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October 31, 2016

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

**SUBJECT:** Issues and Decision Memorandum for the Final Results of  
Expedited Sunset Review of the Countervailing Duty Order on  
Stainless Steel Sheet and Strip in Coils from the Republic of Korea

Summary

We have analyzed the substantive responses of the interested parties participating in the third sunset review of the countervailing duty (CVD) order on stainless steel sheet and strip in coils (sheet and strip) from the Republic of Korea. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues that the Department of Commerce (the Department) is addressing in this expedited sunset review.

1. Likelihood of continuation or recurrence of a countervailable subsidy
2. Net countervailable subsidy likely to prevail
3. Nature of the subsidy

History of the Order

On June 8, 1999, the Department published in the *Federal Register* its final determination in the CVD investigation on sheet and strip from Korea.<sup>1</sup> In the *Final Determination*, the Department found that various forms of financial assistance and export subsidies were being provided to the Korean producers/exporters of sheet and strip through the following programs that were found to confer countervailable subsidies:

- The Government of Korea's (GOK) Direction of Credit;
- Purchase of Sammi Specialty Steel Division by POSCO;

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<sup>1</sup> See *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet in Coils from the Republic of Korea*, 64 FR 30636 (June 8, 1999) (*Final Determination*).



- GOK Pre-1992 Infrastructure Investments at Kwangyang Bay;
- Export Industry Facility Loans;
- Short-Term Export Financing;
- Article 17 of the Tax Exemption and Reduction Control Act (TERCL): Reserve for Export Loss;
- Article 16 of the TERCL: Reserve for Overseas Market Development;
- Investment Tax Credits;
- Electricity Discounts Under the Requested Loan Adjustment Program (RLA);
- Loans From the National Agricultural Cooperation Federation;
- POSCO's Two-Tiered Pricing Structure to Domestic Customer

On August 6, 1999, the Department issued an amended final determination correcting a ministerial error and provided a higher net countervailable subsidy rate for the Incheon Iron and Steel Company (Inchon).<sup>2</sup> As a result, the *ad valorem* net subsidy rates calculated as part of the CVD investigation were as follows:

Inchon:	2.65 percent (amended)
Dai Yang Metal Company (DMC):	1.58 percent
Taihan Electric Wire Company (Taihan):	7.00 percent
Sammi Steel Company, Ltd. (Sammi):	59.30 percent
All Others:	1.68 percent

Additionally, the Department excluded the Pohang Iron and Steel Company (POSCO) from the CVD order.

Since the issuance of the CVD order on sheet and strip, the Department has completed five administrative reviews, two changed circumstances reviews, and two sunset reviews. The Department completed the first three administrative reviews and one changed circumstances review prior to the issuance of the initial sunset review.<sup>3</sup> In the *First Sunset Review*, the

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<sup>2</sup> See also *Amended Final Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea*, 64 FR 42923 (August 6, 1999) (*Amended Final Determination*).

<sup>3</sup> See *Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 67 FR 1964 (January 15, 2002) (*First Review*); *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Amended Final Results of Countervailing Duty Administrative Review*, 67 FR 8229 (February 22, 2002) (*Amended First Review*), *Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip from the Republic of Korea*, 68 FR 13267 (March 19, 2003) (*Second Review*); *Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 69 FR 2113 (January 14, 2004) (*Third Review*); *Amended Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 69 FR 7419 (February 17, 2004) (*Amended Third Review*), *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Notice of Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review*, 67 FR 38257 (June 3, 2002) (*Preliminary CCR*) in which the Department determined that INI Steel Company (INI) was the successor-in-interest to Incheon, unchanged in the *Second Review*, which incorporated the Department's findings in the *Preliminary CCR*, and *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results of*

Department determined that revocation of the CVD order was likely to lead to continuation or recurrence of a countervailable subsidy at rates adjusted to take into account POSCO's privatization as well as the collapsing of two companies from the original investigation (Inchon and Sammi) in the *Third Review* (known then as INI/BNG).<sup>4</sup>

Subsequent to the issuance of the *First Sunset Review*, the Department completed two additional administrative reviews.<sup>5</sup> Additionally, the Department completed a changed circumstances review in which it determined that Hyundai Steel Company (Hyundai) was the successor-in-interest to INI (formerly Inchon).<sup>6</sup> On October 7, 2010, the Department issued the final expected results of the second sunset review in which it determined that revocation of the CVD order would be likely to lead to continuation or recurrence of countervailable subsidies.<sup>7</sup> Since the issuance of the *Second Sunset Review*, the Department has not conducted any further administrative proceedings with respect to the CVD order on sheet and strip.

#### Background:

On July 1, 2016, the Department initiated the third sunset review of the CVD order on sheet and strip from Korea pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).<sup>8</sup> On July 29, 2016, the Department received a notice of intent to participate from Allegheny Ludlum, LLC d/b/a ATI Flat Rolled Products (ATI) and Outokumpu Stainless USA LLC (Outokumpu) (together, domestic interested parties), within the deadline specified in 19 CFR 351.218(d)(1)(i).<sup>9</sup> The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as domestic producers of sheet and strip in the United States.

The Department received an adequate substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). However, the Department did not receive a substantive response from any government or respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department has conducted an expedited review of the CVD order.

#### Discussion of the Issues:

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the CVD duty order would likely lead to continuation or

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*Expedited Sunset Review of Countervailing Duty Order*, 69 FR 75513 (December 17, 2004) (*First Sunset Review*).

<sup>4</sup> See *First Sunset Review*.

<sup>5</sup> See *Final Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 72 FR 120 (January 3, 2007) (*Fourth Review*); and *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 73 FR 2456 (January 15, 2008) (*Fifth Review*).

<sup>6</sup> See *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results of Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results of Countervailing Duty Changed Circumstances Review*, 72 FR 12767 (March 19, 2007) (CCR).

<sup>7</sup> See *Stainless Steel and Strip in Coils from the Republic of Korea: Final Results of Expedited Second Sunset Review*, 75 FR 62101 (October 7, 2010) (*Second Sunset Review*).

<sup>8</sup> See *Initiation of Five-Year Review*, 81 FR 43185 (July 1, 2016) (*Third Sunset Review Initiation*).

<sup>9</sup> See Domestic Interested Parties' submission (Domestic Response), dated July 29, 2016.



recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy has occurred and is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission (ITC) the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures (ASCM).

Below we address the substantive responses of the interested parties.

## 1. **Likelihood of Continuation or Recurrence of a Countervailable Subsidy**

### Domestic Interested Parties' Comments

- Revocation of the CVD order would likely lead to continuation or recurrence of countervailable subsidies to Korean producers and exporters of sheet and strip.
- In each of the subsequent administrative reviews conducted by the Department, the agency has found the continued existence of countervailable subsidy programs.
- The Department's findings indicate that several of the subsidy programs found in the *Final Determination* continue to exist today. For example, in the *Second Sunset Review*, the Department determined that the GOK's direction of credit program continued to exist.<sup>10</sup>
- Further, in *Cold Rolled Steel from Korea*, the Department determined that the GOK continues to subsidize the steel industry through subsidy programs that the Department found countervailable in the *Final Determination*.<sup>11</sup>
- The Department's *Policy Bulletin* makes clear that "continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies."<sup>12</sup>
- The Department stated in the *Second Sunset Review* that "we find that countervailable subsidies continue to be provided to producers and exporters of sheet and strip from Korea. Thus, subsidization will likely continue or recur if the order is revoked."<sup>13</sup>
- The *Policy Bulletin* states that, "where there is a long track record of not using a program," but the program continues to exist, company or industry-specific renunciations of subsidies under the program are not necessarily an indication that continued likely subsidization is unlikely.<sup>14</sup>

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<sup>10</sup> See *Second Sunset Review* and accompanying Issues and Decision Memorandum (IDM) at 4.

<sup>11</sup> See *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49943 (July 29, 2016) (*Cold Rolled Steel from Korea*).

<sup>12</sup> See *Policies Regarding the Conduct of Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*Policy Bulletin*).

<sup>13</sup> See *Second Sunset Review* and accompanying IDM at 4-5.

<sup>14</sup> See *Policy Bulletin*, 63 FR at 18875.

- The Department found in the *Second Sunset Review* that countervailable benefits existed under 20 different programs. This finding alone constitutes sufficient evidence to demonstrate a likelihood of continued and recurring subsidization in the event of revocation.
- That a countervailing duty order has caused a respondent to refrain from using certain subsidies during subsequent administrative review periods does not mean that these subsidies are unlikely to be used if the order is revoked. Rather, it means that the countervailing duty order is having its intended effect, and that absent the order, there will likely be a return to higher levels of subsidization.
- Available import data indicate that the CVD order, and the companion antidumping duty order, have had a direct effect on imports as demonstrated by the fact that imports of sheet and strip from Korea declined significantly immediately after the imposition of the orders and, although they increased somewhat during the 2004-2008 period, they remain well below the pre-order levels.<sup>15</sup>
- Therefore, given the continued existence of many countervailable subsidy programs, as well as sales of subsidized subject merchandise during the post-order period, the Department should again find that Korean producers/exporters are likely to receive continued subsidies if the order is revoked.

**Department's Position:** The Department makes its likelihood determination, (*i.e.*, of whether revocation of the order is likely to lead to continuation or recurrence of a countervailable subsidy) on an order-wide (country-wide) basis, although company-specific rates are reported to the ITC.<sup>16</sup> As discussed above, in the *Final Determination* the Department found that countervailable subsidies were being provided to sheet and strip producers under eleven separate programs that provided tax benefits, electricity discounts, preferential lending, as well as the government provision of goods at preferential prices. The Department also identified several programs that were available to, but not used during the period of investigation, by sheet and strip producers. The Department has completed five administrative reviews, two changed circumstances reviews, and two previous sunset reviews of this order. In the most recently completed administrative review, the Department found countervailable benefits, albeit *de minimis*, were being provided to the one respondent under the GOK's Direction of Credit program, twenty additional programs continued to exist but were not used by the respondent, and three programs were not countervailable.

The presence of programs that have not been used, but that also have not been terminated, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy.<sup>17</sup> Therefore, based on the Department's findings during the sunset period that subsidy programs continue to exist, we find that countervailable subsidies continue to be provided to producers and exporters of sheet and strip from Korea. Thus, subsidization will likely continue or recur if the order is revoked.

<sup>15</sup> See Domestic Response at 20-21.

<sup>16</sup> See Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103-316, Vol. 1 (1994) at 879 and House Report, H.R. Rep. No. 103-826, part 1 (1994) (House Report) at 56.

<sup>17</sup> See *Final Results of Expedited Sunset Review: Sulfanilic Acid from India*, 65 FR 6171, 6173 (February 8, 2000).

## 2. Net Countervailable Subsidy

### Domestic Interested Parties' Comments

- Consistent with the prior sunset reviews and application of the principles set forth in the SAA and the *Policy Bulletin*<sup>18</sup> to the facts of the instant sunset review, the Department should rely on the net subsidy margins from the first and second sunset reviews.
- Specifically, the Department should adjust the margins from the *Amended Final Determination* as follows:

INI/BNG (formerly known as Incheon and now known as Hyundai)	0.54 percent
DMC	0.67 percent
Taihan	4.64 percent
All Others	0.63 percent

**Department's Position:** The Department normally will select a rate from the investigation, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order.<sup>19</sup> Pursuant to the Department's practice, this rate may not be the most appropriate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent review.<sup>20</sup> In addition, the Department may make adjustments to the net countervailable subsidy calculated in the original investigation to take into account subsidy programs that were found in subsequent reviews to be eliminated.

We continue to find, as we did in the first and second sunset reviews, that it is appropriate to depart from the investigation rates based on two facts.<sup>21</sup> First, as a result of POSCO's privatization, there has been a program-wide change with respect to purchases of stainless steel inputs from POSCO under its two-tiered pricing system.<sup>22</sup> Second, in the *Third Review*, the Department determined that cross-ownership existed between INI (formerly Incheon) and BNG (formerly Sammi) and calculated a single net countervailable subsidy rate for the two companies. As a result, neither the investigation rate for Incheon or Sammi (INI's and BNG's respective predecessors) is appropriate to report to the ITC for INI/BNG (currently known as Hyundai). The only rate that reflects these changes is the 0.54 percent rate for INI/BNG calculated in the *Third Review*. With respect to the other companies subject to this sunset review, as we did in the previous sunset reviews, we have continued to adjust the investigation rate, as appropriate, to reflect the program-wide change to the two-tiered pricing system resulting from POSCO's privatization.<sup>23</sup>

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<sup>18</sup> See *Policy Bulletin*, 63 FR at 18876.

<sup>19</sup> See SAA at 890 and House Report at 64.

<sup>20</sup> See *Policy Bulletin*, 63 FR at 18876.

<sup>21</sup> See *Second Sunset Review* and accompanying IDM at 5.

<sup>22</sup> See *Third Review* and accompanying IDM at 12 and 26-28.

<sup>23</sup> See *Second Sunset Review* and accompanying IDM at 5.

### 3. Nature of the Subsidy

Domestic interested parties did not comment on this issue.

Consistent with section 752(a)(6) of the Act, the Department is providing the following information to the Commission concerning the nature of the subsidy, and whether the subsidy is a subsidy as described in Article 3 or Article 6.1 of the ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000.

The following programs are export subsidies as described under Article 3 of the ASCM. A complete description of each of these programs is available on the Department's subsidies enforcement website available at:

[https://eset.trade.gov/eset/groups/public/documents/web\\_resources/eset\\_home.hcsp](https://eset.trade.gov/eset/groups/public/documents/web_resources/eset_home.hcsp).

*Export Industry Facility Loans ("EIFL"):* EIFLs are contingent upon export, and are therefore export subsidies to the extent that they are provided at preferential rates.

*Short-Term Export Financing:* Short-term export financing program is contingent upon export, and are therefore export subsidies to the extent that they are provided at preferential rates.

*Reserve for Export Loss – Article 16 of TERCL:* This program constitutes an export subsidy because the use of the program is contingent upon export performance.

*Reserve for Overseas Market Development – Article 17 of the TERCL:* Article 17 of the TERCL operates similar to Article 16 of the TERCL and constitutes an export subsidy under section 771(5A)(B) of the Act because the use of the program is contingent upon export performance.

*Export Insurance Rates Provided by the Korean Export Insurance Corporation:* Constitutes an export subsidy under section 771 (5A)(B) of the Act because the use of the program is contingent upon export performance.

The following programs do not fall within the meaning of Article 3.1 of the ASCM. However, they could be subsidies described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the ASCM. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review for the Department to make such a determination.

Nevertheless, we are providing the ITC with the following program descriptions. A complete description of each of these programs is available on the Department's subsidies enforcement website listed above.

- *Electricity Discounts Under the Requested Load Adjustment Program*
- *Export Industry Facility Loans (EIFLs)*
- *Loans from National Agricultural Cooperation Federation*



- *Reserve for Investment*
- *Loans from the Energy Savings Fund*
- *Tax Programs Under RSTA (TERCL)*
- *Reserve for Investment Under Article 43-5 of TERCL*
- *Reserve for Overseas Market Development – Article 17 of the TERCL*
- *RSTA Article 9 Reserve for Research and Human Resources Development (formerly Technical Development Fund)*
- *Selective Depreciation Due Revaluation of Assets*
- *Tax Exemptions for Land Acquisition*
- *Emergency Load Reduction Program (ELR)*
- *Energy Saving Facility Loan*
- *Excessive Duty Drawback*
- *Special Depreciation of Assets on Foreign Exchange Earnings*
- *Special Depreciation Under Article 11 of the “Act Concerning the Regulation of the Tax Reduction and Exemption”*
- *Equipment Investment to Promote Worker's Welfare Under Article 88 of TERCL*
- *Reduction of Tax Regarding the Movement of a Factory That Has Been Operated for More Than Five Years (Article 71 of RSTA)*
- *Tax Credit in Equipment to Develop Technology and Manpower Under Article 10 of the TERCL*
- *Tax Credits for Investments in Specific Facilities Under Article 26 of the TERCL*
- *Tax Credit for Vocational Training Under Article 18 of the TERCL*
- *Tax Incentives for Highly-Advanced Technology Business Under the Foreign Investment and Foreign Investment and Foreign Capital Inducement Act*
- *Infrastructure Investments at Harbor Facilities*
- *Research and Development Grants*

#### Final Results of Review

As a result of this review, the Department finds that revocation of the CVD order would likely lead to continuation or recurrence of subsidization at the rates listed below.


Manufacturers/Producers/Exporters	Weighted-average Rate (percent)
INI/BNG (formerly known as Incheon and now known as Hyundai)	0.54
Dai Yang Metal Company	0.67
Taihan Electric Wire Company	4.64
All Others	0.63



Recommendation

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the *Federal Register*.

Agree ☒ Disagree ☐

  
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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

21 OCTOBER 2016  
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(Date)