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Administrative Review
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August 7, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Senior Advisor
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Final Results of 2012 Countervailing
Duty Administrative Review: Cut-to-Length Carbon-Quality Steel
Plate from the Republic of Korea

I. Summary

On March 25, 2014, the Department published the *Preliminary Results* of this countervailing duty (CVD) administrative review.¹ On April 24, 2014, the Department received a case brief from Samsung C&T Corp. (Samsung). For the reasons discussed below, we recommend that the Department make no changes to the approaches taken in the *Preliminary Results*. See the Preliminary Decision Memorandum for additional information concerning the subsidy programs examined in this administrative review.²

II. Period of Review

The period for which we are measuring countervailable subsidies, *i.e.*, the period of review (POR), is January 1, 2012, through December 31, 2012.

III. Scope of the Order

The products covered by the order are certain hot-rolled carbon-quality steel: (1) universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality

¹ See *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2012*, 79 FR 16283 (March 25, 2014) (*Preliminary Results*), and accompanying Issues and Decision Memorandum, dated March 18, 2014 (Preliminary Decision Memorandum).

² See also the Memorandum to Eric B. Greynolds, Program Manager, Office III, Operations, "Preliminary Calculations for Dongkuk Steel Mill Co., Ltd. (DSM)" (March 18, 2014), September 30, 2013) (Preliminary Calculations Memorandum).



steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in the scope of the order are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been “worked after rolling”)--for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in the scope of the order are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is two percent or less, by weight; and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of this order unless otherwise specifically excluded. The following products are specifically excluded from the order: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to the order is currently classifiable in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise covered by the order is dispositive.

IV. Rescission of Administrative Review With Respect to Certain Companies

Consistent with 19 CFR 351.213(d)(3), we are rescinding the review with respect to Daewoo International Corp. (Daewoo), Dongbu Steel Co., Ltd. (Dongbu), GS Global Corp. (GS Global), Hyosung Corporation (Hyosung), and Hyundai Steel Co. (Hyundai) based on the absence of shipments of subject merchandise during the POR. Our decision in this regard is based on the

firms' respective certified non-shipment claims as well as the lack of information from CBP that would call the firms' claims of non-shipment into question.

Therefore, the only companies that are subject to the instant administrative review are Dongkuk Steel Mill Co., Ltd. (DSM), Edgen Murray Corporation (Edgen), Kyoungil Col., Ltd. (Kyoungil), Samsung C&T Corporation (Samsung), Samwoo EMC Co., Ltd.(Samwoo), and TCC Steel Corp (TCC Steel). Of these firms, only DSM is subject to individual examination.

V. Non-Selected Rate

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual respondents not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act). Generally, the Department looks to section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents which we did not examine in an administrative review. Section 705(c)(5)(A) of the Act articulates a preference that we are not to calculate an all-others rate using rates which are zero, *de minimis* or based entirely on facts available. Accordingly, the Department's practice in determining the rate for respondents not selected for individual examination has been to average the weighted-average net subsidy rates for the selected companies, excluding rates that are zero, *de minimis*, or based entirely on facts available.³ Section 705(c)(5)(B) of the Act also provides that, where all rates are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for assigning the all-others rate, including averaging the estimated weighted-average net subsidy rates determined for the exporters and producers individually investigated.

As indicated above, we continue to find that DSM received a *de minimis* net subsidy rate during the POR. In past reviews, the Department determined that a "reasonable method" to use when the rates of selected mandatory respondents are all zero or *de minimis* is to assign non-selected respondents the average of the most recently determined rates that are not zero, *de minimis*, or based entirely on facts available (which may be from a prior review or a new shipper review or the investigation).⁴ However, if a non-selected respondent has its own calculated rate that is contemporaneous with or more recent than such previous margins, the Department found it appropriate to apply that calculated rate to the non-selected respondent, including when that rate is zero or *de minimis*.⁵

In the instant proceeding DSM was the sole company to be individually examined in all previous reviews of the *CTL Plate Order* and all such reviews resulted in *de minimis* net subsidy rates. The only above *de minimis* net countervailable subsidy rate calculated in any segment of this proceeding was the rate of 3.26 percent *ad valorem* established for DSM in the *Amended CTL*

³ See, e.g., *Certain Pasta from Italy: Final Results of the 2008 Countervailable Review*, 75 FR 37386, 37387 (June 29, 2010) (*Pasta from Italy*).

⁴ See *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47191, 47194 (September 15, 2009).

⁵ *Id.*

Plate Investigation.⁶ However, in these final results, we continue to determine that the 3.26 percent *ad valorem* rate from the *Amended CTL Plate Investigation*, which was calculated more than 14 years ago, is not a suitable basis for the non-selected rate. Therefore, in the absence of any other available net subsidy rate, and consistent with the practice and statutory guidance described above, we determine to use the *de minimis* rate calculated for DSM as the non-selected rate applicable to Edgen Murray, Kyoungil, Samsung, Samwoo, and TCC Steel.

VI. Attribution of Subsidies

The Department has made no changes to the methodologies used in the *Preliminary Results* for attributing subsidies. For descriptions of the methodologies used for these final results, *see* the *Preliminary Results* and Preliminary Decision Memorandum at 5.

VII. Analysis of Programs

The Department made no changes to its preliminary determinations with regard to the following programs found countervailable in the *Preliminary Results*. Additionally, the Department made no changes to its preliminary determinations with regard to programs found not to confer a benefit or not used during the POR. No issues were raised by interested parties in case briefs regarding these programs. For the descriptions, analyses, and calculation methodologies of these programs, *see* the *Preliminary Results* and Preliminary Decision Memorandum.

A. Programs Determined to be Countervailable

1. Local Tax Exemption on Land Outside Metropolitan Areas
0.01 percent *ad valorem* for DSM
2. GOK Facilities Investment Support Under Article 26 Restriction of Special Taxation Act (RSTA) Article 26
0.10 percent *ad valorem* for DSM

B. Programs Determined Not to Confer a Benefit

1. Various Grants Contained in DSM's Financial Statement
2. GOK Reimbursements for Wharfage Fee Expenses DSM Incurred in Developing the Asan Bay Port Facility
3. Asset Revaluation under the RSTA and/or Tax Reduction and Exemption Control Act (TERCL) Article 56(2)

C. Programs Determined to be Not Used

1. Short-Term Discounted Loans for Export Granted by the Korean Development Bank (KDB)

⁶ See Notice of Amended Final Determinations: *Certain Cut-to-Length Carbon-Quality Steel Plate from India and the Republic of Korea*; and Notice of Countervailing Duty Orders: *Certain Cut-to-Length Plate from France, India, Indonesia, Italy, and the Republic of Korea*, 65 FR 6587, 6589 (February 10, 2000) (*Amended CTL Plate Investigation*).

2. Funds Provided under the Energy Savings Program
3. Tax Reductions to Companies Operating in the Godae Complex
4. GOK Directed Credit Program
5. GOK Infrastructure Investment at Incheon North Harbor
6. Reserve for Investment (Special Case of Tax for Balanced Development Among Areas)TERCL Articles 42, 43, 44, and 45
7. Price Discounts for DSM Land Purchase at Asan Bay
8. Exemption of VAT on Imports of Anthracite Coal
9. Provision of Land for Less than Adequate Remuneration in the Godae Complex
10. Lease Discounts Provided to Companies Operating in Free Economic Zones
11. Tax Reductions Granted to Companies Operating in the Godae Complex
12. Tax Subsidies Provided to Companies Operating in Free Economic Zones
13. Government Grants and Financial Support to Companies Operating in Free Economic Zones

VIII. Analysis of Comments

Below is a complete list of the issues in this administrative review for which we received case a brief from an interested party.

Comment 1: Whether It Is Appropriate to Assign Samsung a Non-Selected Respondent Rate

Arguments of Samsung

- Under 19 CFR 351.213(d)(3), the Department has the discretion to rescind an administrative review if it concludes that, during the POR, there were no entries of subject merchandise.
- The regulations specify no deadline by which parties may submit evidence indicating non-shipment.
- Further, the Department's practice is mixed when it comes to the amount of time parties have to submit non-shipment letters in a proceeding.⁷
- There is no indication that the Department undertook an analysis as to whether the non-selected rate companies, which include Samsung, had any shipments of subject merchandise during the POR. Rather, the Department simply assigned Samsung the non-selected rate, which is equal to the *de minimis* subsidy it calculated for DSM.
- Samsung does not have APO access in this proceeding. Thus, it does not have access to the proprietary data from CBP that the Department placed on the record and used for purposes of its respondent selection decision. To the extent that the proprietary customs data indicate that Samsung did not have any entries during the POR, then, based on such data, the Department should rescind the review with regard to Samsung.

Petitioners Did Not Submit a Case or Rebuttal Brief

⁷ See, e.g., *Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*; 78 FR 70533, November 26, 2013 (*Activated Carbon from the PRC*).

Department Position: Samsung argues that if the proprietary results of the Department's query of the CBP database indicate that Samsung had no shipments of subject merchandise during the POI, then the Department should rescind the review with regard to Samsung.⁸ However, our practice in CVD reviews is that the Department will not use CBP query results as the sole basis to rescind a review. Rather, in order for the Department to rescind the review, the party for which a review was requested must submit a claim of non-shipment in a timely manner. Regardless of whether the company had access to the proprietary results of the data query, the company itself is in a position to know whether or not it made sales or exports of subject merchandise to the United States during the POR. Absent such a filing, we treat the firm(s) in question as either a mandatory or a non-selected respondent.⁹ Among the companies not selected as a mandatory respondent in this review, we did not receive a non-shipment claim from Edgen Murray Corporation, Kyoungil Co., Ltd., Samsung, Samwoo, or TCC Steel. Even if Samsung's arguments in its case brief could be construed as a non-shipment claim, any such non-shipment claim falls after the Department's 90-day deadline for such claims.¹⁰ Further, any such claim by Samsung falls after the deadline for submitting new factual information.¹¹ Additionally, if it were a non-shipment claim, it would not have provided the Department with sufficient time to confirm the claim with the CBP.

Further, we find that the facts of *Activated Carbon from the PRC* are distinct from the instant review and, therefore are not controlling here. In *Activated Carbon from the PRC*, the respondent filed an untimely non-shipment claim; however, the Department failed to notice that the submission was late and sent an inquiry message to CBP to confirm the respondent's non-shipment claim. In *Activated Carbon from the PRC*, the Department determined that it would not be fair to refrain from rescinding the review of the respondent based on non-shipment in light of the fact that the Department confirmed non-shipment with CBP.¹² The facts are different in the instant review: Samsung did not timely submit a non-shipment claim; the Department is well-aware that the deadline for submitting non-shipment claims has passed; and the Department did not send a non-shipment inquiry to CBP for Samsung. Therefore, unlike the situation in *Activated Carbon from the PRC*, there is no certified statement from the respondent and no information from CBP confirming the lack of shipments of subject merchandise from Samsung during the POR.

Therefore, in keeping with our practice and for the reasons provided above, we continue to treat Samsung as a non-selected rate company and have refrained from rescinding the review on Samsung.

⁸ See May 2, 2013 Memorandum to the File from John Conniff, "Customs and Border Protection Data for Selection of Respondents for Individual Review"

⁹ See *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106, (January 2, 2014), in which the Department refrained from rescinding on firms that did not submit a non-shipment claim and instead treated the firms as non-selected respondents.

¹⁰ See 19 CFR 351.213(d)(1); see also *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 19197, 19198 (March 29, 2013) (*Initiation*).


¹¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 78 FR 7397 (February 1, 2013). The Department stated that parties that have not made any shipments of subject merchandise must notify the Department within 60 days of publication of the Initiation Notice of which five companies responded in a timely manner.

¹² *Id.*

IX. Recommendation

Based on our analysis, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this review in the *Federal Register*.

Agree ☒ Disagree ☐



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

5 August 2014
Date