



C-580-837
Administrative Review
New Shipper Review
POR: 1/1/2014 - 12/31/2014
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September 12, 2016

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for Final Results of 2014 Countervailing
Duty Administrative Review and New Shipper Review: Cut-to-
Length Carbon-Quality Steel Plate from the Republic of Korea

I. Summary

On March 14, 2016, the Department of Commerce (Department) published the *Preliminary Results* of this countervailing duty (CVD) administrative review (AR) and new shipper review (NSR).¹ The Department received case briefs from interested parties. On June 13, 2016, the Department extended the deadline for the final results of this administrative review until September 12, 2016.²

The Department preliminarily determined that Dongkuk Steel Mill Co., Ltd. (DSM), the firm subject to the AR, and Hyundai Steel Company Ltd., (Hyundai Steel), the firm subject to the NSR, each received a net subsidy rate that is *de minimis*, as provided under 19 CFR 351.106(c)(1). For the reasons discussed below, we recommend that the Department make no changes to the *Preliminary Results*. See the Preliminary Decision Memorandum for additional information concerning the subsidy programs examined in this administrative and new shipper review.

In the *Preliminary Results* we invited interested parties to submit case and rebuttal briefs commenting on the preliminary results and to request a hearing. On April 13, 2016 Hyundai Steel submitted a request for a hearing. On April 25, 2016, the Department received case briefs from Nucor in reference to the NSR and AR and from Hyundai Steel. On April 25, 2016 Nucor

¹ See *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review and New Shipper Review; Calendar Year 2014*, 81 FR 13330 (March 14, 2016) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

² See Memorandum titled, "Cut-to-Length Carbon Quality Steel Plate from the Republic of Korea; Extension of Deadline for Final Results of Countervailing Duty Administrative and New Shipper Reviews," dated June 13, 2016.



requested that the Department extend the deadline to submit a rebuttal brief. On April 29, 2016, the Department extended the deadline to file case briefs by interested parties until May 6, 2016. On May 6, 2016 DSM and Hyundai Steel submitted rebuttal briefs. On May 9, 2016, Nucor submitted a rebuttal brief in the NSR. On May 10, 2016, Hyundai Steel withdrew its request for a hearing. On June 13, 2016, the Department extended the deadline for the final results of this administrative review until September 12, 2016.³

Below is a complete list of the issues in this administrative and new shipper review for which we received case briefs from interested parties.

- Comment 1: Whether the Department Should Initiate an Investigation into the Government of Korea's (GOK) Provision of Electricity for less than adequate remuneration (LTAR)
- Comment 2: Whether the Department Improperly Countervailed Acquisition Tax Exemptions Received By Hyundai Steel under the Restrictions of Special Taxation Act (RSTA) Article 120 in Connection With its Acquisition of HYSCO's Cold-Rolled Assets
- Comment 3: Whether the Department Improperly Countervailed Property Tax Exemptions Received by the Pohang Plant under the Restriction of Special Location Taxation Act (RSLTA)
- Comment 4: Whether the Department Should Initiate an Investigation into the GOK's Provision of Electricity for More than Adequate Remuneration (MTAR)

II. Period of Review

The period for which we are measuring countervailable subsidies, *i.e.*, the period of review (POR), is January 1, 2014, through December 31, 2014.

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 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

³ See Memorandum titled "Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea; Extension of Deadline for Final Results of Countervailing Duty Administrative and New Shipper Reviews," dated June 13, 2016.

(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. 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 accompanying Preliminary Decision Memorandum at 5.

V. Bona Fides Analysis

Consistent with Department practice, we examined the *bona fides* of the sales made by Hyundai Steel in the new shipper review. Pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act),⁴ any net subsidy rate determined in a NSR must be based solely on *bona fide* sales during the period of review. Where a review is based on a single sale, exclusion of that sale as non-bona fide necessarily must end the review.⁵ To determine whether

⁴ On February 24, 2016, the President of the United States signed into law the Trade Facilitation and Trade Enforcement Act of 2015, Pub. Law 114-125 (February 24, 2016), which made amendments to section 751(a)(2)(B) of the Act. These amendments apply to this determination.

⁵ *See Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1249 (CIT 2005) (*TTPC*).

a sale in a new shipper review is *bona fide*, the Department considers, depending on the circumstances surrounding such sales:

(I) the prices of such sales; (II) whether such sales were made in commercial quantities; (III) the timing of such sales; (IV) the expenses arising from such sales; (V) whether the subject merchandise involved in such sales was resold in the United States at a profit; (VI) whether such sales were made on an arms-length basis; and (VII) any other factor {it} determines to be relevant as to whether such sales are, or are not, likely to be typical of those the exporter or producer will make after completion of the review.⁶

In examining the totality of the circumstances, the Department looks to whether the transaction is “commercially unreasonable” or “atypical of normal business practices.”⁷

Although some *bona fide* issues may share commonalities across various Department cases, the Department examines the *bona fide* nature of a sale on a case-by-case basis, and the analysis may vary with the facts surrounding each sale.⁸ In *TTPC*, the U.S. Court of International Trade (CIT) affirmed the Department’s practice of considering that “any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,”⁹ and found that “the weight given to each factor investigated will depend on the circumstances surrounding the sale.”¹⁰ Moreover, the Department’s practice makes clear that the Department will examine objective, verifiable factors to ensure that a sale is not being made to circumvent an order.¹¹ Thus, a respondent is on notice that it is unlikely to establish the *bona fides* of a sale merely by claiming to have sold in a manner representative of its future commercial practice.¹²

The Department finds that based on the record evidence, the sales of subject merchandise made by Hyundai Steel were made on a *bona fide* basis. Specifically, the Department finds that (1) there is no evidence indicating that the sales were not made at arm’s length; (2) neither the price nor quantity of the sales were outside normal bounds; and (3) the timing of the sales does not indicate that the sales were not *bona fide*.¹³ Moreover, our review and verification of Hyundai Steel’s responses to our initial and supplemental questionnaires found no facts that would contradict this view and that would indicate this sale was structured in a manner that could not be repeated in the future.

⁶ See section 751(a)(2)(B) of the Act, and 19 CFR 351.214.

⁷ See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1339 (CIT 2005) (*New Donghua*), citing *Windmill Int’l Pte., Ltd. v. United States*, 193 F. Supp. 2d 1303, 1313 (CIT 2002) (*Windmill*); see also *TTPC*, 366 F. Supp. 2d at 1249-50.

⁸ See *New Donghua*, 374 F. Supp. 2d at 1340, n.5, citing *TTPC*, 366 F. Supp. 2d at 1260, and *Certain Preserved Mushrooms From the People’s Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304 (July 11, 2003), and accompanying Issues and Decision Memorandum at Comment 2.

⁹ See *TTPC*, 366 F. Supp. 2d at 1250.

¹⁰ *Id.*, 366 F. Supp. 2d at 1263.

¹¹ See *New Donghua*, 374 F. Supp. 2d at 1339.

¹² *Id.*

¹³ See the Memorandum titled, “New Shipper Review: Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: *Bona Fides* Sales Analysis for the Hyundai Steel Company,” issued concurrently with this memorandum.

Due to business proprietary information contained the *bona fide* analysis, a full discussion of the bases for our decision is set forth in the Bona Fide Analysis Memorandum.¹⁴

Therefore, the Department finds that Hyundai Steel's sales of subject merchandise to the United States were *bona fide* for the purposes of this NSR.

VI. Analysis of Programs

The Department made no changes to its preliminary determinations with regard to the program 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. Program Determined to be Countervailable

1. Local Tax Exemption on Land Outside Metropolitan Areas:

Our net subsidy rate calculations for this program remain unchanged from the *Preliminary Results*. Therefore, we have calculated a net subsidy rate of 0.01 percent *ad valorem* for DSM and 0.23 percent *ad valorem* for Hyundai Steel under this program.

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

1. Electricity Discounts Under Various Korea Electric Power Corporation (KEPCO) Programs
2. Various Research and Development (R&D) Grants Provided Under the Industrial Technology Innovation Promotion Act
3. GOK Directed Credit: 1992-2001 Directed Credit
4. Korean Export Import Bank (KEXIM) Import Financing

C. Additional Programs Determined To Be Not Used During the POR

DSM reported non-use of the following programs:

- GOK Pre-1992 Directed Credit Program
- GOK Infrastructure Investment at Incheon North Harbor
- Tax Program Under the Restriction of Special Taxation Act (RSTA) and/ or the Tax Reduction and Exemption Control Act (TERCL) - Asset Revaluation (TERCL 56(2)
- Reserve for Investment (Special Case of Tax for Balanced Development Among Areas) RSTA Article 58) (TERCL Articles 42, 43, 44, and 45)
- Price Discounts for DSM Land Purchase at Asan Bay
- Exemption of VAT on Imports of Anthracite Coal

¹⁴ *Id.*

- Provision of Land for Less than Adequate Remuneration in the Godae Complex
- Lease Discounts Provided to Companies Operating in Free Economic Zones
- Tax Reductions Granted to Companies Operating in the Godae Complex
- Tax Subsidies Provided to Companies Operating in Free Economic Zones
- Government Grants and Financial Support to Companies Operating in Free Economic Zones
- Electricity Discount under the Power Business Law Program
- Provision of Liquefied Natural Gas (LNG) from (LTAR)

Hyundai Steel reported non-use of the following programs:

- GOK Pre-1992 Directed Credit Program
- GOK Infrastructure Investment at Incheon North Harbor
- Tax Program Under the Restriction of Special Taxation Act (RSTA) and/ or the Tax Reduction and Exemption Control Act (TERCL) - Asset Revaluation (TERCL 56(2)
- Reserve for Investment (Special Case of Tax for Balanced Development Among Areas) RSTA Article 58) (TERCL Articles 42, 43, 44, and 45)
- Price Discounts for DSM Land Purchase at Asan Bay
- Exemption of VAT on Imports of Anthracite Coal
- Provision of Land for Less than Adequate Remuneration in the Godae Complex
- Lease Discounts Provided to Companies Operating in Free Economic Zones
- Tax Reductions Granted to Companies Operating in the Godae Complex
- Tax Subsidies Provided to Companies Operating in Free Economic Zones
- Government Grants and Financial Support to Companies Operating in Free Economic Zones
- Electricity Discount under the Power Business Law Program
- Provision of Liquefied Natural Gas (LNG) for Less than Adequate Remuneration (LTAR)

VII. Analysis of Comments

Comment 1: Whether the Department Should Initiate an Investigation into the GOK's Provision of Electricity for LTAR

Nucor's Case Brief (AR, NSR)

- The Department erred in not initiating an investigation into the GOK's Provision of electricity for LTAR alleged by Nucor.
- The Department failed to fully address Nucor's arguments that the GOK provided electricity for LTAR.¹⁵ The Department's short post-preliminary new subsidy allegation memorandum

¹⁵ See Nucor's Letter titled, "Certain Cut-To-Length Carbon-Quality Steel Plate from South Korea: New Subsidy Allegation for DSM," dated August 20, 2015 (Nucor's NSA for DSM); see also Nucor's Letter titled, "Certain Cut-To-Length Carbon-Quality Steel Plate from South Korea: Request to Reconsider New Subsidy Allegations," dated December 29, 2015 (Nucor's Request for Reconsideration).

did not provide an explanation why there is an insufficient basis to initiate on Nucor's allegation that DSM received a benefit from the GOK's provision of electricity for LTAR.¹⁶

- The Department failed to explain that it extended its *Preliminary Results* to await the results of *Line Pipe from Korea*¹⁷ and failed to provide Petitioner with an opportunity to submit additional factual information in light of its final findings in *Line Pipe from Korea*.
- Nucor provided evidence in its new subsidy allegations to warrant the claim that the GOK provides electricity to DSM and Hyundai Steel for LTAR. Evidence from Nucor was sufficient to warrant at least an initiation of an investigation of the LTAR program.
- The Department's reasoning for not initiating is not consistent with its practice. Specifically, the Department failed to initiate an investigation into the LTAR program even though the evidence provided by Nucor in its new subsidy allegations was the same as the evidence submitted by Petitioners in three past investigations¹⁸ where the Department determined that the same evidence was sufficient to initiate an investigation into whether the GOK provides electricity for LTAR.
- The Department's analysis is flawed and inconsistent with the statute because it does not consider whether KEPCO's electricity prices were based on market principles.
- The Department's reliance on *Line Pipe from Korea*¹⁹ is inappropriate because that determination was published after the deadline for Petitioner to provide factual information in support of its new subsidy allegations.
- The Department's reliance on findings in *Magnesium from Canada* in *Line Pipe from Korea* was unlawful because the analysis from *Magnesium from Canada* was based on the old statutory language.²⁰ According to Nucor, the Department acknowledged this fact in *Line Pipe from Korea*.²¹
- In *Steel Wire Rod from Trinidad and Tobago*,²² the Department recognized that if prices are not set in a manner that allows an appropriate cost recovery, then such prices cannot be considered market-based and the U.S. Court of International Trade affirmed this reasoning in

¹⁶ See Nucor's April 25, 2016, Case Brief at 5, citing to Nucor's NSA at Exhibit 12 dated August 20, 2015.

¹⁷ See *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015) (*Line Pipe from Korea*) and accompanying Issues and Decision Memorandum at Comment 1.

¹⁸ Nucor cites to *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Preliminary Negative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 2172 (January 15, 2016) and accompanying Issues and Decision Memorandum; see also *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Preliminary Negative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 80 FR 79567 (December 22, 2015) and accompanying Issues and Decision Memorandum. See also *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Affirmative Determination*, 80 FR 68842 (November 6, 2015) and accompanying Issues and Decision Memorandum.

¹⁹ See *Line Pipe from Korea* and accompanying Issues and Decision Memorandum at Comment 1.

²⁰ *Id.*, at 16 referencing *Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946 (July 13, 1992) (*Magnesium from Canada*).

²¹ Nucor cites to section 771(5)(E) of Act, that according to Nucor, states that instead of requiring the provision of goods or services at preferential rates, section 771(5)(E) of the Act now defines that a benefit exists when goods or services have been provided for less than adequate remuneration, which is based on "prevailing market conditions."

²² See *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Trinidad and Tobago*, 65 FR 55003 (October 22, 1997); see also *Remand Determination In the Matter of Certain Softwood Lumber from Canada: Final Affirmative Countervailing Duty Determination*, Secretariat File No. USA-CDA-2002-1904-03 NAFTA Binational Panel Review at 9-10.

Royal Thai Government v. United States.²³

- The Department should fully address Nucor’s allegation and initiate an investigation into the GOK’s provision of electricity for LTAR. If the Department does not initiate an investigation into this program, it should fully explain the reasons for it.

DSM’s and Hyundai Steel’s Rebuttal Brief (AR, NSR)

- The Department’s decision not to initiate an investigation into alleged provision of electricity for LTAR was reasonable because Nucor failed to provide sufficient evidence to support its allegations.
- The Department’s reliance on *Line Pipe from Korea* is appropriate because the Department’s methodology in that case is consistent with the statute and its regulations. Additionally, the Department’s final determination in *Line Pipe from Korea* was in response to the same allegation and arguments used by Nucor in this review.
- The data contained in the Korean National Assembly report cannot serve as the basis for supporting an allegation that KEPCO provided electricity for LTAR in the current review that covers calendar year 2014 because the report was from 2013 and, thus, is based on data that does not reflect the 2014 POR.
- Evidence relied upon to demonstrate that a benefit is being provided from electricity purchases vary from year-to-year, which in turn, impacts the outcome. Specifically, in the *CVD Investigation of Wire Rod from Trinidad and Tobago*, the Department examined the electricity rate setting and profitability of the Trinidad and Tobago Electric Commission (TTEC) and found that, for that time period, TTEC was providing a benefit to Caribbean Ispat Limited (IPL).²⁴ However, in a subsequent investigation covering a different time period, the Department found that it did not demonstrate that TTEC was providing an electricity benefit to IPL.²⁵
- The Department’s tier-three analysis applied in *Line Pipe from Korea* is consistent with the market principles analysis outlined in the *CVD Preamble*, which, along with the regulations, the Department promulgated in order to implement the changes to the CVD law, including the revised LTAR provisions of the statute.²⁶
- The Department’s analysis in *Line Paper from Korea* is consistent with the statute because the statute does not require any specific method to apply in determining whether goods or services are provided for LTAR. Specifically, in cases such as here where the GOK is the only supplier of electricity in Korea and private transactions prices in Korea or world market prices are not available, the Department’s regulations provide that the Department “will normally measure the adequacy of remuneration by assessing whether the government price is consistent with market principles.”²⁷
- Contrary to Nucor’s claims, the *CVD Preamble* issued after the changes in the law specifically cites to *Magnesium from Canada* as relevant to its market principles analysis. The *CVD Preamble* also indicates that, as part of its market-principles analysis, the

²³ See *Royal Thai Government v. United States*, 441 F. Supp. 2d 1350, 1359-62 (Ct. Int’l Trade 2006).

²⁴ See *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Trinidad and Tobago*, 62 FR 55001 (October 22, 1991) (*CVD Investigation of Wire Rod from Trinidad and Tobago*).

²⁵ See *Final Negative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*, 67 FR 55810 (August 30, 2002) and accompanying Issues and Decision Memorandum at 25-26.

²⁶ See *Countervailing Duties; Final Rule*, 63 FR 65348 (November 25, 1998) (*CVD Preamble*).

²⁷ See 19 C.F.R. 351.511(a)(2)(iii).

Department would continue to consider factors such as the government's price setting methodology as part of its tier-three analysis as it did in the Samsung Remand.²⁸

- Nucor wrongly argues that KEPCO provided a benefit to Korean steel producers because it did not recover its costs and, therefore, its electricity rates were not established based on market principles. In fact, the Department verified that that KEPCO covered its costs.²⁹
- Nucor's argument that it was not provided an opportunity to file additional factual information after the Department's determination in *Line Pipe from Korea* is misleading and mischaracterizes the Department's determination. The fact that the Department did not request additional information regarding Nucor's allegations is irrelevant because the statute and the regulations do not require the Department to do so.
- In response to Nucor's argument that the Department's decision not to initiate on this program is at odds with the Department's decision in three other investigations, DSM argues that investigations into this program in those cases were initiated prior to the Department's final determination in *Line Pipe from Korea*. The arguments made by Nucor regarding this program have already been considered and rejected in these cases, including in *Line Pipe from Korea*.
- Nucor failed to demonstrate that the Department's analysis is unreasonable and Nucor failed to address the Department's finding that Nucor's specificity allegation was deficient.³⁰
- The Department based its decision not to initiate an investigation based on the fact that the only information provided by Nucor to support its benefit allegation was electricity prices in Japan, which are not available to purchasers in Korea.
- Accordingly, Department acted reasonably in refusing to initiate an investigation into this program. Nucor's arguments are unpersuasive, and the Department should continue to refuse to initiate an investigation into this program.

Department's Position: We disagree with Nucor's assertion that the Department's NSA Memorandum did not provide an explanation why there is an insufficient basis to initiate on Nucor's allegation that DSM received a benefit from the GOK's provision of electricity for LTAR. In the NSA Memorandum, the Department stated that Nucor had not adequately alleged a benefit under section 771(5)(E)(iv) of the Act.³¹

Under 19 CFR 351.511(a)(2)(ii), world market prices may be used as a benchmark to determine whether a foreign government has provided a good or service for LTAR provided that it is reasonable to conclude that such prices would be available to purchasers in the country in question. Concerning electricity, the *Preamble* states that electricity prices (e.g., electricity prices in Europe) normally would not be available to consumers in Latin America and, thus, it would not be reasonable to use such European electricity prices to measure whether a Latin American government sold electricity for LTAR. Further, the mere fact that DSM and Hyundai operate steel making facilities

²⁸ See Redetermination Pursuant to Court Order, *Samsung Electronics Co., Ltd. v. United States*, 973 F. Supp. 2d 1321 (Ct. Int'l Trade 2014), F. Supp. 3d 1320 (Ct. Int'l Trade 2014) (Samsung Remand) at 24.

²⁹ See *Line Pipe from Korea* and accompanying Issues and Decision Memorandum at 17.4.

³⁰ See Memorandum titled, "Administrative Review and New Shipper Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon-Quality Steel Plate from Korea; 2014: New Subsidy Allegation Memorandum for Dongkuk Steel Mill Co., Ltd. and Hyundai Steel Co., Ltd.," dated December 16, 2015 (NSA Memorandum) at 4.

³¹ See NSA Memorandum at 3 (internal citations omitted).

that require a large amount of electricity does not constitute sufficient evidence that the alleged program is specific.

Additionally, in the *Final Determination of Line Pipe from Korea*, the Department examined whether KEPCO set its rates in line with market principals, as provided under 19 CFR 351.511(a)(2)(iii). Specifically, the Department examined whether KEPCO's prices were "consistent with the utility company's standard pricing mechanism." Ultimately, the Department determined that KEPCO did not sell electricity to members of the steel industry in a manner that conferred a benefit under section 771(5)(E)(iv) of the Act. In reaching this conclusion, the Department noted that it "fully verified KEPCO's standard pricing mechanism and its application in the setting of industrial electricity tariffs" and that KEPCO set its electricity prices "using its standard pricing system" and that this pricing system was "consistent with the Department's regulations and precedent."

As indicated above, in the instant proceedings, Petitioner alleges that KEPCO sold the electricity used in industrial sites of the country's largest conglomerates at lower than the production cost in order to strengthen the competitiveness of those large conglomerates. Thus, Petitioner's allegation goes to whether KEPCO sold electricity in a manner that was in line with market principles. In the instant proceeding, we find that Petitioner has not provided any additional information that would call into question the Department's determination in the *Final Determination of Line Pipe from Korea* that KEPCO's sale of electricity was market-based and did not yield a benefit under the analysis provided under 19 CFR 351(a)(2)(iii). Therefore, we recommend not initiating an investigation of this allegation.

As noted by the respondents, the Department responded to Nucor's December 29, 2015, filing in which it urged the Department to reconsider its determination in the NSA Memorandum:³²

For the reasons stated in the Department's NSA Memorandum, we continue to find that there is an insufficient basis to initiate an investigation of Petitioner's subsidy allegation programs concerning the Government of Korea's (GOK) provision of electricity for less than adequate remuneration and the GOK's purchase of electricity for more than adequate remuneration programs.

Furthermore, since the issuance of the NSA Memorandum, the Department has issued another determination addressing whether KEPCO sells electricity for LTAR. Specifically, in *CORE from Korea*, the Department affirmed its findings from *Line Pipe from Korea* concluding that:

In addition, there is no information on the record that Union/Dongkuk and Dongbu are treated differently from other industrial users of electricity that purchase comparable amounts of electricity because the rates paid were from the tariff schedule applicable to all industrial users. Therefore, consistent with 19 CFR 351.511 and *Magnesium from*

³² See Memorandum titled, "Certain Cut-To-Length Carbon-Quality Steel Plate from the Republic of Korea: Countervailing Duty Administrative Review & New Shipper Review - New Subsidy Allegations," dated March 24, 2016.

Canada, we continue to find that this program provides no benefit to Union/Dongkuk and Dongbu because the prices charged to these respondents under the applicable industrial tariff were consistent with KEPCO's standard pricing mechanism.³³

Moreover, the period of investigation of *CORE from Korea*, calendar year 2014, is the same as the POR of the administrative review and NSR at issue here. When considering whether to initiate an investigation of an alleged subsidy program, the Department's practice is to take into consideration its analysis of the alleged subsidy program in other CVD proceedings.³⁴ As noted above, the Department determined in *Line Pipe from Korea* and *CORE from Korea*, two CVD proceedings that covered calendar years 2013 and 2014, respectively, that KEPCO did not sell electricity to steel producers for LTAR. Further, Nucor has not presented any new information in the instant administrative review or NSR that warrants reconsideration of the Department's prior findings. This also explains why the Department initiated investigations based on this evidence in the past but is not doing so now. For all these reasons, we continue to find that the Department's decision not to initiate on Nucor's allegation was appropriate.

We also disagree with Nucor's argument that the Department failed to solicit additional information regarding Nucor's new subsidy allegation. Nucor cites to no regulation or case precedent to support its claim that the Department was obligated to solicit additional information from Nucor to permit Nucor to cure deficiencies in its new subsidy allegations. Further, by issuing the NSA Memorandum, the Department fulfilled its obligation to evaluate Nucor's allegations of new subsidies.

In response to Nucor's allegation that the Department's reliance on findings in *Magnesium from Canada* in *Line Pipe from Korea* was unlawful because the analysis in *Magnesium from Canada* was based on the old statutory language, we disagree. The Department has discretion to conduct its LTAR analysis under the statute. Further, the *CVD Preamble* issued after the changes in the law specifically states that, as part of its market-principles analysis, the Department would continue to consider factors such as the government's price setting methodology as part of its tier-three analysis and cites to *Magnesium from Canada* as relevant to its market principles analysis.³⁵

³³ See *Countervailing Duty Investigation of Certain Corrosion Resistant Steel Products from the Republic of Korea: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35310 (May 24, 2016) (*CORE from Korea*) and accompanying Issues and Decision Memorandum.

³⁴ See, e.g., *Certain Corrosion-Resistant Steel Products From the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Initiation of Countervailing Duty Investigations*, 80 FR 37223 (June 30, 2016) and accompanying Initiation Checklist for *CORE from Taiwan* at 11, where the Department determined to initiate on an alleged subsidy program based on its decision to examine the program in a prior initiation; see also Initiation Checklist for *CORE from Taiwan* at 23, where the Department determined not to initiate on an alleged subsidy program based on the fact that the Department found the alleged program to be not countervailable in a prior CVD proceeding and Petitioners did not provide any new information to warrant a reconsideration of the Department's prior finding.

³⁵ See *CVD Preamble*, 63 FR at 65378.

Finally, we disagree with Nucor that the Department extended its *Preliminary Results* to await the results the *Line Pipe from Korea*. As the extension memorandum indicates, the Department extended its preliminary results because:³⁶

We determine that it is not practicable to complete the preliminary results of this review by the current deadline of November 2, 2015, while accommodating additional time requested by the respondents, the petitioner, and the Government of Korea to respond to the initial questionnaire. Moreover, the Department will need additional time to examine questionnaire responses, analyze the issues in the case, potential new subsidy allegations and, if necessary, draft and send out supplemental questionnaires.

Comment 2: Whether the Department Improperly Countervailed Acquisition Tax Exemptions Received By Hyundai Steel under the Restrictions of Special Taxation Act (RSTA) Article 120 in Connection with its Acquisition of Hyundai HYSCO's Cold-Rolled Assets

Hyundai Steel's Case Brief (NSR)

- Hyundai Steel was only eligible for the Acquisition Tax Exemptions program based on its acquisition of Hyundai HYSCO's cold-rolled assets.
- The HYSCO assets acquired at the Dangjin facility are physically separate from any facilities that produce subject merchandise.
- The CTL plate and cold-rolled products are produced using a separate production process, and neither is used as an input for the other.

Nucor's Rebuttal Brief (NSR)

- The Department correctly found that the tax exemptions for Hyundai Steel's purchase of Hyundai HYSCO's cold-rolled assets were not "tied" directly to the production of cold-rolled steel.
- The Department should find that the tax exemptions related to Hyundai Steel's acquisition of Hyundai HYSCO's cold-rolled steel assets benefitted the entire company and that the subsidy is not "tied" to only Hyundai Steel's production of cold-rolled steel. Thus, the Department should continue to apply the tax exemptions to all of Hyundai Steel's sales, including CTL plate.
- As stated in the *CVD Preamble*, a government subsidy may not benefit all products or corporate entities equally and if a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product.³⁷
- In this review Hyundai Steel has failed to demonstrate that the tax exemptions at issue were tied to products other than CTL Plate.
- Although Hyundai Steel cites the Department's Verification Report that HYSCO "only produces cold-rolled products and was not engaged in the production of subject merchandise" it fails to identify any record evidence the purpose of the tax exemption was only for cold-rolled products.

³⁶ See Memorandum titled, "Cut-to-Length Carbon Quality Steel Plate from the Republic of Korea: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative and New Shipper Reviews," dated July 7, 2015 (internal citations omitted).

³⁷ See *CVD Preamble*, 63 FR at 65403.

- According to the evidence on the record, the stated purpose of the tax exemptions was to benefit certain groups of industries or enterprises meeting the requirements of the Corporate Tax Act.

Department's Position: Hyundai Steel correctly states that the Department's Verification Report did identify that HYSCO "only produces cold-rolled products and was not engaged in the production of subject merchandise."³⁸ However, as Nucor correctly asserts, Hyundai Steel did not reference any specific Korean government statute on the record that the subsidy bestowed was for a specific purpose or product, or was tied to a specific export market.

The subsidy Hyundai Steel received under RSTA Article 120(1) of the Korean tax law was to benefit certain groups of industries or enterprises engaged in a "corporate split meeting the requirements referred to in the subparagraph of Article 46(2) of the Corporate Tax Act."³⁹ There is no record evidence that the GOK's conferral of the subsidy was contingent upon Hyundai Steel's sales or production of cold-rolled steel. Therefore, there is no evidence on the record that benefits under this program were tied to non-subject merchandise (cold-rolled steel). Accordingly, we have continued to attribute subsidies received under this program to the respondent's total sales.

Comment 3: Whether the Department Improperly Countervailed Property Tax Exemptions Received by the Pohang Plant under the Restriction of Special Location Taxation Act (RSLTA)

Hyundai Steel's Case Brief

- In its preliminary calculation of the benefit received by Hyundai Steel under RSTLA Article 78 the Department incorrectly included property tax exemptions received by Hyundai Steel's Pohang Works as this production facility was not involved in the production of subject merchandise during the POR.⁴⁰
- Thus, in accordance with the Department's regulations⁴¹ and its practice⁴² any benefits Hyundai Steel received under RSLTA Article 78 for the Pohang plant should be considered not countervailable.

Nucor did not comment on this issue.

Department's Position: In the *Preliminary Results*, the Department found the property tax exemptions that Hyundai Steel received under RSTLA Article 78 constituted a financial contribution, were specific, and conferred a benefit under sections 771(5)(D)(ii), 771(5A)(D)(iv), and 771(5)(E) of the Act, respectively.⁴³ Concerning the treatment of benefits received under the

³⁸ See Memorandum titled, "Verification of the Questionnaire Responses Submitted by Hyundai Steel Company Ltd.," dated March 1, 2016 (Hyundai Steel's Verification Report) at 4.

³⁹ See Hyundai Steel's June 18, 2015, Initial Questionnaire Response (IQR) at Exhibit V-7.

⁴⁰ See Memorandum to the File titled, "Preliminary Calculations for Hyundai Steel Co., Ltd.," dated March 4, 2016 (Hyundai Steel Preliminary Calculation Memo) at Attachment II.

⁴¹ See 19 CFR 351.525(b)(5).

⁴² See *Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet, and Strip*, 67 FR 34905 (May 16, 2002) (*PET Film From India*) and accompanying Issues and Decision Memorandum.

⁴³ See Preliminary Decision Memorandum at 8-9.

program at issue, Hyundai Steel advocates an approach in which the Department tracks the manner in which an entity uses a subsidy. Specifically, Hyundai Steel argues that the Department should limit its benefit analysis to those subsidies received by Hyundai Steel factories involved in the production of subject merchandise. This argument does not comport with the Department's regulations. Pursuant to 19 CFR 351.503(c), the Department "is not required to consider the effect of the government action on the firm's performance, including its prices or output." Furthermore, the *CVD Preamble* states that:

In analyzing whether a benefit exists, we are concerned with what goes into a company, such as enhanced revenues and reduced-cost inputs in the broad sense that we have used the term, not with what the company does with the subsidy.⁴⁴

Concerning the program at issue, there is no information indicating that subsidy benefits are tied to a particular good or market at the time of bestowal.⁴⁵ As a result, consistent with 19 CFR 351.503(c) and the *CVD Preamble*, we have included all subsidy benefits received by Hyundai Steel under the program during the POR in the numerator of our net subsidy rate calculation.

Comment 4: Whether the Department Should Initiate an Investigation into the GOK's Provision of Electricity for More than Adequate Remuneration (MTAR)

Nucor's Case Brief

- The Department's erred in not initiating an investigation into the alleged GOK's provision of electricity for MTAR.
- The Department's failed to consider evidence on the record demonstrating that contrary to the Department's claim, Hyundai Steel operated power generating facilities during the POR; thus it benefited from this program.⁴⁶

Hyundai Steel's Rebuttal Brief

- The Department's decision not to initiate an investigation into KEPCO's alleged purchase of electricity for MTAR was correct because, according to Hyundai Steel, Nucor's arguments are not supported by the record and are misleading.
- Nucor's claim that Korea Power Exchange (KPX) purchased Pohang Iron & Steel Co., Ltd.'s (POSCO's) electricity and that Hyundai Steel operates power generation facilities⁴⁷ is not relevant to the issue of whether Hyundai Steel sold electricity to KEPCO for MTAR. At best, this evidence indicates that Hyundai Green Power and Hyundai Green are affiliated and may have sold electricity to the KPX. However, record evidence demonstrates that while Hyundai Green Power and Hyundai Energy are affiliated with Hyundai Steel, they do not qualify as cross-owned affiliates because there is no majority ownership between them.

⁴⁴ See *CVD Preamble*, 63 FR at 65361.

⁴⁵ See GOK's September 16, 2015, Initial Administrative Review Questionnaire Response (GOK AR Primary QNR Response) at 5 and Exhibit GIR-2; see also GOK's September 24, 2015, supplemental questionnaire response (GOK AR Supplemental QNR Response) at Exhibit GSQ1R-2.

⁴⁶ See Nucor's Letter titled, "Certain Cut-To-Length Carbon-Quality Steel Plate from South Korea: New Subsidy Allegation for Hyundai Steel," dated July 22, 2015 (Nucor's NSA for Hyundai Steel) at 35-36.

⁴⁷ See Nucor Case Brief at 17-18 (citing Nucor's NSA at 35-36, Exhibits 43-45).

Further, neither of these affiliates provided inputs into the production of Hyundai Steel's downstream products.⁴⁸

- In the final results the Department should reaffirm its decision not to initiate an investigation into the GOK's purchase of electricity for MTAR.

Department's Position: The Department addressed Nucor's concerns in its NSA Memorandum. Specifically, the Department found that:⁴⁹

Petitioner has not submitted any information indicating that DSM and Hyundai, the two mandatory respondents under individual examination in the proceedings at issue, operated power generating facilities during the POR. Further, as noted above, we find there is no evidence currently on the record indicating that the firms have such facilities. Therefore, we find that Petitioner has not adequately alleged a means by which KPX could have provided a financial contribution and a benefit, as described under sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act, respectively, to the respondent firms.

Furthermore, the Department responded to Nucor's concerns when it reiterated the same points in a second request to the Department to reexamine its original finding.⁵⁰ Because Nucor essentially repeated the same arguments that it used in its initial position, because no new evidence had been submitted, the Department determined not to initiate an investigation of certain new subsidy allegations made by Nucor.⁵¹ Finally, at verification, the Department confirmed that neither of the affiliates in question was cross-owned with Hyundai Steel or that they provided inputs into the production of Hyundai Steel's downstream products.⁵² Thus, the Department continues to reaffirm its decision not to initiate an investigation into the GOK's purchase of electricity for MTAR.

⁴⁸ See Hyundai Steel's Rebuttal Brief at 17.

⁴⁹ See NSA Memorandum at 10.

⁵⁰ See Nucor's Request for Reconsideration.

⁵¹ See NSA Memorandum.

⁵² See Hyundai Steel Verification Report at 4-5.

VIII. Recommendation

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

Agree _____ Disagree _____

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

Date