

UNITED STATES COURT OF INTERNATIONAL TRADE

POSCO,

Plaintiff,

GOVERNMENT OF THE REPUBLIC OF
KOREA,

Plaintiff-Intervenor,

v.

UNITED STATES,

Defendant,

and

NUCOR CORPORATION,

Defendant-Intervenor.

Before: Jane A. Restani, Judge

Court No. 24-00006

OPINION AND ORDER

Dated: October 27, 2026

[Sustaining the Department of Commerce’s second remand redetermination in its countervailing duty order review of certain carbon and alloy steel cut-to-length plate from the Republic of Korea.]

Brady Warfield Mills, Taft Stettinius & Hollister LLP, of Washington, DC, for the plaintiff, POSCO. Also on the brief were Donald B. Cameron, Jr., Edward J. Thomas, III, Eugene Degnan, Jordan L. Fleischer, Jr., Julie Clark Mendoza, Mary Shannon Hodgins, Nicholas C. Duffey, and Rudi Will Planert.

Yujin Kim McNamara, Akin, Gump, Strauss, Hauer & Feld, LLP, of Washington, DC, for the plaintiff-intervenor, Government of the Republic of Korea. Also on the brief were Daniel Martin Witkowski, Devin Scott Sikes, and Sung Un K. Kim.

Tara Kathleen Hogan, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, for the defendant. Of counsel on the brief were Fee Pauwels and William Mitchell Purdy, Office of the Chief Counsel for Trade Enforcement & Compliance, U.S. Department of Commerce, of Washington, DC.

Alan Hayden Price, Wiley Rein, LLP, of Washington, DC, for the defendant-intervenor, Nucor Corporation. Also on the brief were Adam Milan Teslik, Christopher Bright Weld, Derick G. Holt, Enbar Toledano, Maureen Elizabeth Thorson, Paul A. Devamithran, and Theodore Paul Brackemyre.

Restani, Judge: Before the court is the U.S. Department of Commerce’s (“Commerce”) final remand redetermination pursuant to the court’s second remand order, see POSCO v. United States, 829 F. Supp. 3d 1298 (CIT 2026) (“POSCO II”), on Commerce’s final determination in its countervailing duty (“CVD”) order review of certain carbon and alloy steel cut-to-length plate (“CTL plate”) from the Republic of Korea (“Korea”) for the period of review (“POR”) January 1, 2021 to December 31, 2021. See Final Results of Redetermination Pursuant to Second Court Remand, ECF No. 79-1 (July 22, 2026) (“Second Remand Results”); Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2021, 88 Fed. Reg. 86,318 (Dep’t Commerce Dec. 13, 2023) (“Final Results”). In POSCO II, the court sustained in part and remanded in part Commerce’s first remand determination. See POSCO II at 1313; Final Results of Redetermination Pursuant to Court Remand, ECF No. 60-1 (Dec. 9, 2025) (“First Remand Results”). The court instructed Commerce to undertake a de facto specificity analysis of Korea’s allocation of additional emissions permits (“Korea Allowance Units” or “KAUs”). POSCO II at 1301, 1313. For the following reasons, the court sustains Commerce’s determination.

BACKGROUND

The court presumes familiarity with the facts of this case as set out in its previous opinions ordering remand to Commerce, see POSCO v. United States, 794 F. Supp. 3d 1402 (CIT 2025) (“POSCO I”); POSCO II, and recounts only those facts relevant to the court’s review of the Second Remand Results. Relevant here, in its First Remand Results, Commerce had found that the

Government of Korea's ("GOK") allocation of KAUs was specific because eligibility for KAUs was contingent on export performance as one of multiple conditions, thereby satisfying the criteria for an export subsidy. First Remand Results at 10. The court, however, found that Commerce's finding of specificity as an export subsidy was unreasonable, POSCO II at 1309–10, because export performance was not a necessary condition for eligibility as required by 19 U.S.C. § 1677(5A)(B). Id. at 1309. The court ordered Commerce, on remand, to evaluate whether the subsidy is de facto specific under 19 U.S.C. § 1677(5A)(D). Id. at 1310.

On July 22, 2026, Commerce filed its Second Remand Results, concluding that the provision of KAUs was de facto specific, pursuant to 19 U.S.C. § 1677(5A)(D)(iii)(1). Second Remand Results at 2. On August 21, 2026, plaintiff POSCO and plaintiff-intervenor GOK filed their comments in opposition to the remand results, asking the court to reject Commerce's remand redetermination. Pl.'s Comments in Opp'n to the Remand Results at 3, ECF No. 82 (Aug. 21, 2026) ("POSCO Cmts."); Pl.-Intervenor Government of the Republic of Korea's Comments in Obj. of the Second Final Results of Redetermination at 7–8, ECF No. 81 (Aug. 21, 2026) ("GOK Cmts."). On October 5, 2026, the defendant, the United States (the "government"), and the defendant-intervenor, Nucor Corporation ("Nucor"), filed their comments in support of the remand results, asking the court to sustain the second remand redetermination. Def.'s Resp. to Comments on the Remand Redetermination at 2, ECF No. 87 (Oct. 5, 2026) ("Gov't Cmts."); Def.-Intervenor's Comments in Support of the Final Results of Redetermination Pursuant to Ct. Remand at 1, ECF No. 86 (Oct. 5, 2026) ("Nucor Cmts.").

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction pursuant to 28 U.S.C. § 1581(c) and 19 U.S.C. § 1516a(a)(2)(B)(i). The court will uphold Commerce's determinations in a countervailing duty

proceeding unless they are “unsupported by substantial evidence on the record, or otherwise not in accordance with law.” 19 U.S.C. § 1516a(b)(1)(B)(i). “The results of a redetermination pursuant to court remand are also reviewed for compliance with the court’s remand order.” U.S. Steel Corp. v. United States, 219 F. Supp. 3d 1300, 1307 (CIT 2017) (citation modified) (citation omitted).

DISCUSSION

POSCO and GOK (collectively, “Plaintiffs”) argue that Commerce’s basis for finding de facto specificity is unreasonable because Commerce compared the number of companies that received additional KAUs (a numerator) with the total number of companies in Korea during the POR (a denominator) regardless of whether they were subject to or eligible for the K-ETS program,¹ which they characterize as an “apples-to-oranges” comparison. See GOK Cmts. at 1; POSCO Cmts. at 2–3.² Instead, they argue, Commerce should have compared the actual recipients of the additional KAUs to only those companies eligible to receive them. See GOK Cmts. at 2. With that smaller denominator, Plaintiffs contend that Commerce would have found that the companies receiving the full allocation are not “limited in number.” GOK Cmts. at 6–7. Plaintiffs

¹ The Korea Emissions Trading System, or K-ETS, program is governed by the Act on the Allocation and Trading of Greenhouse-Gas Emission Permits (“AAGEP”) and its implementing Enforcement Decree. POSCO II at 1305. Entities subject to the K-ETS program must surrender KAUs to offset their annual emissions of greenhouse gases. Id. In this phase of the program, GOK provides a group of companies with KAUs that correspond only to 90% of the carbon emission goal. Id. Some participants are eligible for 100% free KAU allocation: The Korean government provides additional KAUs to certain public organizations or non-profit entities such as local governments, schools, medical institutions, public transportation operators, and business operators, as well as subsectors that meet a mathematical threshold calculation. Id. POSCO is in one of these subsectors. Id. at 1306. The subsidy, the specificity of which is at issue, is the additional ten percent allocation, not the entire regulatory regime.

² POSCO did not submit substantive comments and instead “endorse[d] and adopt[ed] by reference the substantive comments filed by the [GOK],” POSCO Cmts. at 2, so all subsequent references will be to GOK Cmts. only.

reiterate that the K-ETS program is a regulatory compliance regime that obliges some companies to reduce their greenhouse gas emissions, not a subsidy,³ so that the “overwhelming majority of Korean companies are not subject to the K-ETS program and therefore fall entirely outside the universe of entities that could receive any KAUs.” GOK Cmts. at 1–2. According to Plaintiffs, this case is distinguishable from Government of Québec v. United States, 105 F.4th 1359 (Fed. Cir. 2024), because Commerce’s chosen denominator in that case, though constituting all corporate entities, included only those eligible for the tax credit at issue, while the denominator chosen by Commerce here does not reflect an accurate universe of potential recipients, i.e. those companies subject to the K-ETS program. See GOK Cmts. at 2–3 (citing 105 F.4th at 1374). Plaintiffs maintain that while Commerce has discretion in selecting comparators for its de facto specificity analysis, that discretion is not without limits. Id. at 4.

The government argues that Commerce’s second remand redetermination complies with the court’s remand order.⁴ Gov’t Cmts. at 8. The government and Nucor (collectively, “Defendants”) further argue that Commerce’s de facto specificity determination is reasonable because the record evidence relied on is undisputed, and the determination is consistent with court precedent and Commerce’s practice. Id. at 9–21; Nucor Cmts. at 2–6. According to the government, Commerce exercised the necessary latitude afforded to it in comparing the 494 companies that received additional KAUs to the 906,325 companies within GOK’s jurisdiction—a comparison grounded firmly in the overall purpose of the specificity test. Gov’t Cmts. at 9–10, 12–16. Defendants explain that this comparison is similar to Commerce’s finding in Government

³ The court has held already that Commerce’s determination that the allocation of additional KAUs is a “direct transfer of funds” under 19 U.S.C. § 1677(5)(D)(i) was reasonable. POSCO II at 1310–13; see also Gov’t Cmts. at 15 (“The Court has already sustained Commerce’s determinations that the additional allocation of KAUs confers a benefit and constitutes a financial contribution . . .”).

⁴ Neither GOK nor POSCO contends that Commerce failed to comply with the remand order.

of Québec, 105 F.4th at 1368, 1373–75 (comparing 4,930 tax credit recipients to 387,949 corporate tax filers), and analogous to a determination concerning an earlier phase of this same program, Hyundai Steel Co. v. United States, 803 F. Supp. 3d 1252, 1256–58 (CIT 2025) (upholding Commerce’s de facto specificity analysis that compared the number of subsidy recipients to the number of companies operating in the economy). Gov’t Cmts. at 11; Nucor Cmts. at 2.

To be countervailable, a subsidy must be “specific” to a foreign enterprise or industry, or a group of foreign enterprises or industries. 19 U.S.C. § 1677(5)(A). A subsidy can be de jure or de facto (as a matter of fact) specific. Id. § 1677(5A)(D). A subsidy is “specific” as a matter of fact when “one or more” statutory factors exist:

- (I) The actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number.
- (II) An enterprise or industry is a predominant user of the subsidy.
- (III) An enterprise or industry receives a disproportionately large amount of the subsidy.
- (IV) The manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.

19 U.S.C. § 1677(5A)(D)(iii). Commerce analyzes these criteria sequentially. 19 C.F.R. § 351.502(a). If any factor is present, the subsidy is de facto specific, and Commerce ceases its specificity analysis. Id. The purpose of the specificity analysis is “to function as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy.” Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Rep. No. 103-316, vol. 1, at 929 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4209 (“SAA”).⁵ “[T]he specificity test was not intended to function as a

⁵ The SAA “shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act in any judicial proceeding in which a question arises concerning such interpretation or application.” 19 U.S.C. § 3512(d).

loophole through which narrowly focused subsidies provided to or used by discrete segments of an economy could escape the purview of the CVD law.” SAA at 930. The governing statute and the implementing regulations do not prescribe any mandatory method that Commerce must employ in assessing de facto specificity or analyzing the listed factors. See 19 U.S.C. § 1677(5A)(D)(iii); 19 C.F.R. § 351.502. Commerce has discretion when analyzing de facto specificity which “is a fact-intensive and case-specific inquiry.” Gov’t of Québec, 105 F.4th at 1374 (citations omitted). The fact that use of a subsidy may be limited by the “inherent characteristics” of the good or service is irrelevant for de facto specificity. Countervailing Duties, 63 Fed. Reg. 65,348, 65,359 (Dep’t Commerce Nov. 25, 1998) (“CVD Preamble”) (citing SAA at 932). Moreover, the Federal Circuit has determined that Commerce’s comparison of the number of subsidy recipients (a numerator) to the number of corporate entities within an economy (a denominator) reflects an appropriate de facto specificity analysis and “does not conflict with the SAA’s directive regarding the purpose of the specificity determination.” See Gov’t of Québec, 105 F.4th at 1375.

Pursuant to the court’s second remand order in POSCO II, Commerce conducted a de facto specificity analysis, finding that the provision of additional KAUs is de facto specific because the recipients were limited in number. See Second Remand Results at 5–6; 19 U.S.C. § 1677(5A)(D)(iii)(I). Commerce found that 494 companies received additional KAUs under the K-ETS program, and 906,325 companies operated in GOK’s jurisdiction during 2021. Second Remand Results at 6 (citing Letter from Lee & Ko LLC and Morris, Manning & Martin LLP to Sec’y of Commerce, “Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea, Case No. C-580-888: GOK’s Initial Questionnaire Response at 11 C.R. 157–79, P.R. 61–72 (Oct. 12, 2022) (“Korea IQR”); Korea IQR, App. 16 at 20). Comparing these two numbers, Commerce determined that such a program cannot be considered “widely used” throughout the

economy.⁶ Second Remand Results at 6. Commerce explained that this is consistent with its “long-standing de facto specific analysis practice” as affirmed in Government of Québec, and the court has upheld analogous specificity determinations with respect to the same program. Id. at 7–8 (citing Gov’t of Québec, 105 F.4th at 1368, 1373–75, and Hyundai Steel, 803 F. Supp. 3d at 1256–58). Commerce applied an ad valorem subsidy rate of 0.61% for the provision of additional KAUs and calculated a revised total ad valorem subsidy rate for POSCO of 0.80%.⁷ Second Remand Results at 2–3, 17–18.

Commerce’s specificity determination is reasonable. The specificity test is intended 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 the economy” and warns against misuse of the test as a “loophole through which narrowly [focused] subsidies provided to or used by discrete segments of an economy could escape the purview of the CVD law.” SAA at 930. Requiring Commerce to limit the comparator (denominator), as Plaintiffs suggest, to the number of companies subject to the K-ETS program would render the subsidy program non-specific “due to the inherent characteristics of what is being offered.” See CVD Preamble at 65,359. That would ultimately misuse the specificity test as a “loophole,” allowing the K-ETS program to “escape the purview of the CVD law.” See SAA at 930. Recognizing this,

⁶ Commerce found that “the number of recipient companies—which amounted to less than 0.1 percent of companies operating in the Korean economy—indicates that the recipients of the subsidy were limited in number on an enterprise basis and that the program was not widely used throughout the Korean economy.” Second Remand Results at 10.

⁷ No party challenges this calculation.

the court in Hyundai Steel has already upheld Commerce's specificity calculation regarding an earlier phase of the same program,⁸ noting that

there is no requirement that recipients of the benefit of the full allocation share some other characteristic, such as participation in the K-ETS, with the group comprising the denominator: "the fact that users may be limited due to the inherent characteristics of what is being offered" is not "a basis for finding the subsidy non-specific."

803 F. Supp. 3d at 1257 (quoting CVD Preamble at 65,359).⁹

⁸ In that phase of the program during the relevant period of review, K-ETS participants received KAUs that corresponded to 97%, instead of 90%, of the expected permit needs. See Hyundai Steel, 803 F. Supp. 3d at 1254.

⁹ Plaintiffs also take issue with Commerce's reliance on Hyundai Steel Co v. United States, 803 F. Supp. 3d 1252 (CIT 2025), claiming that the court there misconstrued the nature of the K-ETS program, which was also at issue. GOK Cmts. at 4. They argue, instead, that this case is more analogous to Mosaic Co. v. United States, 659 F. Supp. 3d 1285 (CIT 2023), because the programs at issue are both "intended to relieve or reduce a burden that is placed on only a subset of the corporation population." Id. at 5 (emphasis added). According to Plaintiffs, Commerce is ignoring the fact that "hundreds of thousands of companies that are not subject to the K-ETS already were exempted from the compliance costs of the K-ETS program." Id. at 5–6. Applying Mosaic, Plaintiffs suggest that the subsidy is not de facto specific because only 494 companies of the 684 companies subject to the K-ETS program received the full 100% allocation of KAUs. Id. at 7. Nucor finds Plaintiffs' reliance on Mosaic unconvincing because that case concerns an entirely different program in Morocco, and "the number of Korean recipients here (i.e., 494) is a small fraction of the number of Moroccan subsidy recipients at issue in Mosaic (i.e., 8761)." Nucor Cmts. at 6 (citing Second Remand Results at 15). The government notes that the issue in Mosaic was that Commerce had considered too narrow of a universe, not too broad a one. Gov't Cmts. at 19. In Mosaic, Commerce was assessing the specificity of "a common, ordinary tax administration program, available to all taxpayers, under which the taxing authority may mitigate a penalty." Mosaic, 659 F. Supp. 3d at 1316. Commerce compared the number of corporate taxpaying recipients of penalty relief (8,761) to the total number of corporate taxpayers (262,165), not the total number of corporate taxpayers who incurred penalties. Id. at 1314. The court remanded Commerce's choice of both numerator and denominator because they were not "logically comparable," and because the program was available to all taxpayers, not only corporate ones, directing Commerce to consider the potentially wider availability of the benefit. Id. at 1315–17. The court need not go as far as Nucor and the government to disagree with Plaintiffs. Mosaic involves a non-analogous program and is a non-binding CIT decision. See Algoma Steel Corp. v. United States, 865 F.2d 240, 243 (Fed. Cir. 1989). Mosaic applies to its own specific facts. Cf. 105 F.4th at 1374 (Commerce's de facto specificity analysis is a "fact-intensive and case-specific inquiry."). The program at issue here is not a "common, ordinary tax administration program." See 659 F. Supp. 3d at 1316. Hyundai, though addressing an earlier iteration of the K-ETS program, provides that more instructive analysis. See Hyundai Steel, 803 F. Supp. 3d at 1254.

In addition, Commerce does not need to artificially narrow its definition of the “economy” in assessing whether a program “truly [is] broadly available and widely used throughout an economy.” See Gov’t of Québec, 105 F.4th at 1375 (citing SAA at 929). The statute does not prescribe a particular denominator for determining whether the actual recipients of a subsidy are “limited in number,” see 19 U.S.C. § 1677(5A)(D)(iii); 19 C.F.R. § 351.502, and Government of Québec confirms that Commerce has discretion to select an appropriate comparator in conducting this fact-intensive inquiry.¹⁰ See 105 F.4th at 1374–75. Plaintiffs’ contention that “[t]he overwhelming majority of Korean companies are not subject to the K-ETS program and therefore fall entirely outside the universe of entities that could receive any KAUs,” GOK Cmts. at 2, simply reflects an inherent characteristic of the K-ETS program and is not a basis for finding the subsidy non-specific. Cf. Hyundai Steel, 803 F. Supp. 1252 at 1257. Additionally, it is reasonable to think that the comparison Commerce conducted here would be useful in assessing whether the subsidy was widely used throughout the economy.¹¹

¹⁰ This court and the Federal Circuit have sustained Commerce’s specificity determinations that compared the number of subsidy recipients to the number of companies or industries operating in the economy. See, e.g., Gov’t of Québec, 105 F.4th at 1374 (sustaining Commerce’s de facto specificity finding on a “limited in number” basis when 4,930 tax credit recipients were compared to 387,949 corporate taxpayers); Nucor Corp. v. United States, 494 F. Supp. 3d 1377, 1383 (CIT 2021) (sustaining Commerce’s de facto specificity finding when just twenty-five companies operating in Korea received the benefit of the loan restructuring program); Wilmar Trading Pte Ltd. v. United States, 466 F. Supp. 3d 1334, 1358–59 (CIT 2020) (sustaining Commerce’s de facto specificity finding when fourteen distinct industries benefitted from Indonesia’s export levy on crude palm oil because the actual recipients “did not ‘encompass all possible subsidy recipients within the economy of Indonesia’”) (citation omitted); Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States, 61 F. Supp. 3d 1306, 1342–43 (CIT 2015) (sustaining Commerce’s de facto specificity finding when eight industries out of all industries in the economy used hot-rolled steel purchased for less than adequate remuneration).

¹¹ Beyond arguing that the comparison between recipients and companies within GOK’s jurisdiction is analogous to Québec, Nucor explains that the subsidy recipients in this case are more limited in number than the recipients in Québec. Nucor Cmts. at 3–4. Nucor misunderstands Commerce’s practice: Commerce compares the number of subsidy recipients, not to subsidy recipients in other contexts, but to a reasonable comparator in the same context, to determine

Commerce's determination that the provision of additional KAUs was de facto specific because the actual recipients were limited in number is supported by substantial evidence and otherwise in accordance with the law. Commerce properly conducted a specificity analysis pursuant to the remand order, see POSCO II, and the court sustains the Second Remand Results.

CONCLUSION

For the foregoing reasons, Commerce's Final Results of Redetermination Pursuant to Second Court Remand, ECF No. 79-1, are sustained.

/s/ Jane A. Restani
Jane A. Restani, Judge

Dated: October 27, 2026
New York, New York

whether the subsidy is widely used throughout an economy. See SAA at 929; Gov't of Québec, 105 F.4th at 1374.