CJA Tab 4.

[3] Commerce first seeks to compare the government price to a market-based price for the good or service under investigation in the country in question. 19 C.F.R. § 351.511(a)(2)(i). When an in-country market-based price is unavailable, Commerce will compare the government price to a world market price, when the world market price is available to purchasers in the country in question. *Id.* § 351.511(a)(2)(ii).

On November 4, 2019, Nucor submitted new subsidy allegations asking Commerce to initiate investigations into the debt restructuring program of Plantec, an alleged cross-owned input supplier to POSCO, and the Korean government's sale of off-peak electricity to POSCO for less than adequate remuneration. *See* New Subsidy Allegations (Nov. 4, 2019) ("Nucor's Allegation"), CR 182–84, PR 76–78, CJA Tab 7. On April 1, 2020, Commerce declined to initiate either investigation. Decision Mem. on New Subsidy Allegations (Apr. 1, 2020) ("New Subsidy Mem."), PR 144, CJA Tab 12. Commerce explained that, with respect to Plantec, it was unnecessary "to separately initiate an investigation of this allegation" because Commerce was "examining this alleged subsidy as a self-reported program in this review." *Id.* at 4. Commerce also declined to initiate an investigation into the sale of electricity, finding that Nucor failed to "adequately support[] its allegation with respect to the existence of a benefit." *Id.* at 7. On April 9, 2020, Nucor asked Commerce to reconsider its decision. Req. for Recons. of New Subsidy Allegation (Apr. 9, 2020) ("Req. for Recons."), CR 254, PR 148, CJA Tab 13.

Commerce issued its preliminary results on July 27, 2020. *Certain Carbon and Alloy Steel Cut-to-Length Plate From the Republic of Korea*, 85 Fed. Reg. 45,185 (Dep't Commerce July 27, 2020) (prelim. results of [CVD] admin. review, and intent to rescind review, in part; 2018) ("*Prelim. Results*"), PR 170, CJA Tab 16, and accompanying Prelim. Decision Mem. ("Prelim. Mem."), PR 161, CJA Tab 15. Commerce preliminarily found that "the production of [Plantec's] input is not primarily dedicated to the production of the downstream product, including the subject merchandise." Prelim. Mem. at 12.

Commerce also found that "POSCO's purchases of fixed assets and services from [Plantec] during the POR were for maintenance, repair and operation of pre-existing machinery" and the services were not "a part of steel production that is dedicated primarily to the production of a higher value-added product." *Id.* at 12–13. Commerce did not address Nucor's allegation regarding the off-peak sale of electricity. Commerce preliminarily calculated a net subsidy rate of 0.5 percent *ad valorem* for POSCO. *Prelim. Results*, 85 Fed. Reg. at 45,186.

Commerce published the *Final Results* on March 22, 2021. 86 Fed. Reg. at 15,184. For the *Final Results*, Commerce calculated a *de minimis* net subsidy rate of 0.49 percent *ad valorem* for POSCO. 86 Fed. Reg. at 15,185. Additional background regarding Commerce's findings for the *Final Results* is set forth in the sections below.

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction pursuant to section 516A(a)(2)(B)(iii) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1516a(a)(2)(B)(iii), and 28 U.S.C. § 1581(c).

The court will uphold an agency determination that is supported by substantial evidence and otherwise in accordance with law. 19 U.S.C. § 1516a(b)(1)(B)(i).

DISCUSSION

I. Commerce's Determination Not to Investigate the Alleged Sale of Off-Peak Electricity for Less Than Adequate Remuneration

A. Standard for Initiation

Commerce "shall" initiate a CVD investigation "whenever an interested party" files a petition[4] "on behalf of an industry" that "alleges the elements necessary for the imposition of the duty imposed by section 1671(a) of this title" and provides "information reasonably available to the petitioner supporting those allegations." 19 U.S.C. § 1671a(b)(1). Commerce "examine[s] the accuracy and adequacy of the evidence provided in the petition" and, "on the basis of sources readily available to the [agency],"[5] decides "whether to initiate an investigation." 19 C.F.R. § 351.203(b)(1); *see also* 19 U.S.C. § 1671a(c)(1)(A). While these provisions are directed to the initial allegations of subsidization, Commerce applies these standards to any additional subsidy allegations brought after a CVD order is imposed, such as during an administrative review. *See* 19 C.F.R. § 351.301(c)(2)(iv)(B) (providing for the submission of new subsidy allegations in an administrative review); I&D Mem. at 25 (citing 19 U.S.C. § 1671a(b)(1)).

A petition or subsequent subsidy allegation functions "like a civil complaint" and is intended "to alert the agency to the possibility of a subsidy." *RZBC Grp. Shareholding*

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[4] The statute also permits Commerce to self-initiate an investigation. 19 U.S.C. § 1671a(a).

[5] Commerce may "seek information from sources other than the petitioner" when, *inter alia*, "[s]upport for a particular allegation is weak, but better information is unavailable to the petitioner." *Antidumping Duties; Countervailing Duties*, 61 Fed. Reg. 7,308, 7,313 (Dep't Commerce Feb. 27, 1996) (proposed rule); *see also Antidumping Duties; Countervailing Duties*, 62 Fed. Reg. 27,296, 27,307 (May 19, 1997) (final rule).

Co. v. United States, 39 CIT __, __, 100 F. Supp. 3d 1288, 1292 (2015). Thus, "most subsidy petitions are granted unless the allegations are clearly frivolous, not reasonably supported by the facts alleged or omit important facts which are reasonably available to the petitioner." *Id.* at 1295 (citation and ellipsis omitted); *see also SolarWorld Ams., Inc. v. United States*, 39 CIT __, __, 125 F. Supp. 3d 1318, 1330–31 (2015) (sustaining Commerce's determination not to investigate when the allegation lacked evidence of a benefit).

In some circumstances, a heightened standard may apply. "When allegations concern a program previously held non-countervailable," Commerce may "require[] a petition to contain evidence of changed circumstances . . . before an investigation is initiated." *Delverde, SrL v. United States*, 21 CIT 1294, 1296–97, 989 F. Supp. 218, 222 (1997), *vacated on diff't grounds by Delverde SrL v. United States*, 202 F.3d 1360 (Fed. Cir. 2000); *see also Bethlehem Steel Corp. v. United States*, 25 CIT 307, 315, 140 F. Supp. 2d 1354, 1363 (2001) (applying this standard). Commerce did not invoke this heightened standard in its determination and, at the hearing, the Government confirmed that Commerce did not apply this standard to Nucor's allegation even though Commerce previously investigated the Korean government's sale of electricity. Oral Arg. 34:05–34:15 (time stamp from the recording on file with the court).

B. The Korean Electricity Market

The court previously summarized the characteristics of the Korean electricity market in an opinion addressing challenges to Commerce's determination that electricity was not subsidized in the CVD investigation covering certain cold-rolled steel products

from Korea. *See generally POSCO v. United States*, 46 CIT __, __, 557 F. Supp. 3d 1290, 1293–94 (2022). Background that is also relevant to this administrative review is recounted here:

> Korea Electric Power Corporation ("KEPCO") is a state-owned entity and the exclusive supplier of electricity in Korea. In Korea, electricity is generated by independent power generators, community energy systems, and KEPCO's six subsidiaries. By law, electricity must be bought and sold through the Korean Power Exchange ("KPX"), including by KEPCO. Accordingly, electricity generators sell electricity to the KPX, and KEPCO purchases the electricity it distributes to its customers through the KPX.
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> . . .
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> The price of electricity has two principal components: (1) the marginal price (representing the variable cost of producing electricity, primarily, fuel costs), and (2) the capacity price (representing the fixed cost of producing electricity). The variable cost and the capacity price are determined in advance of trading by the Cost Evaluation Committee.
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> . . .
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> To sell electricity, generators submit bids to the KPX to supply electricity for a given hour one day in advance of trading. The generation unit with the lowest variable cost of producing electricity for a given hour is first awarded a purchase order for electricity up to the available capacity of such unit. The KPX continues to award purchase orders, based on variable cost, until the projected demand for electricity for such hour is met. The variable cost of the generation unit that is the last to receive the purchase order for such hour is referred to as the system marginal price.

Id. (internal quotation marks, citations, ellipses, and bracketing omitted). In the underlying proceeding, Commerce likewise understood the system marginal price ("SMP") to represent "the marginal price of electricity at a given hour at which the projected demand for electricity and the projected supply [of] electricity for such hour intersect." New Subsidy Mem. at 7 & n.54 (citing New Subsidy Allegations Suppl. Questionnaire Resp. (Dec. 31, 2019) ("Nucor's Suppl. Allegation") at 4–5, PR 94, CJA Tab 11).

C. Nucor's Allegation and Commerce's Determination

Nucor alleged that the Korean government cross-subsidized "large industrial electricity consumers" that "shift consumption to the off-peak hours" by charging below-cost prices during that time while charging above-cost prices to on-peak consumers. Nucor's Allegation at 8. Nucor alleged that the difference between off-peak and on-peak pricing cannot be explained by differential consumption rates and supported the allegation with a statement by KEPCO's president and evidence demonstrating the absence of significant variation in the SMP throughout the day. *Id.* at 9–11; *see also id.*, Ex. 9 (SMP data by hour, day, and month). Nucor also submitted evidence that KEPCO was not profitable during the POR, *id.* at 12, and that "revisions to the off-peak industrial electricity pricing structure" were barred by the Korean government "because of complaints from industries," *id.* at 13. Nucor estimated the alleged benefit to the steel industry based on the average off-peak SMP, KPX cost-of-sale data, *id.* at 14–15, and unit prices paid to KEPCO's lowest-priced generator, Req. for Recons. at 7–8.

In the New Subsidy Memorandum, Commerce rejected the SMP as a benchmark. New Subsidy Mem. at 7–8. Commerce reasoned that "[t]he SMP reflects the generation unit with the highest variable cost that receives a purchase order at any given hour" and "does not reflect the average cost of electricity provision." *Id.* at 7 & n.57 (citing Nucor's Suppl. Allegation, Ex. 1 at 35). Commerce also faulted Nucor for "exclud[ing] . . . from its allegation" information regarding "the capacity price" and "adjusted coefficient factor" that KEPCO uses in conjunction with the SMP "to calculate amounts owed to electricity generators." *Id.* at 8. Commerce also found that although

KEPCO "operat[ed] at a loss during the POR," it was profitable in the four previous years. *Id.* at 9. Commerce therefore declined to reexamine "KEPCO's cost recovery" as a basis for finding any benefit. *Id.* Lastly, Commerce questioned Nucor's focus on off-peak electricity, explaining that "the prevailing market condition in Korea is a [time-of-use] system" and that Nucor had not shown "that KEPCO's operations are outside of the prevailing market conditions of an electricity utility in Korea." *Id.*

For the *Final Results*, Commerce continued to find that Nucor failed to provide sufficient evidence for Commerce to initiate an investigation into off-peak electricity. I&D Mem. at 20. Commerce rejected both the average off-peak SMP and KPX's cost-of-sale data as benchmarks, reasoning that "neither . . . reflect the average price of off-peak electricity for [less than adequate remuneration]." *Id.* at 22. With respect to cost recovery, Commerce did not find "one year without cost recovery sufficient to demonstrate that a government-owned entity is not recovering its costs." *Id.* at 23. Citing *Nucor Corporation v. United States*, 42 CIT __, 286 F. Supp. 3d 1364 (2018), *aff'd Nucor Corp. v. United States*, 927 F.3d 1243 (Fed. Cir. 2019) ("*Nucor CAFC*"), Commerce further explained that preferentiality may be considered in conjunction with other measures, such as cost recovery, when "the marketplace is a government-controlled monopoly." I&D Mem. at 23; *see also id*. at 23–24 & nn.84–86, 88–89.[6] To

[6] In *Nucor CAFC*, the majority affirmed Commerce's determination that the sale of electricity was not for less than adequate remuneration in the investigation concerning certain corrosion-resistant steel products from Korea. 927 F.3d at 1249. The majority's affirmance was, however, based on the agency's finding that KEPCO had recovered its costs during the investigation period and Nucor's failure to exhaust its arguments

that end, Commerce relied on Nucor's assertion that "POSCO paid for off-peak electricity at industrial tariff rates given to all industrial electricity buyers in Korea" to find no evidence of preferential treatment. *Id.* at 23–24 & n.87 (citing Nucor's Allegation at 14). Commerce rejected Nucor's argument that the agency had "set an unreasonably high standard for initiation" and instead faulted Nucor for failing to build the record necessary to support its allegation. *Id.* at 25 & nn.94–95 (citing *SolarWorld*, 125 F. Supp. 3d at 1330); *see also id.* at 26.

D. Parties' Contentions

Nucor contends that its allegation "met and exceeded the low evidentiary standard for initiation." Nucor's Mem. at 19. Nucor argues that Commerce impermissibly based its decision on the absence of information—such as actual electricity generation costs—that was not reasonably available to Nucor. *Id.* at 28–29. Noting that the regulation permits Commerce to seek information from sources other than the petitioner, Nucor's Reply at 6–7, Nucor faults Commerce for failing to request information from "the respondent parties" that "'normally . . . are in the best position to provide information'" concerning "an alleged subsidy program," *id.* at 5 (quoting *Fine Furniture*, 748 F.3d at 1369–70). Nucor also contends that Commerce effectively—and

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regarding the KPX's costs and prices before the agency. *Id.* In a subsequent opinion, the appellate court remanded Commerce's determination that electricity was not sold for less than adequate remuneration in the investigation concerning cold-rolled steel after finding that Commerce failed to adequately investigate the role of the KPX in the Korean electricity market. *See POSCO v. United States*, 977 F.3d 1369 (Fed. Cir. 2020) ("*POSCO CAFC*"). Commerce's remand pursuant to *POSCO CAFC* is currently pending appellate review.

impermissibly—found that Nucor had failed to show "that KEPCO's prices were inconsistent with KEPCO's standard pricing mechanism, i.e., with themselves." Nucor's Mem. at 33 (citing New Subsidy Mem. at 9); *see also* Nucor's Reply at 8–10.

The Government contends that Nucor merely disagrees with Commerce's weighing of the evidence and "it is not this [c]ourt's role to reweigh that evidence." Def.'s Resp. at 9. According to the Government, "[h]aving a low standard for initiation is not the same as having *no* standard at all," *id.* at 12, and Nucor failed to meet its burden of building a record adequate to support its allegation, *id.* at 12–13.

POSCO contends that the court must consider the issue within the context of Commerce's prior investigations into the alleged provision of electricity for less than adequate remuneration. POSCO's Resp. at 9. POSCO accuses Nucor of "ignor[ing] the [time-of-use] system" and "cherry pick[ing] a single time period during the 24-hour period to support the alleged existence of a benefit without regard to overall cost recovery." *Id.* at 11. POSCO contends that Commerce's determination is consistent with the court's decision in *TMK IPSCO v. United States*, 40 CIT __, 179 F. Supp. 3d 1328 (2016). *Id.* at 15.

E. Commerce Must Reconsider or Further Explain Its Decision Not to Investigate Off-Peak Electricity

Nucor's allegation centered on what it characterized as the cross-subsidization of the steel industry through the charging of below-cost prices during off-peak hours that are offset by above-cost prices charged to peak consumers. *See* Nucor's Allegation at 8. Nucor's allegation thus raised two questions: (1) whether the pricing of off-peak

electricity could constitute a subsidy program distinct from Nucor's previous allegation regarding the sale of electricity for less than adequate remuneration; and (2) whether Nucor's allegation met the threshold for initiating an investigation into any such program.

Commerce's determination focused on the latter, that is, Nucor's asserted failure to provide a suitable benchmark to compare to the off-peak electricity prices POSCO paid. *See* I&D Mem. at 21–26. While Commerce appeared to question the propriety of examining a segment of a time-of-use system, its discussion in this regard is cursory. *See* New Subsidy Mem. at 9. Commerce explained that the "prevailing market condition in Korea is a [time-of-use] system" and Nucor had not shown that "KEPCO's operations are outside of the prevailing market conditions of an electricity utility in Korea." *Id.* On its face, Commerce's brief statement appears to fault Nucor for failing to demonstrate that KEPCO's prices were inconsistent with KEPCO's own tariff schedule. *See* Nucor's Reply at 8–9. During oral argument, the Government sought to explain that a time-of-use system is consistent with market principles and Nucor had not shown that KEPCO's off-peak industrial pricing conferred a benefit within the time-of-use system and was thus inconsistent with market principles. Oral Arg. 46:05–47:10. The Government acknowledged, however, that Commerce did not explicitly address whether the off-peak supply of electricity within such a system may constitute a distinct subsidy program. *Id.* at 36:30–37:45, 44:50–45:30.

It is well settled that the court may only sustain Commerce's decision "on the same basis articulated in the order by the agency itself" and not on the basis of

"counsel's *post hoc* rationalizations." *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168–69 (1962). Because the Government's assertions at oral argument are not readily discernible from Commerce's explanation, the court limits its consideration to the grounds advanced by Commerce, namely, Nucor's failure to meet the evidentiary threshold for initiating an investigation.

To that end, Commerce's reliance on *SolarWorld* to support its determination is misplaced. *See* I&D Mem. at 25.[7] Nucor's allegation was not, as in that case, "devoid of any evidentiary support." *SolarWorld*, 125 F. Supp. 3d at 1330–31. Rather, Commerce faulted Nucor for failing to provide better cost information without making the corresponding finding that such information was reasonably available to Nucor. *See* New Subsidy Mem. at 8 & n.62 (discussing the capacity price and adjusted coefficient factors); I&D Mem. at 22 (noting that the SMP does not "reflect[] a real-world average unit cost of providing electricity" or "the rates that KEPCO would pay electricity generators" or "the average value of . . . generation costs over the course of the day"); I&D Mem. at 26 (stating that "there was a substantial amount of information available to Nucor" without tying that information to the deficiencies Commerce identified).

[7] POSCO's reliance on *TMK IPSCO* also is misplaced. In *TMK IPSCO*, the court sustained Commerce's application of a heightened standard to an allegation concerning export restraints based on Commerce's practice of requiring petitioners to present historical data supporting such allegations. 1789 F. Supp. 3d at 1339. The court explicitly rejected the plaintiff's reliance on *RZBC Group* to support a lower initiation standard because "that case did not involve an allegation of indirect subsidies, such as an export tax, where it is Commerce's practice to hold petitioners to a higher standard of proof before initiating an investigation." *Id.* at 1340 n.18. Just as *RZBC Group* was inapposite to the facts of *TMK IPSCO*, so is *TMK IPSCO* inapposite here.

At the hearing, the Government pointed to Commerce's rejection of KPX pricing data as a specific example of Nucor failing to support its allegation. Oral Arg. 43:00–43:45 (citing I&D Mem. at 22). Commerce stated: "Unless the average price KPX provided to KEPCO can be isolated to off-peak hours, this benchmark cannot make an equivalent comparison to the tariff schedules' off-peak prices POSCO paid . . . ." I&D Mem. at 22. While the KPX pricing data may not be a perfect benchmark, Commerce failed to address whether the time-period-specific data that Commerce preferred was "reasonably available" to Nucor. *See* 19 U.S.C. § 1671a(b)(1). Given the substantial amount of information Nucor provided and the typically "low" bar "for launching a CVD inquiry," Commerce's determination is unsupported by substantial evidence and lacking reasoned explanation. *See RZBC Grp.*, 100 F. Supp. 3d at 1292. Accordingly, the court remands Commerce's determination not to investigate off-peak electricity for further explanation or reconsideration.

II. Commerce's Determinations Regarding Plantec

A. Legal Framework for Subsidy Attribution

The provision of countervailable subsidies by a foreign government may be direct or indirect "with respect to the manufacture, production, or export" of subject merchandise to the United States. *See* 19 U.S.C. § 1671(a)(1). Commerce has promulgated rules addressing the attribution of subsidy benefits to a respondent based on corporate cross-ownership. 19 C.F.R. § 351.525(b)(6). With respect to inputs, when "there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to production of the downstream

product, [Commerce] will attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations)." *Id.* § 351.525(b)(6)(iv).

In the preamble to the final rule, Commerce explained that the regulation is intended to capture situations in which "a subsidy is provided to an input producer whose production is dedicated almost exclusively to the production of a higher value added product—the type of input product that is merely a link in the overall production chain." *CVD Preamble*, 63 Fed. Reg. at 65,401 (providing as examples "stumpage subsidies on timber that was primarily dedicated to lumber production and subsidies to semolina primarily dedicated to pasta production"). Conversely, when inputs "are not primarily dedicated to the downstream products," Commerce will not "assume that the purpose of a subsidy to the input product is to benefit the downstream product." *Id.* (noting, by way of example, that "it would not be appropriate to attribute subsidies to a plastics company to the production of cross-owned corporations producing appliances and automobiles").

B. Commerce's Determination

Commerce's determination is contained in both the I&D Memorandum and an accompanying confidential memorandum. I&D Mem. at 31–36; Business Proprietary Information Accompanying the [I&D Mem.] for the Final Results ("BPI Mem."), CR 302, PR 188, CJA Tab 20. Those memoranda together explain Commerce's decision not to attribute subsidies received by Plantec in connection with POSCO's purchase of steel scrap and other equipment and services. BPI Mem. at 1 (note 1).

In its analysis, Commerce considered "whether Plantec's production was primarily dedicated to the production of downstream product, and whether the inputs provided by Plantec were inputs primarily dedicated to the production of subject merchandise." I&D Mem. at 33. In response to Nucor's argument that agency precedent supported attribution, *id.* at 27,[8] Commerce found that "Plantec's production [was] not 'dedicated almost exclusively to the production of a higher value product' (i.e., POSCO's steel production)" and identified Plantec's "primary function" to be "the 'construction of industrial plant[s],'" *id.* at 33 & n.135 (quoting Prelim. Mem. at 12). Commerce also made specific findings in relation to scrap and other equipment and services, discussed more fully below.

C. Scrap

Commerce declined to attribute subsidies received by Plantec to POSCO because Plantec generated the scrap as a byproduct and sold the scrap to POSCO Daewoo Corporation ("PDC"), which, in turn, resold the scrap to POSCO. I&D Mem. at 34; BPI Mem. at 2 (note 4). Commerce thus distinguished decisions that did not involve

[8] Nucor relied on: Decision Mem. for the Prelim. Results of CVD Admin. Review, and the Prelim. Intent to Rescind, in Part: Steel Concrete Reinforcing Bar from the Republic of Turkey; 2017, C-489-819 (Jan. 9, 2020) ("*Rebar From Turkey 2017* Prelim. Mem."), available at https://access.trade.gov/Resources/frn/summary/turkey/2020-00743-1.pdf (last visited Oct. 5, 2022); Issues and Decision Mem. for the Final Determination in the CVD Investigation of Certain Oil Country Tubular Goods from the Republic of Turkey, C-489-817 (July 10, 2014) ("*OCTG From Turkey* Mem."), available at https://access.trade.gov/Resources/frn/summary/turkey/2014-16860-1.pdf (last visited Oct. 5, 2022); and Issues and Decision Mem. for the Final Determination in the CVD Investigation of Certain Cold-Rolled Steel Flat Prods. from Brazil, C-351-844 (July 20, 2016) ("*CRS From Brazil* Mem."), available at https://access.trade.gov/Resources/frn/summary/brazil/2016-17952-1.pdf (last visited Oct. 5, 2022).

an intermediary or that reflected "production" of scrap. I&D Mem. at 34 & nn.143, 144, 146 (citing *Rebar From Turkey 2017* Prelim. Mem. at 10–11; *OCTG From Turkey* Mem. at 8). Commerce noted that its determination was consistent with its findings in the 2017 administrative review of the CVD order on cold-rolled steel from Korea ("*CRS From Korea 2017*"). *Id.* at 34 & n.139 (citing Issues and Decision Mem. for the Final Results of the 2017 Admin. Review: Certain Cold-Rolled Steel Flat Products from the Republic of Korea, C-580-882 (June 22, 2020) at Cmt. 2, available at https://access.trade.gov/Resources/frn/summary/korea-south/2020-13813-1.pdf (last visited Oct. 5, 2022)).

1. Parties Contentions

Nucor contends that Commerce's determination that Plantec did not supply steel scrap to POSCO is arbitrary and unlawful. Nucor's Mem. at 39; Nucor's Reply at 13–14. Nucor asserts that Commerce's reliance on the presence of an intermediary (PDC) reopens a loophole for vertically integrated businesses that the regulation was intended to close. Nucor's Mem. at 39 (citing *CVD Preamble*, 63 Fed. Reg. at 65,401); *see also* Nucor's Reply at 14. Nucor further contends that Commerce recently "disavowed the very 'primary function' standard that it defends" in this case. Nucor's Reply at 18 (citing Issues and Decision Mem. for the Final Results of the CVD Admin. Review of Steel Concrete Reinforcing Bar from the Republic of Turkey; 2018, C-489-819 (Sept. 21, 2021) ("*Rebar From Turkey 2018* Mem.") at 23, 26, available at https://access.trade.gov/Resources/frn/summary/turkey/2021-20906-1.pdf (last visited Oct. 5, 2022)).

The Government contends that Commerce's determination is supported by evidence regarding Plantec's "primary function" and evidence that the inputs provided by Plantec "were not primarily dedicated to the steel production process." Def.'s Resp. at 18. The Government further contends that "Plantec failed to satisfy the regulatory criteria of a cross-owned input supplier" because "it did not *supply* scrap to POSCO." *Id.* at 19 (citing I&D Mem. at 33); *see also id.* at 20–21; POSCO's Resp. at 23 (advancing similar arguments).

2. Commerce Must Reconsider Its Decision Regarding Scrap

Commerce began its analysis by noting that it examined (1) "whether Plantec's production was primarily dedicated to the production of downstream product," and (2) "whether the inputs provided by Plantec were inputs primarily dedicated to the production of subject merchandise." I&D Mem. at 33.

With respect to the first consideration, while not specific to scrap, Commerce found that because "Plantec's primary function is the 'construction of industrial plants,'" I&D Mem. at 33 & n.135 (citation omitted), "Plantec's production is not dedicated almost exclusively to . . . POSCO's steel production," *id.* at 33. Commerce's reliance on Plantec's primary function was not, however, further explained.[9] This omission

[9] The *CVD Preamble* explains that Commerce's regulation is intended to address "the situation where a subsidy is provided to an input producer *whose production* is dedicated almost exclusively to the production of a higher value added product—the type of input product that is merely a link in the overall production chain." 63 Fed. Reg. at 65,401 (emphasis added). While this may be intended to refer to the overall production operation of the producer, the preamble subsequently refers to whether "the production of the *input* product is primarily dedicated to the production of the

undermines Commerce's determination because Commerce has elsewhere stated "that [the] primary business activity of the affiliated company that is providing the input is [not] a relevant factor in . . . most cases." *Rebar From Turkey 2018* Mem. at 26 (finding scrap primarily dedicated to rebar production when it was generated as a by-product of the supplier's ship-building activities); *see also* Decision Mem. for the Prelim. Determination in the CVD Investigation of Certain Cold-Rolled Steel Flat Prods. from Brazil, C-351-844 (Dec. 15, 2015) ("*CRS From Brazil* Prelim. Mem.") at 18, available at https://access.trade.gov/Resources/frn/summary/brazil/2015-32221-1.pdf (last visited Oct. 5, 2022) (attributing subsidies received by a cross-owned supplier of steelmaking equipment when the affiliate's "activities encompass[ed] the production of capital goods and assemblies, steel structures, bridges, blanks and forgings and similar projects, as well as industrial maintenance) (unchanged in relevant respects in the final results).

At the hearing, the Government argued that Commerce declined to attribute subsidies based on Plantec's sale of scrap because the volume of such sales was small in relation to total sales by Plantec to POSCO. Oral Arg. 1:20:40–1:22:15. The Government's argument is impermissibly *post hoc*, *see Burlington Truck Lines*, 371 U.S. at 168–69, and appears to be unsupported by the agency's citations to the record.[10]

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downstream product," *id.* (emphasis added), and it is this latter phrasing that is reflected in the regulation, 19 C.F.R. § 351.525(b)(6)(iv). The court does not suggest that Plantec's primary business activities are necessarily immaterial to Commerce's analysis; however, Commerce has not sufficiently explained the relevance of those findings to its determination.

[10] The Government pointed to note 2 of Commerce's confidential memorandum, which reflected, in Korean Won ("KRW"), Plantec's sale of "3,166 million KRW" in raw

Moreover, while Commerce has declined to attribute subsidies when the volume of scrap sold to the respondent was small in comparison to the respondent's total production costs,[11] Commerce has attributed subsidies in other instances "[r]egardless of the amount of steel scrap manufactured by [an affiliate]," *Rebar From Turkey 2018* Mem. at 27; *cf. Içdaş Celik Enerji Tersane ve Ulasim Sanayi A.S. v. United States*, 45 CIT __, __, 498 F. Supp. 3d 1345, 1364 (2021) (sustaining Commerce's determination to attribute subsidies received by a cross-owned scrap supplier when the volume of scrap provided was "low" and the Government argued that that "the quantity of scrap provided . . . is irrelevant to Commerce's analysis").

With respect to the second consideration, Commerce based its decision on a distinction between producing scrap and generating scrap as a byproduct and on the presence of an intermediary. *See* I&D Mem. at 34 & n.143 (stating that "Plantec generated the scrap, but neither produced nor provided the scrap to POSCO") (citing,

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materials to POSCO. *Id.*; *see also* BPI Mem. at 2 (note 2). The Government argued that this figure reflected sales of scrap. Oral Arg. 1:20:40–1:22:15. That assertion is incorrect. Note 3 "identifie[s] the raw materials that Plantec provided as [[ ]]." BPI Mem. at 2 (note 3). Indeed, as Commerce further notes, "[t]he sale of scrap does not appear in POSCO's financial statements as a transaction with Plantec" but, consistent with the presence of an intermediary, "in PDC's raw material ledger that reconciles to Note 36 of POSCO's financial statements." *Id.* at 2 (note 4) (citing POSCO's Aff. QR, Ex. 5). Information contained therein reflects raw material sales from PDC in the amount of [[ ]] million KRW, a substantially higher value. POSCO's Aff. QR, Ex. 2 (note 37), Ex. 5. It is, however, for Commerce on remand to evaluate the significance, if any, of this value. (While Commerce cited Note 36 of POSCO's financial statements, the information regarding related party transactions appears in Note 37.)

[11] By way of example, see Issues and Decision Mem. for the Final Aff. Determination of the [CVD] Investigation of Forged Steel Fluid End Blocks from the Federal Republic of Germany, C-428-848 (Dec. 7, 2020) at 58, available at https://access.trade.gov/Resources/frn/summary/germany/2020-27335-1.pdf (last visited Oct. 5, 2022).

by way of contrast, *Rebar From Turkey 2017* Prelim. Mem. at 10–11). Commerce's determination with respect to scrap cannot be sustained on these grounds.

First, Commerce has found steel scrap primarily dedicated to the production of rebar when "there [was] no question" that the input supplier generated steel scrap as a "byproduct." *Rebar From Turkey 2018* Mem. at 26; *see also OCTG From Turkey* Mem. at 7–8 (rejecting an argument against attribution when the input supplier did not "produce[]" the scrap). Thus, notwithstanding consistency with Commerce's determination in *CRS From Korea 2017*, without some basis for finding the distinction between producing scrap and generating scrap relevant here, Commerce's decision in this segment of the proceeding appears impermissibly arbitrary. *See SKF USA Inc. v. United States*, 263 F.3d 1369, 1382 (Fed. Cir. 2001) ("[A]gency action is arbitrary when the agency offer[s] insufficient reasons for treating similar situations differently.") (second alteration in original) (quoting *Transactive Corp. v. United States*, 91 F.3d 232, 237 (D.C. Cir. 1996)).

Second, Commerce's reliance on Plantec's supply of scrap to POSCO through PDC suggested that the agency did not interpret the attribution regulation to apply in these circumstances. *See* I&D Mem. at 34; BPI Mem. at 2 (notes 2, 4). At the hearing, however, the Government stated that the regulation can apply when inputs are sold through an intermediary and, thus, the inquiry does not necessarily end there. Oral Arg.

1:27:10–1:27:20. Without further explanation from Commerce, the court is unable to discern the relevance of PDC to Commerce's determination.[12]

The court recognizes that decisions regarding attribution are fact specific and Commerce may reach different conclusions in different cases in relation to the same input. *See* I&D Mem. at 33. Nevertheless, "Commerce must explain the basis for its decisions." *NMB Singapore Ltd. v. United States*, 557 F.3d 1316, 1319 (Fed. Cir. 2009) ("[W]hile its explanations do not have to be perfect, the path of Commerce's decision must be reasonably discernable to a reviewing court."). In a case such as this, in which various prior Commerce determinations appear to support the arguments of both Plaintiff and Defendant-Intervenor, it is incumbent upon Commerce to go beyond simply identifying one set of prior decisions in support of its determination. Commerce must provide a clear rationale, supported by substantial evidence, for the agency's determination. Because Commerce has failed to provide such a rationale regarding Plantec's provision of scrap, this issue is remanded to Commerce for reconsideration or further explanation.

[12] During oral argument, POSCO suggested that PDC is further processing the scrap before selling it to POSCO. Oral Arg. 1:32:20–1:32:40. Commerce, however, did not make that factual finding or indicate that such a finding was relevant to its determination.

D. Equipment and Services

Plantec directly provided POSCO with raw materials,[13] "fixed assets,"[14] and services.[15] Commerce found that the raw materials and fixed assets are not "tied specifically to the production of any steel products" but are "used in a typical manufacturing process." BPI Mem. at 2 (note 3). Commerce stated that the raw materials and fixed assets are not "inputs dedicated almost exclusively to the production of downstream steel products" and are not "link[s] in the overall steel production chain." *Id.* at 3 (note 6); *see also* I&D Mem. at 33 (likening the inputs Plantec supplied to the example in the *CVD Preamble* of plastic used in the production of an automobile).

Commerce further found that Plantec's services are not "a type of input production primarily dedicated to POSCO's production of steel" because "they are not an actual part of POSCO's steel production process." BPI Mem. at 3 (note 5).

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[13] The raw materials consisted of [[

]]. BPI Mem. at 2 (note 3).

[14] The fixed assets consisted of:

[[

]].

Id. (alteration in original). POSCO reported that "[n]one of these fixed assets are actual machinery or equipment used to produce the downstream product; they are instead related to repair and maintenance of pre-existing machinery." POSCO's Resp. to Nucor's New Subsidy Allegations (Nov. 21, 2019) ("POSCO's NSA Resp.") at 10, CR 185, PR 88, CJA Tab 9.

[15] POSCO purchased [[ ]]. BPI Mem. at 2–3 (note 5).

Commerce noted that certain services are limited in nature.[16] *See id.* at 3 (note 6). Commerce found that Plantec did not produce the steelmaking equipment it provided to POSCO and instead "only provided services *related* to such equipment." I&D Mem. at 36.[17] Commerce distinguished *CRS From Brazil* as a proceeding in which Commerce attributed subsidies based on the supply of steel mill parts and equipment but not services. I&D Mem. at 36 & n.159 (citing *CRS From Brazil* Mem. at Cmt. 16).

1. Parties' Contentions

Nucor contends that Commerce's determination regarding steel mill equipment and services was unlawful and unsupported by record evidence. Nucor's Mem. at 41. Nucor argues that Commerce impermissibly considered the nature of Plantec's operations in relation to POSCO's steel production rather than "whether the input (steelmaking equipment and services) was dedicated to production of a downstream product (steel)." *Id.* at 43. Nucor also asserts that Commerce's analysis departs from its determination in *CRS From Brazil*, a proceeding in which the affiliate supplier operated in capital goods and services with customers in varying industries. *Id.* (citing *CRS From Brazil* Prelim. Mem. at 18). Lastly, Nucor points to evidence demonstrating that "Plantec manufactures steel making equipment and machinery" to question Commerce's finding that Plantec did not produce the equipment provided to POSCO.

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[16] Commerce stated that "[[ ]] services . . . are limited to [[ ]] that belongs to POSCO." *Id.* at 3 (note 6).

[17] Commerce explained that "Plantec did not produce the parts and tools that were used to [[ ]], but [[ ]]." *Id.* at 3 (note 7).

Id. at 45 (citing Resp. to Affiliated Cos. Sec. of the Initial Questionnaire (Aug. 19, 2019) ("POSCO's Aff. QR"), Ex. 8 at 3, CR 4–15, PR 20–23, CJA Tab 5); *see also* Nucor's Reply at 16 (asserting that Commerce overlooked evidence that Plantec supplied "actual" steelmaking equipment regarding one of the items characterized as a fixed asset).[18]

The Government contends that Commerce's decision is supported by evidence demonstrating that the parts and services Plantec provided were not "part of POSCO's steel production." Def.'s Resp. at 22–23 (citing BPI Mem. at 2–3). The Government further contends that Commerce properly distinguished *CRS From Brazil*. *Id.* at 23. POSCO likewise contends that the "products and services that [Plantec] provided to POSCO were tangentially 'related' to steelmaking equipment or machinery" but were not "step[s]" in the "production of the downstream product." POSCO's Resp. at 21.

2. Commerce's Determination is Sustained in Part and Remanded in Part

Nucor relies primarily on its attempt to analogize the facts of this case to those of *CRS From Brazil*. Nucor's Mem. at 44–45; Nucor's Reply at 16–17. In that proceeding, Usiminas Mechanica, S.A. ("UMSA") provided respondent Usinas Siderurgicas de Minas Gerais SA ("Usiminas") with "parts for Usiminas' plate rolling mill, new technology and structure maintenance." *CRS From Brazil* Mem. at 54; *see also id.* at 2, 5 (defining the company names). Commerce characterized those parts and services as

[18] Specifically, Nucor points to evidence that Plantec supplied [[ ]] that Nucor asserts is used in steelmaking. Nucor's Reply at 16.

"steelmaking equipment and services" and found that they constituted "inputs into the downstream production of steel." *Id.* at 55. Commerce "attribute[d] to Usiminas the subsidies received by UMSA" based on "UMSA's provision of equipment." *Id.* at 56. Thus, although Commerce found the services provided to constitute inputs, Commerce referenced only the provision of equipment in its final attribution decision. *Id*.

Beyond relying on *CRS From Brazil*, Nucor points to no record evidence to undermine Commerce's finding that the services at issue were not primarily dedicated to the production of the downstream product. Nucor simply asserts that it is enough that Plantec provided "services related to the construction or repair of POSCO's steel mills," Nucor's Mem. at 44, an argument that Commerce addressed and rejected, I&D Mem. at 36 (stating that Plantec "only provided services *related* to such equipment to POSCO"). Thus, the court sees no reason to disturb Commerce's finding with respect to services.

With one exception, discussed below, Nucor's challenge to Commerce's determination with respect to Plantec's provision of raw materials or fixed assets also fails. Nucor argues that Commerce did not adequately focus on whether the equipment was primarily dedicated to production of the downstream product. Nucor's Mem. at 43. Commerce, however, found that such equipment could not "be tied specifically to the production of any steel products" and was instead of a type "used in a typical manufacturing process." BPI Mem. at 2 (note 3). Furthermore, Nucor's reliance on record evidence purporting to demonstrate Plantec's production of steelmaking equipment and machinery is unavailing. Nucor's Mem. at 45 (citing POSCO's Aff. QR, Ex. 8 at 3). The exhibit on which Nucor relies constitutes POSCO's response to

Commerce's second supplemental questionnaire in the investigation underlying the *Korea CTL Order*. *See* POSCO's Aff. QR, Ex. 8 (cover page). The exhibit does not describe the "steel making equipment and machinery" that POSCO reported Plantec manufacturing, *see id.*, Ex. 8 at 3, such that Commerce, or the court, could ascertain its relevance to this administrative review.

For the foregoing reasons, the court finds that Commerce's determination is supported by substantial evidence regarding the nature of the equipment and its uses. The fact that Commerce reached a different conclusion in relation to different equipment in *CRS From Brazil* does not require a remand here.

As indicated above, there is one exception to the foregoing. In its reply brief, Nucor argued that one of the fixed assets in particular—[[ ]]—"under even the narrowest definition of steelmaking equipment, is 'actual steel mill equipment used to make steel products.'"[19] Nucor's Reply at 16 (citing Def.'s Resp. at 23).[20]

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[19] The [[ ]] is described as "[[ ]]." BPI Mem. at 2 (note 3).

[20] At the hearing, the court asked the Parties to state their position on whether Nucor adequately preserved for judicial review any distinction concerning this product. Letter to Counsel (Sept. 8, 2022) at 3, ECF No. 48. The Government stated that it did not find Nucor's argument precluded. Oral Arg. 1:25:00–1:25–10. POSCO averred that Nucor never objected to POSCO's description of the fixed assets specifically in relation to the [[ ]] until it filed its reply brief. *Id.* at 1:36:50–1:37:05.

The court finds that Nucor adequately preserved this argument. Commerce was aware of POSCO's description of the [[ ]] and the potential inconsistency with POSCO's assertion that none of the fixed assets were used in steelmaking and were instead "related to repair and maintenance of pre-existing machinery." POSCO's NSA Resp. at 10. Nucor has consistently objected to Commerce's treatment of the fixed assets and argued that they constitute steelmaking equipment. *See, e.g.*, [Nucor's] Case Br. (Aug. 26, 2020) at 16, CR 300, PR 174, CJA Tab 17. Accordingly,

Because POSCO's description of the product as something used "[[

]]" suggests use in steelmaking, POSCO's NSA Resp. at 10, and in the absence of any explanation from Commerce why that is not the case, the court will remand this issue for reconsideration or further explanation.

CONCLUSION AND ORDER

In accordance with the foregoing, it is hereby

ORDERED that Commerce's *Final Results* are sustained in part and remanded in part; it is further

ORDERED that, on remand, Commerce shall reconsider or further explain its determination not to investigate the alleged off-peak sale of electricity for less than adequate remuneration; it is further

ORDERED that, on remand, Commerce shall reconsider or further explain its determination not to treat Plantec as a cross-owned input supplier in connection with the supply of scrap and [[ ]]; it is further

ORDERED that Commerce shall file its remand redetermination on or before January 3, 2023; it is further

ORDERED that subsequent proceedings shall be governed by USCIT Rule 56.2(h); if, however Commerce determines to investigate whether off-peak electricity is provided for less than adequate remuneration, the Parties may instead file a joint status

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the court would not be resolving an issue before the agency had the opportunity "to apply its expertise." *Vinh Hoan Corp. v. United States*, 40 CIT __, __, 179 F. Supp. 3d 1208, 1226 (2016).

report addressing the timing of any necessary further administrative proceedings; and it is further

ORDERED that any comments or responsive comments must not exceed 4,000 words.

/s/ Mark A. Barnett
Mark A. Barnett, Chief Judge

Dated: October 5, 2022
New York, New York