



C-580-837

Administrative Review

POR: 1/1/2015 - 12/31/2015

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August 11, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Final Results of 2015
Countervailing Duty Administrative Review and Partial
Rescission: Cut-to-Length Carbon-Quality Steel Plate from the
Republic of Korea

I. Summary

On March 15, 2017, the Department of Commerce (Department) published the *Preliminary Results* of this countervailing duty (CVD) administrative review (AR).¹ The Department received case briefs from interested parties.

This review covers multiple exporters/producers; two of which are being individually examined as mandatory respondents. The Department preliminarily determined that Hyundai Steel Co. (Hyundai Steel) received countervailable subsidies that are above *de minimis* and that Dongkuk Steel Mill Co., Ltd. (DSM) received countervailable subsidies that are *de minimis* as provided under 19 CFR 351.106(c)(1). The Department also preliminarily determined that five companies for which a review was requested and not preliminarily rescinded, but were not selected as mandatory respondents, would receive the rate preliminarily calculated for Hyundai Steel.² In addition, the Department stated its intent to partially rescind the review with respect to

¹ See *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, and Preliminary Intent to Rescind in Part: Calendar Year 2015*, 82 FR 13792 (March 15, 2017) (*Preliminary Results*), and accompanying Decision Memorandum (Preliminary Decision Memorandum).

² The five firms subject to the non-selected rate are: Bookuk Steel, BDP International, Samsung C&T Engineering and Construction Group (Samsung C&T Engineering), Sung Jin Steel Co., Ltd., and Samsung C&T Trading and Investment Group (Samsung C&T Trading).



companies that timely filed no shipment certifications.³ 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 review.

In the *Preliminary Results*, we invited interested parties to submit case and rebuttal briefs and to request a hearing. On April 14, 2017, the Department received case briefs from Nucor Corporation (Nucor), the Government of Korea (GOK), and Samsung C&T Corporation (Samsung C&T Corp.). On April 19, 2017, the GOK, Hyundai Steel, and Nucor submitted rebuttal briefs.

II. List of Interested Party Comments

Below is a complete list of the issues in this administrative review for which we received comments from interested parties. We analyzed these comments in the “Analysis of Comments” section below.

Comment 1: Whether the Department Should Initiate an Investigation into the GOK’s Provision of Electricity for Less than Adequate Remuneration (LTAR)

Comment 2: Whether the Department Erred in not Initiating an Investigation into the GOK’s Purchases of Electricity for More than Adequate Remuneration (MTAR)

Comment 3: Whether the Department’s Findings that the Demand Response Resources (DRR) Program Constitutes a Countervailable Subsidy is in Accordance with the Requirements of the Statute or the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (SCM Agreement)

Comment 4: Whether the Department Erred in Finding that the Restriction of Special Taxation Act (RSTA) Tax Programs are *De Facto* Specific

Comment 5: Whether the Department Should Find that Samsung C&T Engineering and Samsung C&T Trading Samsung C&T Trading Had No Reviewable Entries During the Period of Review (POR)

III. Period of Review

The period for which we are measuring countervailable subsidies, *i.e.*, POR, is January 1, 2015, through December 31, 2015.

³ These companies are GS Global Corp. (GS Global), Hyundai Glovis, Hyundai Mipo Dockyard Co., Ltd (Hyundai Mipo), Hyosung Corporation (Hyosung), Daewoo International Corp., Samsung C&T Corporation (Samsung C&T Corp.), SK Networks Co., Ltd. (SK Networks), and Samsung Heavy Industries.

IV. 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 (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.

V. Rescission of the 2015 Administrative Review, in Part

GS Global, Hyundai Glovis, Hyundai Mipo, Hyosung, Daewoo International Corp., Samsung C&T Corp., SK Networks, and Samsung Heavy Industries claimed no shipments during the POR, and Customs and Border Protection (CBP) did not provide any contradictory information. Based on our analysis of record evidence, we preliminarily determined that GS Global, Hyundai Glovis, Hyundai Mipo, Hyosung, Daewoo International Corp., Samsung C&T Corp., SK Networks, and Samsung Heavy Industries did not ship subject merchandise to the United States during the POR.⁴ Therefore, in accordance with 19 CFR 351.213(d)(3), and consistent with our practice,⁵ we preliminarily determined to rescind the review for GS Global, Hyundai Glovis, Hyundai Mipo, Hyosung, Daewoo International Corp., Samsung C&T Corp., SK Networks, and Samsung Heavy Industries.⁶

We received no comments concerning our preliminary intent to rescind the administrative review with regard to GS Global, Hyundai Glovis, Hyundai Mipo, Hyosung, Daewoo International Corp., Samsung C&T Corp., SK Networks, and Samsung Heavy Industries. Therefore, we have rescinded the review for these companies.

VI. 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(e)(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 usual practice in determining the rate for respondents not selected for individual examination has been to weight-average the net subsidy rates for the selected companies, excluding rates that are zero, *de minimis*, or based entirely on facts available.⁷ 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 in the accompanying *Federal Register* notice of final results, dated concurrently with this Issues and Decision Memorandum, we determine that Hyundai Steel received countervailable subsidies that are above *de minimis* and that DSM received countervailable subsidies that are *de minimis*. Therefore, we are applying to the non-selected companies the above *de minimis* net subsidy rate calculated for Hyundai Steel.

⁴ See *Preliminary Results*, 82 FR at 13793; see also *Preliminary Decision Memorandum* at 1-2.

⁵ See, e.g., *Aluminum Extrusions from the People's Republic of China: Notice of Partial Rescission of Countervailing Duty Administrative Review*, 79 FR 2635 (January 15, 2014).

⁶ See *Preliminary Results*, 82 FR at 13793; see also *Preliminary Decision Memorandum* at 1-2.

⁷ See, e.g., *Certain Pasta from Italy: Final Results of the 2008 Countervailing Duty Administrative Review*, 75 FR 37386, 37387 (June 29, 2010) (*Pasta from Italy*).

VII. Subsidy Methodologies

The Department has made no changes to the methodologies used in the *Preliminary Results* (e.g., no changes to our approach to the allocation period, loan benchmarks, discount rates, denominators, or attribution). For descriptions of the methodologies used for these final results, *see* the *Preliminary Results* and accompanying Preliminary Decision Memorandum.

VIII. Analysis of Programs

The Department has made no changes to the programs found countervailable in the *Preliminary Results*. Additionally, the Department made no changes to programs found not to confer a benefit or not used during the POR in the *Preliminary Results*. 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 Exemptions on Land Outside Metropolitan Areas – Article 78

Hyundai Steel used this program during the POR, and the net subsidy rate for the company under this program is 0.11 percent *ad valorem*.

DSM used this program during the POR, and the net subsidy rate for the company under this program is 0.005 percent *ad valorem*. Thus, consistent with our practice, we find that the program did not confer a measurable benefit to DSM.⁸

2. Tax Deduction Under RSTA Article 26

Hyundai Steel used this program during the POR, and the net subsidy rate for the company under this program is 0.27 percent *ad valorem*.

DSM did not use this program during the POR.

3. Tax Credit for Research and Human Resource Development Expenses under RSTA Article 10(1)(3)

Hyundai Steel used this program during the POR, and the net subsidy rate for the company under this program is 0.02 percent *ad valorem*.

⁸ *See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 73 FR 79791, 79800 (December 30, 2008); in which the Department refrained from determining whether a subsidy benefit constituted a financial contribution or was specific under the statute when the resulting net subsidy rate was less than 0.005 percent *ad valorem*; unchanged in *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20923 (May 6, 2009) (*HRS from India*) and accompanying Issues and Decision Memorandum at “Programs Found Not To Confer a Countervailable Benefit During the POR.”

DSM did not use this program during the POR.

4. Tax Credit for Research and Human Resource Development Expenses under RSTA Article 25-3

Hyundai Steel used this program during the POR, and the net subsidy rate for the company under this program is 0.07 percent *ad valorem*.

DSM did not use this program during the POR.

5. Electricity Discounts under Various Korea Electric Power Corporation (KEPCO) Programs

Both DSM and Hyundai Steel received various electricity discounts under various KEPCO programs, and during the POR both DSM and Hyundai Steel had one measurable subsidy program, the Trading of the DRR Program. Accordingly, we determine that the net subsidy rate for Hyundai Steel under this program is 0.05 percent *ad valorem*, and the net subsidy rate for DSM under this program is 0.12 percent *ad valorem*.

6. Various Research and Development Grants Provided Under the Industrial Technology Innovation Promotion Act (ITIPA)

Both DSM and Hyundai Steel received various research and development (R&D) grants pursuant to the ITIPA, and during the POR both DSM and Hyundai Steel had one measurable subsidy program under the ITIPA. Accordingly, we determine that the net subsidy rate for Hyundai Steel under this program is 0.01 percent *ad valorem*, and the net subsidy rate for DSM under this program is 0.01 percent *ad valorem*.

7. Modal Shift Program

Hyundai Steel used this program during the POR, and the net subsidy rate for the company under this program is 0.01 percent *ad valorem*.

DSM did not use this program during the POR.

B. Programs Determined Not to Confer Measurable Benefits to Either Respondent

1. GOK Directed Credit: 1992-2001 Directed Credit
2. Article 84 of the Restriction of Special Location Act (RSLTA)
3. Demand Adjustment Program of Emergent Reduction (ER) (former Emergency Road Reduction (ELR))

C. Programs Determined Not to be Countervailable

1. Loan from Korea National Oil Corporation (KNOC) and Korea Resources Corporation (KORES)

D. Other Programs Not Included In Subsidy Analysis

In the *Preliminary Results*, the Department determined not to include the programs listed below in its subsidy analysis.⁹ We did not receive any comments from interested parties concerning these programs and, thus, our approach remains unchanged from the *Preliminary Results*.

1. Loans to DSM from the Korean Development Bank (KDB)
2. Local Tax Exemptions Under RSLTA Articles 19, 46, 57-2, 109, and 112

E. Additional Programs Determined to Be Not Used During the POR

- 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
- Provision of Liquefied Natural Gas (LNG) for LTAR
- Electricity Discount under the Power Business Law Program

IX. 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

- In the NSA Memorandum,¹⁰ the Department erred in not initiating an investigation into the

⁹ See Preliminary Decision Memorandum at 9 and 19.

¹⁰ See Memorandum titled, "New Subsidy Allegations Memorandum for Dongkuk Steel Mill Co., Ltd. and Hyundai Steel Co., Ltd.," dated November 15, 2016 (NSA Memorandum).

GOK's provision of electricity for LTAR alleged by Nucor.¹¹

- The Department failed to fully address Nucor's arguments that the GOK provided electricity for LTAR during the POR.
- The Department has not provided an explanation as to 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.¹²
- Additionally, the Department's decision not to initiate an investigation into the GOK's provision of electricity for LTAR in this administrative review is not supported by the Department's decision not to initiate in the 2014 administrative review.
- Citing the *Carbon and Alloy Steel Plate 2015 Initiation Notice*, Nucor argues that the Department's reasoning in the NSA Memorandum does not appear to be consistent with its past practice of initiating subsidy allegations.¹³
- The NSA Filing contains evidence that KEPCO provides electricity to DSM and Hyundai Steel for LTAR. This evidence should have been sufficient to initiate an investigation into the program.
- The Department initiated an investigation into the GOK's provision of electricity for LTAR in *Carbon and Alloy Steel Plate from Korea* based on the same information that Petitioners presented in their NSA.¹⁴ Therefore, the Department should explain why it was reasonable to initiate an investigation in *Carbon and Alloy Steel Plate from Korea* but not in this review.
- In the NSA Memorandum, the Department failed to consider evidence indicating that the GOK acknowledged that its provision of electricity constitutes a subsidy.¹⁵
- The Department's reliance on *Line Pipe from Korea*, in the NSA Memorandum, to support its decision not to initiate an investigation into the GOK's provision of electricity for LTAR was in error.¹⁶
- In *Line Pipe from Korea*, the Department found that the provision of electricity for LTAR was not a countervailable subsidy because the respondents were charged tariffs based on KEPCO's standard pricing mechanism.¹⁷ However, in accordance with the statute and binding precedent, a standard pricing mechanism cannot rectify KEPCO's failure to charge Korean steelmakers electricity rates that cover KEPCO's costs.
- The provision of electricity for LTAR program confers a benefit because there is evidence on the record that KEPCO's prices are not market-based. Specifically, the Department failed to consider evidence that KEPCO, the GOK, the U.S. government, and other entities have recognized that KEPCO's price setting is not in accordance with market principles.¹⁸

¹¹ See Petitioner's August 29, 2016, submission titled, "Certain Cut-to-Length Carbon-Quality Steel Plate from South Korea: New Subsidy Allegations" (NSA Filing).

¹² See Nucor's April 25, 2016, Case Brief at 5, citing to NSA Filing at Exhibit 12.

¹³ See *Certain Carbon and Alloy Steel Cut-to Length Plate from Brazil, the People's Republic of China, and the Republic of Korea*, 81 FR 27098 (May 5, 2016) (*Carbon and Alloy Steel Plate from Korea Initiation Notice*).

¹⁴ See *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 82 FR 16341 (April 4, 2017) (*Carbon and Alloy Steel Plate from Korea*) and accompanying Issues and Decision Memorandum (IDM).

¹⁵ See NSA Filing at Exhibit 12, referencing the Korean National Assembly Report (National Assembly Report).

¹⁶ 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 IDM at 17-18.

¹⁷ See *Line Pipe from Korea* IDM at 15.

¹⁸ See NSA Filing at 2-3 and Exhibit 1.

- According to the Korean National Assembly, KEPCO's electricity prices do not cover its costs and provides significant benefits to certain industrial users within the steel industry.¹⁹
- In *Steel Wire Rod from Trinidad and Tobago* the Department found that "... if prices are not set in a manner that allows an appropriate cost recovery, then such prices cannot be considered market based."²⁰ The Court of International Trade (CIT) has affirmed this reasoning.²¹
- The Department failed to consider the GOK's admission that it provides electricity to Hyundai Steel and DSM at below cost, and failed to find that such evidence fulfills the Department's initiation standard.
- The Department based its decision not to countervail KEPCO's provision of electricity on its findings in *Line Pipe from Korea*. The Department's approach in *Line Pipe from Korea* was in error because it employed an outdated analysis from *Magnesium from Canada*.²²
- When *Magnesium from Canada* was issued, the Department's practice under the previous version of the statute was to treat "preferential" as meaning "more favorable treatment to some within the relevant jurisdiction than to others within that jurisdiction."²³
- After the Department's issuance of *Magnesium from Canada* in 1992, the statute governing the existence of subsidy benefits changed. Instead of requiring the provision of goods or services at preferential rates, section 771(5)(E)(iv) of the Act now defines that a benefit exists when goods or services are provided for LTAR, which is based on whether the prices charged by the administering authority are in accordance with market principles.
- Thus, an administering authority's provision of a good or service may confer a benefit even if such prices are not found to be preferential.
- The Department's reliance in the NSA Memorandum on an outdated benefit standard resulted in it inappropriately determining not to initiate on the alleged subsidy program at issue.
- The data contained in the National Assembly Report supports Nucor's allegation that KEPCO provided electricity for LTAR with respect to the current review because the National Assembly Report, even though issued in 2013, constitutes the most recent information available and is sufficient to initiate an investigation during the 2015 calendar year.
- In the NSA Memorandum, the Department adopted the analysis it employed in *Line Pipe from Korea* in which it discounted the National Assembly Report because the respondents in that investigation were not listed as top 100 companies. The Department should consider new evidence on the record in this review indicating that Hyundai Steel and DSM are both listed as top 100 companies.²⁴
- The Department should explain why the National Assembly Report, as well as other information placed on the record, was insufficient to support the allegation that Hyundai

¹⁹ See NSA Filing at 2-3 and Exhibit 1.

²⁰ See *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Trinidad and Tobago*, 62 FR 55003 (October 22, 1997).

²¹ See *Royal Thai Government v. United States*, 441 F. Supp. 2d 1350 (CIT 2006).

²² See *Line Pipe from Korea* IDM at 18; see also *Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946, 30954 (July 13, 1992) (*Magnesium from Canada*).

²³ See *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comment*, 54 FR 23366, 23372 (May 31, 1989) (*Proposed CVD Regulations*).

²⁴ See NSA Filing at Exhibit 18, p. 13.

Steel and DSM received a benefit from the GOK's provision of electricity for LTAR.

The GOK's Rebuttal Brief

- The Department properly declined to initiate an investigation concerning KEPCO's electricity pricing because Nucor failed to submit sufficient new information to warrant an investigation of its allegation.
- Nucor fails to address the fact that in *CORE from Korea*, the Department found KEPCO's alleged provision of electricity not to be countervailable and, in reaching this conclusion, found the National Assembly Report to be "flawed" and "not relevant" to the Department's analysis.²⁵
- Furthermore, in *CORE from Korea*, the Department refused to rely on the National Assembly Report, and the Department's analysis in that investigation applied to DSM.²⁶ Additionally, the Department refused to rely on the National Assembly Report in *Cold-Rolled Steel from Korea* and *Hot-Rolled Steel from Korea*, and Hyundai Steel was one of the mandatory respondents in those investigations.²⁷ Therefore, the Department has already concluded that the National Assembly Report was not probative or relevant in determining whether DSM or Hyundai Steel received electricity for LTAR.
- Although Nucor argues that the Department improperly relied on the "preferential pricing" standard in *Magnesium from Canada* in this review rather than focusing on whether KEPCO provided electricity for LTAR, this argument was rejected by the Department in previous determinations.²⁸
- The fact that the Korean steel industry is a large industrial consumer of electricity does not make the electricity pricing specific within the meaning of the statute.²⁹
- The CIT has affirmed the Department's practice of finding that electricity prices are not "specific" to a given industry or enterprise if the rate charged is consistent with a standard pricing mechanism and the company under investigation is not treated differently than other companies that purchase electricity.³⁰

Hyundai Steel's Rebuttal Brief

- The Department's decision not to initiate an investigation into alleged provision of electricity for LTAR was correct and consistent with past reviews and investigations.
- The Department adequately explained its reasons in the 2014 review for not initiating an investigation into the provision of electricity for LTAR Program and is not required to

²⁵ 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 (June 2, 2016) (*CORE from Korea*), and accompanying IDM at Comment 2.

²⁶ *Id.*

²⁷ See *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49946 (July 29, 2016) (*Cold-Rolled Steel from Korea*) and accompanying IDM at Comment 2; see also *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea*, 81 FR 53439 (August 12, 2016) (*Hot-Rolled Steel from Korea*) and accompanying IDM at Comment 2.

²⁸ See *Cold-Rolled Steel from Korea* IDM at Comment 2; *Hot-Rolled Steel from Korea* IDM at Comment 2, and *Carbon and Alloy Steel Plate from Korea* IDM at Comment 2.

²⁹ See the GOK's Rebuttal Brief at 8.

³⁰ See *Bethlehem Steel v. United States* 140 F. Supp. 2d 1354, 1369-70 (CIT 2000).

reiterate the entire argument where the record has not changed in a meaningful way.³¹

- Nucor’s argument that the Department erred in relying on *Line Pipe from Korea* is unpersuasive because the Department correctly found in *Line Pipe from Korea* that KEPCO’s electricity rates are consistent with market principles.
- Although Nucor argues that the Department’s tier-three analysis applied in *Line Pipe from Korea* is inconsistent with the statute because it does not establish whether prices were set based on market principles, the Department’s focus on whether KEPCO followed its standard pricing mechanism is fully consistent with the statute, regulations, and *CVD Preamble*.³²
- The data contained in the 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 2015 because the report was from 2013 and, thus, is based on data that does not reflect the 2015 POR.
- The Department’s analysis in *Line Pipe from Korea*, on which the Department relied in its NSA Memorandum, is consistent with the statute because the statute does not mandate a particular method for determining whether goods or services are provided for LTAR. Specifically, in cases such as the instant administrative review where the GOK is the only supplier of electricity in Korea and private transaction 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.”³³
- The Department’s reliance on the methodology from *Magnesium from Canada* is reasonable. Contrary to Nucor’s claims, the *CVD Preamble*, which was issued after the changes in the law, specifically cites to *Magnesium from Canada* as relevant to the market principles analysis.³⁴ The *CVD Preamble* also indicates that, as part of the market-principles analysis, the Department will continue to consider factors such as the government’s price setting methodology as part of its tier-three analysis. The Department’s approach in this regard is reflected in the *Samsung Remand*.³⁵
- Nucor incorrectly argues that KEPCO provided a benefit to Korean steel producers because it did not recover its costs and, therefore, its electricity rates were not based on market principles. In fact, the Department verified that KEPCO covered its costs.³⁶
- The Department’s decision not to initiate on this program is not at odds with the Department’s decision in other Korean flat-rolled cases because it was reasonable for the Department not to initiate on a program that it did not find countervailable in the final determination of *Line Pipe from Korea*. Moreover, each of the Korean flat-rolled cases cited by Nucor were preliminary determinations where the Department later found that the provision of electricity for LTAR program was not countervailable.

³¹ See Memorandum, “New Subsidy Allegations Memorandum for Dongkuk Steel Mill Co., Ltd. and Hyundai Steel Co., Ltd.,” dated December 16, 2015 (2014 AR NSA Decision Memorandum) at 4 (a public document that is included in Attachment I of the NSA Memorandum).

³² See *Countervailing Duties; Final Rule*, 63 FR 65348 (November 25, 1998) (*CVD Preamble*).

³³ See 19 C.F.R. 351.511(a)(2)(iii).

³⁴ See *CVD Preamble*, 63 FR at 65378.

³⁵ See Redetermination Pursuant to Court Order, *Samsung Electronics Co., Ltd. v. United States*, 973 F. Supp. 2d 1321 (CIT 2014), 37 F. Supp. 3d 1320 (CIT 2014) (*Samsung Remand*) at 24.

³⁶ See *Line Pipe from Korea* IDM at 17.

- 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.
- The Department based its decision not to initiate an investigation 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.³⁷
- Accordingly, the 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 erred in not initiating on the GOK’s provision of electricity for LTAR in the instant review. In the NSA Memorandum, the Department stated:

Petitioner submitted the same allegation in the prior administrative review covering calendar year 2014. In the 2014 review, the Department declined to initiate on the allegation when provided with this information. For the instant review, we determine that Petitioner had not provided any new additional information that would call into question the Department’s prior finding in *Line Pipe from Korea Final* that KEPCO’s sale of electricity was market-based and did not yield a benefit under the analysis provided under 19 CFR 351.511(a)(2)(iii).³⁸ Since the issuance of the 2014 AR NSA Decision Memorandum, the Department has continued to find that KEPCO’s sale of electricity is in line with market principles and does not confer a benefit within the meaning of section 771(5)(E)(iv) of the Act.³⁹

Thus, because there is no new information or argument in the current NSA Submission to warrant a reconsideration of our prior findings 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.⁴⁰

The petitioner cites the Department’s decision to initiate in *Carbon and Alloy Steel Plate from Korea* to support the proposition that the Department should have initiated in the instant case. Although the Department did initiate on the program in *Carbon and Alloy Steel Plate from Korea*, we determined in that proceeding that the provision of electricity for LTAR program was not countervailable.⁴¹ Additionally, in each of the flat-rolled cases that the petitioner listed in

³⁷ See NSA Memorandum at 3; see also 2014 AR NSA Decision Memorandum at 3-4.

³⁸ See 2014 AR NSA Decision Memorandum at 4 citing to *Line Pipe from Korea* IDM at Comment 1.

³⁹ See, e.g., *Hot-Rolled Steel from Korea* IDM at Comment 2; see also *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review and New Shipper Review; Calendar Year 2014*, 81 FR 64138 (September 19, 2016) (*2014 Review of Carbon Alloy Steel Plate from Korea*) and accompanying IDM at Comment 1, in which the Department affirmed its decision in the 2014 AR NSA Decision Memorandum not to initiate an investigation into KEPCO’s alleged provision of electricity for LTAR.

⁴⁰ See NSA Memorandum at 3.

⁴¹ See *Carbon and Alloy Steel Plate from Korea* IDM at Comment 2.

support of initiating, the Department determined that the provision of electricity for LTAR program was not countervailable.⁴²

The petitioner argues that the new evidence it submitted on the record of this review should have been sufficient for the Department to initiate an investigation into the provision of electricity for LTAR program. Yet, the new evidence to which the Petitioner refers is primarily a re-stating of the facts from the National Assembly Report and the submission of electricity prices from Japan, which are not available to Korean producers.⁴³

Electricity Prices from Japan

The petitioner claims that information on Japanese electricity prices, when compared to Korean domestic electricity prices, demonstrates that KEPCO's sale of electricity conferred a benefit upon Hyundai Steel and DSM.⁴⁴ As we determined in the *2014 Review of Carbon Alloy Steel Plate from Korea*, we find that information concerning electricity prices in Japan does not constitute sufficient evidence to support the allegation that KEPCO sold electricity to Hyundai Steel and DSM for LTAR.⁴⁵ Under 19 CFR 351.511(a)(2)(ii), where there is no tier-one benchmark price available, the Department will seek to measure the adequacy of remuneration by comparing the government price to a world market price, ". . . where it is reasonable to conclude that such a price would be available to purchasers in the country in question." The *CVD Preamble* goes on to state that concerning the use of world market price benchmarks under 19 CFR 351.511(a)(2)(ii):

. . . a European price for electricity normally would not be an acceptable comparison price for electricity provided by a Latin American government, because electricity from Europe in all likelihood would not be available to consumers in Latin America.⁴⁶

Therefore, based on 19 CFR 351.511(a)(2)(ii) and following the guidance provided in the *CVD Preamble*, we find that it is not reasonable to conclude that electricity prices in Japan would be available to firms located in Korea and, thus, such information does not sufficiently support the petitioner's benefit allegation.

The National Assembly Report

The petitioner argues that the Department should rely on the National Assembly Report because it demonstrates that large corporations are being charged discounted electricity prices. As we have determined in prior Korean CVD proceedings,⁴⁷ the National Assembly Report relied upon by the petitioner is not relevant to our analysis as to whether KEPCO provides electricity to Hyundai Steel and DSM for LTAR. The National Assembly Report provides information on the electricity consumption patterns of Korea's largest 100 corporations. The losses incurred by

⁴² See, e.g., *Hot-Rolled Steel Plate from Korea* IDM at Comment 2, *Cold-Rolled Steel from Korea* IDM at Comment 2, and *CORE from Korea* IDM at Comment 2.

⁴³ See Nucor Case Brief at 5-6 and 12-16.

⁴⁴ *Id.*, at 5-6 and 12-16.

⁴⁵ See *2014 Review of Carbon Alloy Steel Plate from Korea* IDM at 8-9.

⁴⁶ See *CVD Preamble*, 63 FR at 65377.

⁴⁷ See, e.g., *CORE from Korea* IDM at 23.

KEPCO, as shown in the National Assembly Report, are flawed due to the methodology used to produce the data, *i.e.*, comparing company-specific revenue to aggregated cost. Another important flaw is that the information provided within the National Assembly Report is from three years prior to our POR, 2015. Since the date of the National Assembly Report, KEPCO electricity industrial tariffs have been increased three different times.⁴⁸ Under our regulations, we must determine whether the rates paid during the POR, the 2015 calendar year, are for adequate remuneration as set forth under 19 CFR 351.511. Therefore, the information in the National Assembly Report is outdated and not relevant to our POR. Thus, the Department continues to affirm its decision not to initiate an investigation into the GOK's provision of electricity for LTAR.

The Standard Pricing Mechanism Developed in Magnesium from Canada Measures Adequacy of Remuneration

With respect to the petitioner's other claims concerning the Department's prior determination regarding this program, the petitioner contends that the Department's reliance on its standard pricing mechanism, set forth in *Magnesium from Canada*,⁴⁹ is contrary to law because that administrative determination was made pursuant to a prior version of the U.S. CVD law, under which subsidies included the provision of goods or services at preferential rates. As we determined in the *Samsung Remand*, the Department specifically tied its "standard pricing mechanism" to the new LTAR statute and stated "the Department is required to analyze the prevailing market conditions for that good or service. Because commercial utility companies determine the tariff rates based on factors such as volume of consumption, the Department is statutorily required to take this into account when analyzing whether the provision of electricity is for less than adequate remuneration."⁵⁰ The petitioner is incorrect, as demonstrated by the fact that the current CVD regulations that implemented the statutory changes as a result of the Uruguay Round Agreements Act (URAA), and in particular 19 CFR 351.511, regarding the provision of a good or service, were enacted with reference to the methodology developed in *Magnesium from Canada* to analyze whether the provision of a good or service such as electricity is provided at adequate remuneration.⁵¹

When the *CVD Preamble* mentions the "government's price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination" as factors the Department may consider under the new law to assess whether a government price is

⁴⁸ See, e.g., *Carbon and Alloy Steel Plate from Korea* IDM at 33.

⁴⁹ See Nucor's Case Brief at 7-11, citing to *Magnesium from Canada*.

⁵⁰ See *Samsung Remand* at 24; see also *Cold-Rolled Steel from Korea* IDM at 46

⁵¹ Paragraph (a)(2)(iii) provides that, in situations where the government is clearly the only source available to consumers in the country, we normally will assess whether the government price was established in accordance with market principles. Where the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government's price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination. We are not putting these factors in any hierarchy, and we may rely on one or more of these factors in any particular case. In our experience, these types of analyses may be necessary for such goods or services as electricity, land leases, or water, and the circumstances of each case vary widely. See, e.g., *Magnesium from Canada*, 57 FR at 30946 and 30954; see also *Final Affirmative Countervailing Duty Determination: Venezuelan Wire Rod*, 62 FR 55014, 55021-22 (October 22, 1997).

consistent with market principles, it cites *Magnesium from Canada* as a case that includes such an analysis. Accordingly, in a tier-three analysis, if “the rate charged is consistent with the {utility company’s} standard pricing mechanism and the company under investigation is, in all other respects, essentially treated no differently than other industries which purchase comparable amounts of electricity,” then that fact is sufficient to support a finding that no benefit is conferred.⁵² The fact that KEPCO adheres to a standard pricing mechanism is significant. The application of a uniform price-setting philosophy is the first factor enumerated in assessing whether the government price was set in accordance with market principles.⁵³

Moreover, with the concept of a standard pricing methodology developed in *Magnesium from Canada*, the Department recognized the market conditions for the provision of electricity, which is that electricity tariffs are generally based upon the type and amount of consumption of electricity and that utility rates will vary depending on the size and classification of the electricity consumer. Therefore, the Department developed the standard pricing methodology, codified under 19 CFR 351.511(a)(2)(iii), to account for the commercial market conditions by which electricity is provided to consumers. As such, the standard pricing methodology ensures that adequacy of remuneration for the provision of a good or service is determined in relation to the prevailing market conditions for the good or service being provided as required under section 771(5)(E) of the Act.⁵⁴

The URAA’s move away from the preferentiality methodology flipped the regulatory hierarchy, with market prices from the country under investigation and world market prices moving up the hierarchy, and other considerations, including price discrimination, remaining potentially relevant only if the preferred data are unavailable.⁵⁵ However, the petitioner’s argument that a preferentiality analysis cannot be sufficient to assess adequate remuneration, is mistaken. In response to comments to its proposed regulation implementing the new law based on adequate remuneration, the Department addressed concerns “about potentially continuing the use of the preferentiality standard by shifting the focus of {its} inquiry toward whether the government employed market principles in setting prices.”⁵⁶ The Department clarified that a price discrimination analysis may still be appropriate under the new law because, in the context of a tier-three analysis, “there may be instances where government prices are the most reasonable surrogate for market-determined prices.”⁵⁷

⁵² See *Magnesium from Canada*, 57 FR at 30949-50.

⁵³ See *CVD Preamble*, at 63 FR 65378.

⁵⁴ See *Cold-Rolled Steel from Korea* IDM at 47.

⁵⁵ As explained in *Certain Softwood Lumber Products from Canada Prelim*, the prior methodology that applied under the pre-URAA law provided that the Department “would measure whether the government provided a good or service at a preferential rate based upon, in order of preference, the following benchmarks: (1) The price the government charges to other parties for the identical or similar good; (2) the price charged by other sellers within the same political jurisdiction (*i.e.*, country under investigation); (3) the government’s cost of providing the good or service; or (4) the price paid for that good outside the country under investigation.” See *Preliminary Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada*, 57 FR 8801 (March 12, 1992) (*Certain Softwood Lumber Products from Canada Prelim*). This correctly emphasized the priority given to market prices under the new law, but nothing in that decision disturbs the Department’s practice, as set forth in the *CVD Preamble*, with respect to assessing a government price under a “tier three” analysis.

⁵⁶ See *CVD Preamble*, 63 FR at 65378.

⁵⁷ *Id.*

Specificity Comments

Finally, the petitioner argues that the Department reliance on *Line Pipe from Korea* in not initiating an investigation into the provision of electricity for LTAR program is misplaced because the two respondents in *Line Pipe from Korea* were not on the list of the 100 largest corporations in the National Assembly Report, whereas Hyundai Steel and DSM are both listed as top 100 companies. However, because the Department concluded that no benefit was provided under the provision of electricity for LTAR program in *Line Pipe from Korea*, the issue of specificity is moot.

Comment 2: Whether the Department Should Initiate an Investigation into the GOK's Purchases of Electricity for MTAR

Nucor's Case Brief

- The Department erred in not initiating an investigation into the alleged GOK's purchases of electricity for MTAR.
- The Department failed to consider new evidence on the record demonstrating that Hyundai Steel operated power generation facilities and sold electricity to the national grid.⁵⁸
- The Department failed to consider new information on the record demonstrating that the GOK purchased electricity from Hyundai Steel for MTAR.

Hyundai Steel's Rebuttal Brief

- The Department properly determined not to initiate an investigation into KEPCO's alleged purchases of electricity for MTAR, and its decision was consistent with past reviews.
- The Department considered and rejected Nucor's allegation in the past reviews that KEPCO purchased electricity from Hyundai Steel for MTAR.
- Nucor's new evidence that Hyundai Steel's affiliates, Hyundai Green Power and Hyundai Energy, operate electricity generation facilities does not justify initiation of an investigation because it does not demonstrate that Hyundai Steel sold electricity to KEPCO. At best, this evidence indicates that Hyundai Green Power and Hyundai Energy are affiliated and may have sold electricity to the Korean Power Exchange (KPX). However, record evidence demonstrates that Hyundai Green Power and Hyundai Energy do not qualify as cross-owned affiliates because there is no majority ownership between Hyundai Steel and the two affiliates.
- Further, Hyundai Green Power and Hyundai Energy did not provide inputs into the production of Hyundai Steel's downstream products.
- The Department should reaffirm its decision not to initiate an investigation into the GOK's purchase of electricity for MTAR.

Department's Position: We disagree with Nucor's assertion that the Department erred in not initiating an investigation into the GOK's purchases of electricity for MTAR in this administrative review. In the NSA Memorandum, the Department stated:

⁵⁸ See Nucor's NSA Filing at 11 and Exhibit 71.

Petitioner alleged the same subsidy program in the 2014 review. In the *2014 CTL Plate from Korea*, the Department explained that Petitioner had not submitted any information indicating that DSM and Hyundai operated power generating facilities during the POR and the record lacked evidence indicating that the two firms operated such facilities. Additionally, in the prior review, the Department explained that at verification it confirmed that DSM and Hyundai did not have any power generating, cross-owned affiliates that supplied the respective firms with electricity during the 2014 POR. As a result, the Department found that Petitioner had 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.

The information contained in Petitioner's allegation in this review is the same as that included in the allegation it submitted during the 2014 review. Further, the information contained in the affiliation response of DSM and Hyundai continues to indicate that the two firms are not cross-owned with any energy producing affiliates that supplied the firms with electricity or any other input that is primarily dedicated to the production of subject merchandise. Thus, consistent with the prior review, the allegation lacks a means by which KPX, the alleged government authority, 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.⁵⁹

In reference to Nucor's claim that Hyundai Steel operated power generating facilities during the POR, we disagree. In the prior review, at the 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.⁶⁰ As a result, the Department found that the petitioner had 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.⁶¹ Further, the information contained in the affiliation response of the current review continues to indicate that the two firms are not cross-owned with any energy producing affiliates that supplied the firms with electricity or any other input that is primarily dedicated to the production of subject merchandise.⁶²

The petitioner has not submitted any information demonstrating that DSM or Hyundai Steel 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. Because Nucor essentially repeated the same arguments that the Department analyzed in the 2014 administrative review and no new evidence was submitted with respect to the GOK's purchases of electricity for MTAR, we determined not to initiate an investigation into this new subsidy allegation.⁶³

⁵⁹ See NSA Memorandum at 11-12, referencing the 2014 AR NSA Decision Memorandum at 9-10.

⁶⁰ See *2014 Review of Carbon Alloy Steel Plate from Korea* IDM at 15.

⁶¹ *Id.*

⁶² See DSM's Section III, Part I, Questionnaire Response, dated June 24, 2016, at page 5 and Exhibit 4; *see also* Hyundai Steel's June 30, 2016, Section III, Part I Questionnaire Response at pages 5-8 and Exhibits 3 and 7.

⁶³ See NSA Memorandum at 11-12.

Thus, the Department continues to affirm its decision not to initiate an investigation into the GOK's purchases of electricity for MTAR.

Comment 3: Whether the Department's Finding that the DRR Program Constitutes a Countervailable Subsidy is in Accordance with the Requirements of the Statute or the WTO SCM Agreement

The GOK's Case Brief

- The Department erred in finding that payments received by DSM and Hyundai Steel under the DRR program constituted countervailable subsidies because the DRR program does not constitute a subsidy within the meaning of the statute or the SCM Agreement)
- The DRR program constitutes a purchase of a service and the statute and the SCM Agreement exclude government purchases of a service from the definition of "financial contribution." This program does not provide a financial contribution because it constitutes the purchase of a service, and payments to electricity users that participate in the program are made by "Operators" and not the GOK.
- Even if KEPCO constitutes a government authority, its payments under the DRR program do not represent "financial contributions" within the meaning of the statute and WTO SCM Agreement, because KEPCO did not make payments to the individual electricity users that participated in the DRR program. KEPCO provided funding to KPX which made payments to individual private "Demand Management Business Operators," who in turn made payments to the individual electricity users.
- The statutory provision governing payments through non-government authorities confirms that these payments do not constitute "subsidies" within the meaning of the statute (or "financial contributions" within the meaning of the SCM Agreement).
- The DRR program does not involve any direct payments to the Korean producers of subject merchandise or other Korean companies by the GOK. Rather, the payments to the individual companies are made by private entities, known as "Demand Management Business Operators" (Operators). Further, because the payments to the electricity users that participate in the program are made by Operators, and not by the GOK, these payments cannot be classified as financial contributions under the U.S. statute.
- Even if the payments could be considered subsidies, the private nature of the payments means that the payments reflected the market price.
- The DRR program should not be considered "specific" because evidence indicates that participation in the DRR program was open to all electricity users.
- The DRR Program does not confer a countervailable benefit because the program operates through market transactions, whereby the private Operators contract with individual participants to obtain commitments to curtail electricity demand when requested. While KPX decides on the amount of curtailment to be requested from the Operators, it is not involved in the actions by the Operators to obtain that curtailment from electricity users. The amounts that KPX pays to the Operators are independent of the amounts that the Operators pay to the electricity users that participate in the program. Neither KEPCO nor KPX know the amount of the payments made between the Operators and the electricity users.
- Even if the payments made under the DRR program could be considered subsidies, they were made at arm's length.

Nucor's Rebuttal Brief

- The Department should continue to find that the DRR Program provides a countervailable subsidy.
- The GOK's arguments that payments by the Operators to the participants of the DRR Program are made at "arm's-length and constitute private-to-private transactions" are unpersuasive.
- Although the GOK claims that payments are made to electricity users who participate in the DRR program through intermediaries, without government interference, the evidence on the record indicates that these transactions are made through KEPCO which has previously been found by the Department to be a government entity.⁶⁴
- There is no merit to the GOK's claim that the DRR Program is not *de facto* specific. The fact that only a fraction of the eligible companies was approved for assistance confirms that the recipients of the program are limited in number.
- The GOK's argument that amounts paid by the Operators to the electricity users that participate in the DRR program are made in arm's-length private-to-private transactions, without government interference is also unpersuasive. This program involves payments through a known government entity (*i.e.*, KEPCO); therefore it is clear that these transactions are made with government interference.
- The Department found *de facto* specificity under similar circumstances in prior reviews and should continue do to so in this review.⁶⁵ Consistent with its findings in prior cases, the Department should continue to find that the DRR program is countervailable.

Department's Position: Consistent with the Department's prior determination, we continue to find that the DRR program is countervailable.⁶⁶

The legal basis for this program is Article 31(5) of the Electricity Business Law (EBL) and Chapter 12 of the Rules on Operation of Electricity Utility Market (ROEUM). Chapter 12 of the ROEUM governs the program's operations, the purpose of which is to smooth imbalances between supply and demand of power provision by creating a competitive marketplace for the price of demand response resources. The program is divided into two sub-programs, Demand Response Peak Curtailment and Demand Response Program for Electricity Price Curtailment. The former program is designed to curtail load during peak electricity demand periods, and the latter is intended to minimize power generation costs through price competition. The KPX operates both programs.⁶⁷ Under this program, KPX pays multiple private Demand Management Business Operators, also called "aggregators," which have contractual relationships with end

⁶⁴ See Nucor's Rebuttal Brief at 5.

⁶⁵ Nucor cites to *Cold-Rolled Steel from Korea*, 81 FR at 49943, *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410 (March 26, 2012) (*Bottom Mount Refrigerators from Korea*); see also *Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) (*Residential Washers from Korea*).

⁶⁶ See *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 81 FR 63168 (September 14, 2016) (*Carbon and Alloy Steel Plate from Korea Preliminary Determination*) and accompanying preliminary decision memorandum (PDM) at 17-18; unchanged in *Carbon and Alloy Steel Plate from Korea* IDM at 16.

⁶⁷ See GOK August 1, 2016, QR at 240-246.

users of the program. End users receive payments from those aggregators. Prior to that exchange between the KPX and the aggregators, KEPCO pays the KPX for the latter's role in electricity demand curtailment under the program.⁶⁸ The GOK indicates that the end users of the DRR program are firms, which include DSM and Hyundai Steel.

Consistent with the Department's findings in prior Korean CVD proceedings, we find KEPCO to be an "authority" within the meaning of section 771(5)(B) of the Act.⁶⁹ Concerning KPX, (1) information from the GOK indicates that KEPCO owns 50 percent of KPX with KEPCO subsidiaries owning KPX's remaining shares;⁷⁰ (2) the Electricity Business Law is the legal basis for the establishment of the KPX;⁷¹ (3) KPX is "responsible for managing the Trading of Demand Response Resources Program;"⁷² (4) Under the Demand Response Program for Peak Curtailment sub-program, KPX "can order participants to reduce consumption by the demand curtailment volume between 9 a.m. and 8 p.m. on weekdays, up to 60 hours per year, provided that the participants that curtail consumption are compensated for doing so;"⁷³ (5) payments to the Management Business Operators are "made by KEPCO (through KPX)";⁷⁴ and (6) KPX is responsible for maintaining records regarding transactions between itself and Management Business Operators.⁷⁵ Based on this information, we find that KPX was established by the GOK, is wholly-owned by the GOK, and that KPX manages the DRR program and assists in transmitting funds to Management Business Operators. Therefore, we find KPX to be an "authority" within the meaning of section 771(5)(B) of the Act.

The GOK argues that the DRR program does not constitute a financial contribution because it is the "aggregators," and not KEPCO/KPX, that provide funds to participating firms. We disagree with this argument. The GOK stated the following regarding the DRR program:

The Demand Management Business Operators act as intermediaries between the KPX and the electricity users that have agreed to participate in the DRR program. The Demand Management Business Operators trade DRR curtailment commitments on the market established by the KPX on behalf of the users with whom they have contracted; they convey KPX's curtailment instructions to those users; they receive Performance Payments and Basic Payments from the KPX for participation in the program; and they

⁶⁸ *Id.*, at 242.

⁶⁹ See e.g., *Carbon and Alloy Steel Plate from Korea* PDM at 28-29, in which the Department based its finding that KEPCO was an "authority" on the fact that KEPCO (1) was established under the Korea Electric Power Corporation Act and its Enforcement Decree; (2) is an integrated electric utility company engaged in the transmission and distribution of substantially all of the electricity in Korea; (3) KEPCO generates the substantial majority of the electricity produced in Korea; (4) MOTIE also has the authority to regulate and supervise the electricity business in Korea; and (5) under Korean law, the GOK is required to own, directly or indirectly, at least 51 percent of KEPCO's capital which allows the GOK to control the approval of corporate matters relating to KEPCO; unchanged in *Carbon and Alloy Steel Plate from Korea* IDM at 16. The POI of *Carbon and Alloy Steel Plate from Korea* is the same as the POR of the instant review.

⁷⁰ See GOK's August 1, 2016 QR at 247.

⁷¹ *Id.*, at 245.

⁷² *Id.*, at 246.

⁷³ *Id.*, at 241.

⁷⁴ *Id.*, at 242.

⁷⁵ *Id.*, at 243.

pay the electricity users with whom they have contracts in accordance with the terms of those contracts.⁷⁶

The GOK's use of the term "intermediary" to describe the Management Business Operators implies that they are merely "go-betweens" rather than entities that are completely divorced from the actions GOK/KEPCO/KPX and the DRR program itself. Further, the GOK's description of the program indicates that the Management Business Operations pass along KPX's curtailment instructions to the users of the program, an aspect of the program that indicates KPX's direct involvement in the operation of the program.

Additionally, the GOK's questionnaire response states:

Under Article 12.2.2. of the KPX's Rules on Operation of Electric Utility Market (ROEUM), a Demand Management Business Operator who intends to participate in the power market must register as a trader. In addition, the Demand Management Business Operator must represent a Demand Response Resource - *i.e.* a group consisting of 10 or more electricity users that have agreed to participate in the DRR program. In addition, the Demand Response Resource must represent an aggregate commitment to curtail demand (which is referred to as an "Obligation Reduction Capacity") of between 10 megawatts and 500 megawatts for each Demand Response Resource.⁷⁷

The fact that Management Business Operators, as a qualifying condition to participate in the program, "must represent . . . 10 or more electricity users that have agreed to participate in the DRR program" belies the GOK's claim in its case brief that Management Business Operators are entities that are independent of the participating firms.

Thus, based on the information contained in the GOK's questionnaire response, we reject the GOK's claim that a direct financial contribution does not exist under the DRR program. Rather, because the Management Business Operators act as representatives to the participating firms, we find that, for purposes of the financial contribution, the Management Business Operators merely serve as a conduit between KPX and the recipient firms. Accordingly, we find that the funds provided by KEPCO and KPX, through the Management Business Operators, to companies participating in this program constitute a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act and that a benefit exists in the amount of the grant in accordance with section 771(5)(E) of the Act and 19 CFR 351.504(a).

Furthermore, we reject the argument that benefits under the DRR program constitute a government purchase of a service. As an initial matter, under the GOK's argument, the Management Business Operators are acting as the "government" purchasing a service. But this undermines the GOK's position discussed above that the Management Business Operators are private entities wholly divorced from the actions of the GOK/KEPCO/KPX. Furthermore, the GOK fails to adequately explain its theory that the end users under the program – those receiving benefits in the form of "payments"⁷⁸ – can constitute "service providers" to the government. We

⁷⁶ See GOK's August 1, 2016, QR at 244.

⁷⁷ *Id.*, at 249.

⁷⁸ See GOK August 1, 2016, QR at 242.

find that the GOK does not provide any evidentiary support for its claim that the payments under the DRR program can be considered remuneration for a service, *e.g.*, the nature of the service performed and the basis for determining payment for any such service. Thus, based on this information, we find that benefits received from KPX under the DRR program constitute grants under section 771(5)(E) of the Act and 19 CFR 351.504(a) as countervailable benefits.

Finally, although the GOK asserts that the DRR program is open to all electricity users during the POR, only a limited number of users were approved for the program. Therefore, we find that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients are limited in number.⁷⁹ Therefore, we continue to find the DRR program countervailable for the final results of review.

Comment 4: Whether the Department Erred in Finding that Various RSTA Tax Programs are *De Facto* Specific

GOK's Case Brief

- The Department's *de facto* specificity finding with respect to the RSTA Tax Programs is incorrect, and the determination should be reversed for the final results.
- The Department erred in finding that number of tax deductions under the RSTA were specific, because only some portion of Korean tax payers took advantage of these tax deductions.⁸⁰
- There is no basis for finding the RSTA tax programs to be *de facto* specific based on alleged disproportionate use by Hyundai Steel.
- The Department should not make its specificity determination by considering the ratio of companies that took the deductions to all Korean tax payers, but should make its determination based on the ratio of taxpayers who took the deductions over the number of Korean taxpayers who were eligible for it.

Nucor's Rebuttal Brief

- The Department properly found that the RSTA tax programs are *de facto* specific based on the share of tax returns. Record evidence confirms that benefits provided under the RSTA Program are *de facto* specific because the recipients of these tax programs are limited in number.
- The GOK failed to provide a basis for the Department to depart from its prior findings concerning this program; thus, the Department should continue to find that the RSTA tax programs are *de facto* specific.
- The Department rejected the same arguments raised by the GOK in the prior investigations such as *Cold-Rolled Steel from Korea* and *Carbon and Alloy Steel Plate from Korea*.⁸¹ Therefore, the Department should continue to reject the GOK's specificity arguments in the final results of the current review.

Department's Position: The statutory criteria for *de facto* specificity are set forth under sections 771(5A)(D)(iii)(I) through (IV) of the Act. In accordance with section

⁷⁹ See Preliminary Decision Memorandum at 13, referencing the GOK's August 1 Q at 252.

⁸⁰ See Preliminary Decision Memorandum at 9-12; *see also* the GOK's Case Brief at 9.

⁸¹ See *Cold-Rolled Steel from Korea* IDM at 88-89; *see also Carbon and Alloy Steel Plate from Korea* IDM at 59.

771(5A)(D)(iii)(III) of the Act, the Department found in the *Preliminary Results* that these programs were *de facto* specific because two enterprises received a disproportionately large amount of the subsidy. The statute instructs that where the number of users of a subsidy is very large, the Department must assess predominant use and disproportionality factors. Furthermore, the Statement of Administrative Action (SAA) explicitly states that because the weight accorded to the individual *de facto* specificity factors is likely to differ from case to case, clause (iii) makes clear that the Department shall find *de facto* specificity if one or more factors exist.⁸²

The statute does not mandate any specific methodology in conducting a *de facto* specificity analysis, and the Department has discretion to apply any reasonable methodology in making a *de facto* determination in light of the facts and circumstances of each particular case. In conducting our specificity analysis under section 771(5A)(D)(iii) of the Act for the two RSTA programs, the Tax Deduction Under Restriction of Special Taxation Act (RSTA) Article 26 program and Tax Credit for Research and Human Resource Development Expenses program under RSTA Article 10(1)(3), we examined the company's receipt of benefits as a portion of the total benefits granted by the GOK to all companies to determine whether the company was a predominant or disproportionate user of the program. While the record contains the total amount of the subsidy disbursed during the relevant period, the GOK did not provide information regarding specific amounts for each of the recipient firms, except for the amounts received by Hyundai Steel.⁸³ To determine whether Hyundai Steel received a disproportionate amount of the subsidy, we compared the benefit amount received by Hyundai Steel to the average amount received by all other companies. Under this approach, we find that in 2015, Hyundai Steel received a disproportionately large percentage of all the benefits granted under the two RSTA programs and, thus, that the benefits provided to Hyundai Steel are specific, as described under section 771(5A)(D)(iii)(III) of the Act. Our *de facto* specificity analysis is consistent with the approach utilized in *Bottom Mount Refrigerators from Korea*.⁸⁴

Unlike the two previously discussed programs, for the Research and Human Resource Development Expenses Program under RSTA Article 25-3, we lacked program-specific usage data when examining whether the provision of this tax benefit is specific, in fact, to an enterprise or industry or group thereof, pursuant to section 771(5A)(D)(iii) of the Act. Thus, in order to determine whether the tax credits Hyundai Steel received were *de facto* specific, we sought to recreate the specificity analysis the Department conducted in *Bottom Mount Refrigerators from Korea* (e.g., a comparison of the number of recipients that received the benefits under the program during tax year 2015 to the number of companies that filed tax returns during the same period).⁸⁵ However, we lack information concerning the number of corporate tax filings during the POR of the instant review.⁸⁶ Thus, in order to recreate the analysis employed in *Bottom Mount Refrigerators from Korea*, we used the number of recipients that received benefits under Article (10)(1)(3) of the RSTA during tax year 2014, the year prior to the POR, as a proxy for

⁸² See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1 at 931 reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (1994) at 931.

⁸³ See GOK's August 1, 2016, QR at 197-198.

⁸⁴ See *Bottom Mount Refrigerators from Korea* IDM at 17 and Comment 1.

⁸⁵ See Preliminary Decision Memorandum at 12; see also *Bottom Mount Refrigerators from Korea* IDM at 17 and Comment 1.

⁸⁶ See Preliminary Decision Memorandum at 12.

the number of firms that filed corporate tax returns during the same period.⁸⁷ We note that our use of usage information pertaining to the Article (10)(1)(3) program as a proxy is conservative, given that the users of the program are a subset of the total number of corporations that filed tax returns during tax year 2014. Based on our analysis, we find that the number of firms that claimed credits under Article 25-3 of the RSTA is limited. On this basis we continue to find that the subsidies provided under Article 25-3 are specific in fact as described under section 771(5A)(D)(iii)(I) of the Act.

Comment 5: Whether the Department Should Find that Samsung C&T Engineering and Samsung C&T Trading Had No Reviewable Entries During the POR

Samsung C&T Corp.'s Case Brief

- The Department erred in assigning the all-others net subsidy rate to Samsung C&T Engineering and Samsung C&T Trading because these companies had no reviewable entries during the POR.
- The Department preliminarily rescinded this review of the CVD duty order, in part, with respect to Samsung C&T Corp. The Department's finding of no entries in 2015 with respect to Samsung C&T Corp. should include Samsung C&T Engineering and Samsung C&T Trading.
- The Department should rescind this review with respect to all three companies consistent with the final results of the 2014 administrative review.⁸⁸ The Department confirmed in the 2014 administrative review that all three entities had no shipments and rescinded the review with respect to all of them and should do so in this review.
- The Department confirmed that Samsung C&T Corp. had no reviewable entries during the POR and should make the same finding with respect to Samsung C&T Engineering and Samsung C&T Trading.
- Nucor's review request related to a single entity, Samsung C&T Corporation, but, in fact, covered the other two Samsung companies at issue. Nucor's review request identified all three Samsung companies at issue as one and provided a single service copy of the review request to a single address. Thus, the Department's initiation notice on the three companies should be considered a single initiation, and Department's finding of Samsung C&T's no shipment certification should apply to all three names included in the initiation notice.
- In the event the Department declines to consider Samsung C&T Engineering and Samsung C&T Trading as covered by Samsung C&T Corp.'s no shipment certification, the Department should include clarification notes in CBP's ACE entry system that the new case numbers associated with Samsung C&T Trading and Samsung C&T Engineering do not apply to Samsung C&T Corp. Additionally, the cash deposit instructions should clarify that the new 10-digit AD/CVD case numbers associated with Samsung C&T Engineering and Samsung C&T Trading do not apply to entries made by Samsung C&T Corp.

⁸⁷ See Preliminary Decision Memorandum at 12; *see also* the GOK's August 1, 2016, QR at 193.

⁸⁸ See *Certain Cut-to-Length Carbon Quality Steel Plate from the Republic of Korea: Partial Rescission of Countervailing Duty Administrative Review*; 2014, 80 FR 45183 (July 29, 2015) (*2014 Review Partial Rescission*).

Nucor's Rebuttal Brief

- The Department should continue to assign Samsung C&T Engineering and Samsung C&T Trading the all-others rate because neither company submitted a certification of no shipments in this review.
- The record indicates that Samsung C&T Engineering and Samsung C&T Trading were named separately in the Department's *Initiation Notice*.⁸⁹
- Unlike in the prior review, neither Samsung C&T Engineering nor Samsung C&T Trading submitted a no shipment certification, thus the Department properly assigned both companies the all others rate in the *Preliminary Results* and should continue to do so in the final results.

Department's Position: We disagree with Samsung C&T Corp. contention that the Department should find that Samsung C&T Engineering and Samsung C&T Trading did not have shipments of subject merchandise during the POR and, thus, that their respective administrative reviews should be rescinded.

In the *Initiation Notice*, the Department indicated that any producer or exporter named in the notice must submit a certification of no shipments within 30 days of the publication of the notice.⁹⁰ Furthermore, notwithstanding the manner in which Nucor submitted its review request with regard to the three Samsung companies at issue, the Department initiated the administrative review separately for Samsung C&T Corp., Samsung C&T Engineering, and Samsung C&T Trading.⁹¹ In other words, in the *Initiation Notice* the Department did not provide any indication that it was treating the three Samsung companies as a single entity for purposes of the CVD review. Therefore, it was incumbent upon Samsung C&T Corp., Samsung C&T Engineering, and Samsung C&T Trading to file a no shipment certification covering each of the companies within 30 days of the publication of the *Initiation Notice*.⁹² However, the non-shipment certification submitted by Samsung C&T Corp. only mentioned non-shipments with regard to itself and made no mention of non-shipments with regard to Samsung C&T Engineering and Samsung C&T Trading.⁹³ Because the Department did not receive a certification of no shipments for Samsung C&T Engineering and Samsung C&T Trading, in the *Preliminary Results*, the Department assigned the net subsidy rate of 0.54 percent to these companies.⁹⁴

Samsung C&T Corp.'s reference to the *2014 Review Partial Rescission* is off point. The Department based its decision to rescind its review of Samsung C&T Corp, Samsung C&T Engineering, and Samsung C&T Trading on the fact that the petitioner withdrew its request for each of the three firms in a timely manner. In the instant review, Nucor has submitted no such withdrawal of review requests for Samsung C&T Corp, Samsung C&T Engineering, and Samsung C&T Trading. Accordingly, the Department limited its rescission to those firms (*i.e.*, Samsung C&T Corp.) that submitted timely filed no-shipment certifications. Therefore, the facts

⁸⁹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 20324, 20327 (April 7, 2016) (*Initiation Notice*).

⁹⁰ *Id.*; see also 19 C.F.R. § 351.213(d)(3);

⁹¹ See *Initiation Notice*, 81 FR at 20324.

⁹² See *Initiation Notice*, 81 FR at 20324; see also *Zenith Electronics Corp. v. United States*, 988 F.2d 1573, 1583 (Fed. Cir. 1993) (stating that the "burden of production should belong to the party in possession of the necessary information").

⁹³ See Samsung C&T Corp. Non-Shipment Submission, dated May 4, 2016.

⁹⁴ See *Preliminary Results*, 82 FR at 13793.

of the prior review are distinct from those of the instant review. Therefore, in the final results, the Department will continue to apply the all-others rate to Samsung C&T Engineering and Samsung C&T Trading.

X. 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

8/11/2017

X



Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance