



C-580-837

Administrative Review

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March 5, 2018

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
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the
Countervailing Duty Administrative Review, and the Preliminary
Intent to Rescind in Part: Certain Cut-to-Length Carbon-Quality
Steel Plate from the Republic of Korea

I. Summary

In response to requests from interested parties, the Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on certain cut-to-length carbon-quality steel plate from the Republic of Korea (CTL Plate from Korea) for the period of review (POR) January 1, 2016, through December 31, 2016. Commerce preliminarily determines that Hyundai Steel Company (Hyundai Steel) received above *de minimis* countervailable subsidies and that Dongkuk Steel Mill Co., Ltd. (DSM) received countervailable subsidies that are *de minimis*.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We intend to issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).



II. Background

On February 10, 2000, Commerce published the *CTL Plate Order* in the *Federal Register*.¹ On February 8, 2017, Commerce published a notice of opportunity to request an administrative review of the *CTL Plate Order*.² On February 24, 2017, we received a timely request for administrative review from Hyundai Steel.³ On February 28, 2017, we received a timely request for administrative review from DSM.⁴ On February 28, 2017, we received a timely request from Nucor Corporation for review of the *CTL Plate Order* for the following firms: Bookuk Steel, Daewoo International Corp., DSM, Hyundai Glovis Company Ltd. (Hyundai Glovis), Hyundai Mipo Dockard Co., Ltd. (Hyundai Mipo), Hyundai Steel, Hyuosung Corporation (Hyuosung), Samsung C&T Corp., Samsung C&T Engineering & Construction Group (Samsung C&T Engineering), Samsung Heavy Industries, Samsung C&T Trading and Investment Group (Samsung C&T Trading), SK Networks, Steel N People Co. Ltd., and Sung Jin Steel Co., Ltd.⁵ On April 10, 2017, Commerce initiated a CVD review with regard to the producers for which interested parties requested individual review.⁶

On May 8, 2017, Commerce released CBP entry data, and provided interested parties until May 15, 2017, to submit comments on the data.⁷ On May 10, 2017, Hyundai Mipo, Hyuosung, Daewoo International Corp., Samsung C&T Corp., Samsung C&T Trading, Samsung C&T Engineering, SK Networks, and Samsung Heavy Industries submitted no-shipment claims. On May 17, 2017, Nucor submitted comments requesting that Commerce select Hyundai Steel and DSM as mandatory respondents in the review.⁸

On July 12, 2017, Commerce selected DSM and Hyundai Steel as the mandatory respondents in the administrative review.⁹

On July 10, 2017, Nucor withdrew its request for an administrative review of Bookuk Steel, Daewoo International Corp., Hyundai Glovis, Hyundai Mipo, Hyuosung, Samsung C&T Corp., Samsung C&T Engineering, Samsung Heavy Industries, Samsung C&T Trading, SK Networks, Steel N People Co Ltd., and Sung Jin Steel Co., Ltd.¹⁰

¹ See *Notice of Amended Final Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-to-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea*, 65 FR 6587 (February 10, 2000) (*CTL Plate Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 82 FR 9709 (February 8, 2017).

³ See Hyundai Steel's February 24, 2017, letter to Commerce.

⁴ See DSM's February 28, 2017, letter to Commerce.

⁵ See Nucor's February 28, 2017, letter to Commerce.

⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 17188 (April 10, 2017) (*Initiation*).

⁷ See Memorandum to the File, "Customs and Border Protection Data for Selection of Respondents for Individual Review," dated May 8, 2017 (CBP Query Memorandum).

⁸ See Nucor's May 17, 2017, submission.

⁹ See Memorandum titled, "Respondent Selection," dated July 12, 2017.

¹⁰ See Nucor's July 10, 2017, letter to Commerce (Nucor Withdrawal Request).

On July 12, 2017, Commerce issued the Initial Questionnaire to the Government of Korea (GOK), DSM, and Hyundai Steel.¹¹ DSM and Hyundai Steel submitted their affiliation questionnaire responses on July 26, 2017, and July 31, 2017, respectively.¹² On September 5, 2017, DSM and Hyundai Steel submitted their responses to Section III of Commerce's July 12, 2017, Initial Questionnaire.¹³ On September 5, 2017, the GOK submitted its response to Commerce's Initial Questionnaire.¹⁴

On October 3, 2017, the petitioner submitted deficiency comments for DSM, Hyundai Steel, and the GOK.¹⁵

On October 10, 2017, the petitioner submitted timely new subsidy allegations (NSA) with regard to Hyundai Steel and DSM.¹⁶ On October 17, 2017, Commerce extended the due date of the preliminary results of this administrative review until February 28, 2018.¹⁷ On October 20, 2017, Hyundai Steel and GOK submitted rebuttals to the petitioner's NSAs. On January 10, 2018, Commerce released its decision memorandum regarding the petitioner's NSAs concerning DSM and Hyundai Steel.¹⁸ On January 16, 2018, Commerce issued the NSA questionnaire to Hyundai Steel, DSM, and the GOK.¹⁹ On February 5, 2018, DSM submitted its NSA questionnaire response.²⁰ On February 12, 2018, Hyundai Steel and the GOK submitted NSA questionnaire responses.²¹

Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government on January 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final results of this review is now March 5, 2018.²²

¹¹ See Commerce's July 12, 2017, Initial Questionnaire.

¹² See DSM's July 26, 2017, Affiliation Questionnaire Response (DSM Affiliation QNR Response) and Hyundai Steel's July 31, 2017 Affiliation Questionnaire Response (Hyundai Affiliation QNR Response).

¹³ See DSM's September 5, 2017, Section III Initial Questionnaire Response (DSM Primary QNR Response) and Hyundai Steel's September 5, 2017, Section III Initial Questionnaire Response (Hyundai Steel Primary QNR Response).

¹⁴ See the GOK's September 5, 2017, Questionnaire Response to Commerce's July 12, 2017, Initial Questionnaire (GOK Primary QNR Response).

¹⁵ See the petitioner's Deficiency Comments regarding DSM's Initial Questionnaire Response, dated October 3, 2017; *see also* the petitioner's Deficiency Comments regarding Hyundai Steel's Initial Questionnaire Response, dated October 3, 2017.

¹⁶ See the petitioner's October 10, 2017 submission, "Certain Cut-to-Length Carbon-Quality Steel Plate from South Korea: New Subsidy Allegation," (NSA Submission).

¹⁷ See Memorandum regarding Cut-to-Length Carbon Quality Steel Plate from the Republic of Korea: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review, dated October 17, 2017.

¹⁸ See Memorandum titled, "New Subsidy Allegations Memorandum for Dongkuk Steel Mill Co., Ltd. and Hyundai Steel Co., Ltd.," dated January 10, 2018 (NSA Memorandum).

¹⁹ See Commerce's January 16, 2018, New Subsidies Questionnaire.

²⁰ See DSM's February 5, 2018, New Subsidies Questionnaire Response (DSM New Subsidy Response).

²¹ See Hyundai Steel's and GOK's February 12, 2018, New Subsidies Questionnaire Responses (Hyundai Steel New Subsidy Response and GOK New Subsidy Response).

²² See Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

On January 31, 2018, Commerce issued a supplemental questionnaire to DSM to which it responded on February 12, 2018.²³

III. Rescission of Administrative Review, In Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party or parties that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. The petitioner timely withdrew its request for an administrative review of Bookuk Steel, Daewoo International Corp., Hyundai Glovis, Hyundai Mipo, Hyuosung, Samsung C&T Corp., Samsung C&T Engineering, Samsung Heavy Industries, Samsung C&T Trading, SK Networks, Steel N People Co. Ltd., and Sung Jin Steel Co., Ltd.²⁴ Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this administrative review with respect to these companies.

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 is 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

²³ See Commerce’s January 31, 2018, Supplemental Questionnaire; *see also* DSM’s February 12, 2018, Supplemental Questionnaire Response.

²⁴ See Nucor Withdrawal Request.

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. Subsidies Valuation Information

A. Allocation Period

For non-recurring subsidies, we applied the “0.5 percent test,” as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the average useful life (AUL). In the instant review, we are relying on a 15-year AUL. However, for purposes of the preliminary results, none of the programs we examined required the allocation of benefits over the AUL.

B. Attribution of Subsidies

Commerce’s regulations at 19 CFR 351.525(b)(6)(i) state that Commerce will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides that Commerce will attribute subsidies received by certain other companies to the combined sales of those companies when: (1) two or more corporations with cross-ownership produce the subject merchandise; (2) a firm that received a subsidy is a holding or parent company of the subject company; (3) there is cross-ownership between an input supplier and a downstream producer and production of the input is primarily dedicated to the production of the downstream product; or (4) a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a corporation with cross-ownership with the subject company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two

corporations or through common ownership of two (or more) corporations. The Court of International Trade (CIT) upheld Commerce's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.²⁵

DSM reported that during the POR, none of its affiliates produced subject merchandise and that DSM is not a subsidiary of any company. Thus, it has no parent company or holding company. Accordingly, DSM responded to the Initial Questionnaire only with regard to DSM. Therefore, pursuant to 19 CFR 351.525(b)(6)(ii), we attributed subsidies received by DSM to the sales of DSM.

Hyundai Steel reported that, during the POR, none of its affiliates produced subject merchandise and that Hyundai Steel is not a subsidiary of any company. Thus, it has no parent company or holding company. Accordingly, Hyundai Steel responded to the Initial Questionnaire only with regard to Hyundai Steel. Therefore, pursuant to 19 CFR 351.525(b)(6)(ii), we attributed subsidies received by Hyundai Steel to the sales of Hyundai Steel.²⁶

C. Benchmarks for Long-Term Loans and Discount Rates

During the POR, DSM had outstanding countervailable long-term denominated loans from a government-owned bank.²⁷ As benchmarks for countervailable, won-denominated long-term loans and as discount rates, we used, where available, the company-specific interest rates on the company's comparable commercial, won-denominated loans. If such loans were not available, we use, where available, the company-specific corporate bond rate on the company's public and private bonds, as we have determined that the GOK did not control the Korean domestic bond market after 1991.²⁸ This is the approach Commerce has taken in several prior Korean CVD proceedings.²⁹ Specifically, in those cases, we determined that, absent company-specific, commercial long-term loan interest rates, the won-denominated corporate bond rate is the best indicator of the commercial long-term borrowing rates for won-denominated loans in Korea,

²⁵ See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001) (*Fabrique*).

²⁶ As noted below in the "Programs Preliminarily Determined Not to Confer a Benefit" section, the petitioner alleged that Hyundai Steel was cross-owned with Hyundai Green Power, an affiliated electricity provider, during the POR with the meaning of 19 CFR 351.525(b)(6)(iv) and, thus, that any subsidies received by Hyundai Green Power were attributable to Hyundai Steel. However, because we have preliminarily determined that the sole alleged subsidy program involving Hyundai Green Power did not confer a countervailable benefit, the issue of whether Hyundai Green Power is cross-owned with Hyundai Steel is not relevant for purposes of these preliminary results.

²⁶ See DSM Primary QNR Response at 9.

²⁸ See, e.g., *Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR 15530, 15531 (March 31, 1999) and "Analysis Memorandum on the Korean Domestic Bond Market" (March 9, 1999).

²⁹ *Id.*; see also *Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea*, 65 FR 41051 (July 3, 2000), and accompanying Issues and Decision Memorandum (IDM) at "Benchmark Interest Rates and Discount Rates;" and *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003), and accompanying IDM at "Discount Rates and Benchmark for Loans."

because it is widely accepted as the market rate in Korea.³⁰ Where company-specific rates were not available, we used the national average of the yields on three-year, won-denominated corporate bonds, as reported by the Bank of Korea (BOK). This approach is consistent with 19 CFR 351.505(a)(3)(ii) and our practice.³¹ In accordance with 19 CFR 351.505(a)(2)(i), our benchmarks take into consideration the structure of the government-provided loans. For countervailable fixed-rate loans, pursuant to 19 CFR 351.505(a)(2)(iii), we used benchmark rates issued in the same year that the government loans were issued.

D. Denominators

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondent's receipt of benefits under each program. As discussed in further detail below, we determine that only one program, used by Hyundai Steel, was tied to export performance. Therefore, for the program tied to export performance, we used total export sales as the denominator for our calculation. For all other calculations, because they were not tied to export performance, we used total sales as the denominator for our rate calculations for both Hyundai Steel and DSM.

VI. Analysis of Programs

A. Programs Preliminarily Determined to be Countervailable

1. Restriction of Special Location Taxation Act (RSLTA) - Local Tax Exemptions on Land Outside Metropolitan Areas – Article 78

In our Initial Questionnaire, we asked the GOK, DSM, and Hyundai Steel to report the receipt of tax exemptions that were contingent upon the firms having facilities located outside of Korean metropolitan areas. In response, DSM and Hyundai Steel reported receiving tax exemptions under Article 78³² of the RSLTA.

The GOK administers the tax exemption program under Article 78 of the RSLTA to provide incentives for companies to relocate from populated areas in the Seoul metropolitan region to industrial sites in less populated parts of the country.³³ Under Article 78 of the RSLTA, any entity acquiring real estate in a designated industrial complex for the purpose of constructing new buildings or renovating existing ones shall be exempted from the acquisition tax.³⁴ In addition, the entity located in these designated industrial complexes shall have the property tax reduced by 50 percent on the real estate for five years from the date the tax liability becomes effective. The tax exemption is increased to 100 percent of the relevant land, buildings, or

³⁰ See *Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea*, 58 FR at 37328, 37345-37346 (July 9, 1993).

³¹ See, e.g., *Final Results of CORE from Korea 2006*, and accompanying IDM at “Benchmark for Long Term Loans.”

³² See DSM Primary QNR Response QR at Appendix D-13-A (Restriction of Special Local Tax Act (RSLTA), Article 78); and Hyundai Steel Primary QNR Response at 16 for the Acquisition and Property Taxes and Exhibit C-2 (RSLTA, for the acquisitions and property law).

³³ See GOK Primary QNR Response at 97.

³⁴ *Id.* at 6.

facilities that are located in an industrial complex outside of the Seoul metropolitan area. The program is administered by the local tax officials of the county where the industrial complex is located.

Based on the above, we preliminarily determine that the tax reductions constitute a financial contribution in the form of revenue forgone, as described under section 771(5)(D)(ii) of the Act, and confer a benefit to both DSM and Hyundai Steel pursuant to section 771(5)(E) of the Act, and 19 CFR 351.509(a). We further preliminarily determine that the tax exemptions provided under this program are specific under section 771(5A)(D)(iv) of the Act because the subsidies are limited to enterprises located within designated geographical regions. Our findings in this regard are consistent with Commerce's practice.³⁵

The tax credits provided under this program are recurring benefits, because the taxes are due annually. Thus, the benefit is expensed in the year in which it is received.³⁶ To calculate the benefit, we subtracted the amount of taxes paid by the firms from the amounts that would have been paid absent the program. To calculate the net subsidy rate, we divided the total benefit by the total sales of the respective company. On this basis, we preliminarily determine the net subsidy rate under the Article 78 program during the POR to be 0.05 percent *ad valorem* for Hyundai Steel, and for DSM to be less than 0.005 percent, which does not result in a measurable benefit.³⁷

DSM and Hyundai Steel also reported the receipt of additional local tax reductions in connection with facilities located outside of Korean metropolitan areas. Specifically, DSM reported receiving local tax exemptions under RSLTA Articles 19, 31, 46 and 84.³⁸ Hyundai Steel reported receiving local tax exemptions under RSLTA Articles 19, 31, 46, 47-2, 84, 109, and 112.³⁹

In the case of DSM, the respective tax savings it reported receiving under RSLTA Articles 19, 31, 46, and 84 during the POR were less than 0.005 percent of its total sales and therefore are not measurable. In the case of Hyundai Steel, the respective tax savings it reported receiving under RSLTA Articles 19, 31, 46, 47-2, 84, 109, and 112 during the POR were less than 0.005 percent of its total sales and therefore are not measurable. Thus, we preliminarily determine that the tax exemptions DSM and Hyundai Steel received under each of the aforementioned RSLTA Articles did not confer a benefit during the POR. Therefore, we preliminarily determine that only the

³⁵ See, e.g., *Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 FR 60639 (October 25, 2007) (*CFS from Korea*) and accompanying IDM at 12; see also *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review*; 2010, 78 FR 19210 (March 29, 2013) and accompanying IDM at 22.

³⁶ See 19 CFR 351.524(a).

³⁷ See *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 Commerce 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 IDM at "Programs Found Not To Confer a Countervailable Benefit During the POR."

³⁸ See DSM Primary QNR Response at 14 and Appendix D-13.

³⁹ See Hyundai Steel Primary QNR Response at 16 and Exhibit C-2.

Article 78 tax exemptions conferred any benefit under the RLSTA programs during the POR, and that benefit is solely attributed to Hyundai Steel at a rate of 0.05 percent *ad valorem*.

2. Tax Deduction Under Restriction of Special Taxation Act (RSTA) Article 26

Under Article 26 of the RSTA, the GOK provides tax incentives to companies that make investments in their respective fields of business. Under RSTA Article 26, taxpayers are permitted to apply for a tax deduction from the income tax or corporate tax equal to 10 percent of the value of the qualifying investment. According to the GOK, the following categories of companies qualify for the tax incentives provided under the program: (1) a small- or medium-sized enterprise, (2) a “transitioning” company, or (3) “any other company.” Additionally, the tax incentives provided under the program are limited to firms located outside the Seoul Metropolitan area.⁴⁰ Hyundai Steel and DSM claimed tax credits under this program on the tax return filed during the POR.⁴¹

We preliminarily determine that the tax reductions under RSTA Article 26 constitute a financial contribution in the form of revenue forgone, as described under section 771(5)(D)(ii) of the Act, and confer a benefit pursuant to section 771(5)(E) of the Act, and 19 CFR 351.509(a). We further preliminarily determine that the tax exemptions provided under this program are specific under section 771(5A)(D)(iv) of the Act, because benefits are limited to enterprises located within designated geographical regions. Our findings in this regard are consistent with Commerce’s practice.⁴²

To calculate the benefit for DSM and Hyundai Steel, we subtracted the amount of taxes paid by the firms from the amount that would have been paid absent the program. To calculate the net subsidy rate, we divided the total benefit by the total sales of the respective company. On this basis, we preliminarily determine the net subsidy rate under this program during the POR to be 0.03 percent *ad valorem* for DSM and 0.41 percent *ad valorem* for Hyundai Steel.

3. Electricity Discounts under Trading of Demand Response Resources (DRR) Program

DSM and Hyundai Steel each used the Trading of Demand Response Resources (DRR) Program during the POR.⁴³ 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).⁴⁴

⁴⁰ See Hyundai Steel Primary QNR Response at 13-14.

⁴¹ *Id.* at 13; see also DSM Primary QNR Response at 30.

⁴² 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) (*2015 Preliminary Results*) and accompanying Decision Memorandum at 13, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Final Results of Countervailing Duty Administrative Review and Rescission of Countervailing Duty Administrative Review, in Part*, 82 FR 39410 (August 18, 2017) (*2015 Final Results*) and accompanying IDM at 6.

⁴³ See Hyundai Steel Primary QNR Response at 23-26 and Exhibit E-1; see also DSM Primary QNR Response at 23-24 and Appendix D-15-A and Appendix D-15-B.; see GOK Primary QNR Response at 19.

⁴⁴ See GOK Primary QNR Response at 240.

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.⁴⁵ The Korean Power Exchange (KPX) operates both programs.⁴⁶ KPX is majority-owned by the Korea Electric Power Corporation (KEPCO), which is, in turn, majority-owned by the GOK.⁴⁷

The law does not limit eligibility to a specific enterprise or industry or group thereof, in accordance with section 771(5A) (D)(i) of the Act. However, the GOK submits that 2,223 companies were approved for the assistance under this program in 2016,⁴⁸ though participation in it is available to "all entities" in Korea.⁴⁹ We, therefore, preliminarily determine that this program is *de facto* specific under section 771(5A) (D)(iii)(I) of the Act, as the actual recipients are limited in number. Our findings in this regard is consistent with Commerce's approach in the prior administrative review as well as its approach in prior CVD proceedings involving Korea.⁵⁰

Under this program, the KPX pays multiple private Demand Management Business Operators, also called "aggregators," which have direct, contractual relationships with end users of the program.⁵¹ 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 demand curtailment under the program.⁵² Consistent with our prior findings, we preliminarily find KEPCO to be an "authority" within the meaning of section 771(5)(B) of the Act.⁵³ Therefore, we determine that a financial contribution in the form of a direct transfer of funds from KPX is provided to companies participating in this program under section 771(5)(D)(i) of the Act, and a benefit exists in the amount of the grant provided to DSM and Hyundai Steel in accordance with 19 CFR 351.504(a). Our findings in this regard are consistent with Commerce's practice.⁵⁴

⁴⁵ *Id.* at 240-241.

⁴⁶ *Id.* at 242.

⁴⁷ See GOK New Subsidy Response at 2-3.

⁴⁸ See GOK Primary QNR Response at 269.

⁴⁹ *Id.* at 268.

⁵⁰ See *2015 Preliminary Results* and accompanying Decision Memorandum at 13, unchanged in *2015 Final Results* and accompanying IDM at 6; see also *Non-Oriented Electrical Steel from the Republic of Korea: Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 79 FR 61605 (October 14, 2014) (*NOES from Korea*), and accompanying IDM at 11 and 13; *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015), and accompanying IDM at 36. See also Statement of Administrative Action (SAA) accompanying H.R. 5110, H.R. Doc. No. 316, 103d Cong., 2d Sess. 911, 929 (1994) ("the Administration intends to apply the specificity test in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy.").

⁵¹ *Id.* at 242.

⁵² *Id.*

⁵³ See *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015) (*Welded Line Pipe from Korea*), and accompanying IDM at 13-15.

⁵⁴ See *2015 Preliminary Results* and accompanying Decision Memorandum at 13, unchanged in *2015 Final Results* and accompanying IDM at 20-22.

Because we found no evidence on the record indicating that subsidies under the DRR program were tied to export sales, we used the total sales of DSM and Hyundai Steel as a denominator to determine the countervailable benefit under this program during the POR. On this basis we preliminarily determine the net subsidy rate (*i.e.*, electrical payments received from the GOK) that DSM and Hyundai Steel received under this program to be 0.18 percent *ad valorem* for DSM and 0.06 percent *ad valorem* for Hyundai Steel.

4. Various Research and Development Grants Provided Under the Industrial Technology Innovation Promotion Act

Funding for research and development projects under the Industrial Technology Innovation Promotion Act (ITIPA) is designed to enhance the competitiveness of Korea's national economy through the development of industrial technologies.⁵⁵ The legal basis of this program is Article 11 of the Industrial Technology Innovation Promotion Act and relevant regulations. Under these provisions, the Ministry of Trade, Industry and Energy (MOTIE) is authorized to regulate and operate this program, and the Korea Evaluation Institute of Industrial Technology (KEIT), the Korea Institute of Energy Technology Evaluation and Planning (KETEP), and the Korea Industrial Complex Corporation (KICOX) are authorized to administer this program. To implement this program, KEIT, KETEP, and KICOX prepare a basic plan each year for the development of industrial technology.⁵⁶

The plan includes the technology research and development (R&D) that KEIT, KETEP, and KICOX intend to pursue, and describes the application process and supporting documentation required from potential participants. According to the GOK, any person seeking to participate in one of the projects described in KEIT's basic plan then prepares an industrial technology development business plan that conforms to the requirements set forth in the basic plan, and submits that business plan to the Review Committee established by MOTIE. The Review Committee then evaluates the business plans submitted to verify their conformity with the terms and conditions set forth in the basic plan. If the business plans conform with the basic plan, MOTIE and the applicants for the program sign a contract.⁵⁷

We preliminarily determine the ITIPA program to be *de jure* specific under section 771(5A)(D)(i) of the Act, because it is limited by law to projects in the basic plan that KEIT forecasts will support the development of the Korean national economy. For the portion of the subsidy that may have to be repaid, we preliminarily determine that a financial contribution was provided within the meaning of section 771(5)(D)(i) of the Act because the GOK's payments constitute a direct transfer of funds, and a benefit exists in the amount of the grant provided in accordance with section 771(5)(E) of the Act and 19 CFR 351.504(a). Our findings in this regard are consistent with Commerce's practice.⁵⁸

⁵⁵ *Id.* at 8.

⁵⁶ *Id.*

⁵⁷ *Id.* at 9.

⁵⁸ See 2015 Preliminary Results and accompanying Decision Memorandum at 14, unchanged in 2015 Final Results and accompanying IDM at 6.

During the POR, DSM and Hyundai Steel received various R&D grants pursuant to the ITIPA.⁵⁹ DSM has participated in an R&D program for Evaluation of Characterization of Direct Reduction Iron and Development of Optimization Model for Electric Arc Furnace. The R&D activities under this program took place from December 1, 2015, to April 30, 2017.⁶⁰ DSM has also participated in an R&D program for the Development of Earthquake-Proof Reinforced Steel Bars in the 700 megapascal Class for the Sake of Social Safety. The R&D activities under this project commenced on July 1, 2016, and are expected to continue until June 30, 2026. The first stage of the project covered took place from July 1 to December 31, 2016.⁶¹ DSM has also participated in an R&D project for the Development of Radiation Curable Coating and Process with High-Quality (Clarity 90) for Colored Pre-Coated Metal. The R&D activities under this program commenced on November 1, 2016, and are expected to continue until October 31, 2020. The first stage of the project took place from November 1, 2016, to October 31, 2017.⁶²

The names of the R&D projects in which Hyundai Steel has participated in are business proprietary and, thus, cannot be disclosed in this decision memorandum.⁶³ We find no evidence on the record indicating that subsidies under the ITIPA program were tied to export sales. Under the ITIPA program, both DSM and Hyundai Steel were awarded specific grants under separate criteria for a variety of programs. Therefore, consistent with Commerce's practice to treat each ITIPA grant as a separate program whose benefits are attributable to total sales, we divided each ITIPA grant by the total sales of DSM and Hyundai Steel in order to determine whether these individual programs conferred a countervailable benefit during the POR.⁶⁴ Accordingly, we preliminarily determine the net subsidy rates that DSM and Hyundai Steel received under these programs during the POR, when analyzed separately, are 0.01 percent *ad valorem* for Hyundai Steel and for DSM are less than 0.005 percent *ad valorem*, and therefore not measurable.

5. Modal Shift Program

The GOK established this grant program in 2010 in order to decrease greenhouse gas emissions in the transportation and logistics sector. Specifically, through this program, the GOK aims to increase the transport volume by railroad and vessels, in order to decrease the transport volume by heavy freight motorized vehicles.⁶⁵ Under this program, the GOK provides grants from the Ministry of Land, Infrastructure and Transport to administering agencies for truck-to-rail "modal shift" entities and grants from the Ministry of Oceans and Fisheries to administering agencies for truck-to-marine freight "modal shift" entities. The legal framework for this program is Article

⁵⁹ See GOK September 5 QR at 7-8; Hyundai Steel Primary QNR Response at 18-23 and Exhibit D-1; DSM Primary QNR Response at 16-22.

⁶⁰ See DSM September 5 QR at 19-20.

⁶¹ *Id.* at 20-21.

⁶² *Id.* at 21-22.

⁶³ For a listing of the various R&D projects for which Hyundai Steel received grants, see Memorandum to the File, "Preliminary Calculations for Hyundai Steel Co., Ltd.," dated concurrently with this memorandum, (Hyundai Steel Preliminary Calculation Memorandum).

⁶⁴ See 2015 Preliminary Results and accompanying Decision Memorandum at 15, unchanged in 2015 Final Results and accompanying IDM at 6.

⁶⁵ See GOK Primary QNR Response at 247 for a description of the program.

21 of the Sustainable Transportation Logistics Development Act, Article 24 of its Enforcement Decree, and Articles 14 through 17 of the Regulation on Modal Shift Agreement as promulgated by the Ministry of Finance (MOF).⁶⁶

We preliminarily determine that a financial contribution from the GOK exists in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act. Furthermore, we find that the law does not limit eligibility to a specific enterprise or industry or group thereof, in accordance with section 771(5A) (D)(i) of the Act. However, the GOK submits that, for the period between 2012 through 2016, there were a limited number of companies that were approved for/received assistance under this program.⁶⁷ Because the number of companies that received assistance under this program for these years was limited in number, we preliminarily determine 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.⁶⁸ Our findings are consistent with Commerce's practice.⁶⁹

Hyundai Steel reported that it used this program and received a grant during the POR.⁷⁰ The criterion that Hyundai Steel had to meet to qualify for assistance was to shift some of its truck transportation to shipping by boat in order to promote a low-carbon transportation logistics system by reducing greenhouse gas emissions. Because the proposals were consistent with the Sustainable Transportation Logistics Development Act, the proposals were approved by the Korean Shipping Association.⁷¹

We find no evidence on the record indicating that subsidies under this program are tied to export sales. To calculate the benefit to Hyundai Steel that it received under this grant program during the POR, we divided the value of the grant that it received by its total sales. Accordingly, we preliminarily determine the net subsidy rate that Hyundai Steel received under this program during the POR is 0.01 percent.

B. Programs Preliminarily Determined Not to Confer a Measurable Benefit

DSM and Hyundai Steel reported receiving assistance under the programs listed below. We find that none of the information from the GOK, DSM, or Hyundai Steel indicate that the programs are contingent upon export activities. Therefore, to determine whether benefits under the programs listed below resulted in measurable benefits, we used the companies' total sales as the

⁶⁶ *Id.*

⁶⁷ *Id.* at 236 through 239 (BPI) for a more complete description of the number of companies involved in the program.

⁶⁸ See e.g., *NOES from Korea* and accompanying Issues and Decision Memorandum at 11 and 13; see also *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015), and accompanying Issues and Decision Memorandum at 36; see also Statement of Administrative Action (SAA) accompanying H.R. 5110, H.R. Doc. No. 316, 103d Cong., 2d Sess. 911, 929 (1994) (“{t}he Administration intends to apply the specificity test in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy.”).

⁶⁹ See *2015 Preliminary Results* and accompanying Decision Memorandum at 15, unchanged in *2015 Final Results* and accompanying Decision Memorandum at 6.

⁷⁰ See Hyundai Steel Primary QNR Response at 30.

⁷¹ See Hyundai Steel Primary QNR Response at Exhibit H-1.

denominator. Based on this analysis, we preliminarily determine that the following programs did not confer a measurable benefit during the POR:

1. Receipt of Payment from KOGAS under Natural Gas Promotion Program
2. Demand Adjustment Program of Emergent Reduction (ER) (former Emergency Road Reduction (ELR))
3. GOK Directed Credit: 1992-2001 Directed Credit

During the POR, DSM was the only company that had an outstanding loan for this program, which was a loan received from the Korea Housing Bank in 1995 to provide rental housing to employees and which is now held by Kookmin Bank (following a merger with the Korea Housing Bank).⁷²

To determine whether this loan conferred a benefit upon DSM during the POR, we compared the amount of interest paid during the POR to the amount of interest that would have been paid on a comparable commercial loan.⁷³ We used as our loan benchmark, the national average yield on three-year corporate bonds, as described in the “Loan Benchmarks and Interest Rates” section above.⁷⁴ Next, we divided the benefit by DSM’s total sales for the POR, which resulted in a rate that was less than 0.005 percent and, therefore, is not measurable.

4. GOK Purchase of Electricity for More Than Adequate Remuneration (MTAR)

As explained in the NSA Memorandum, the petitioner alleged that Hyundai Steel received benefits from the GOK as a result of the state-owned KPX’s⁷⁵ purchases of electricity generated by Hyundai Green Power for MTAR. In its allegation, the petitioner alleges that Hyundai Green Power was a cross-owned input supplier under 19 CFR 351.525(b)(6)(iv) during the POR and, thus, KPX’s purchases of electricity for MTAR were attributable to Hyundai Steel.⁷⁶ In the NSA Memorandum, Commerce initiated an investigation into whether Hyundai Steel benefitted from electricity purchases made by KPX during the POR to the extent that Hyundai Steel was cross-owned with Hyundai Green Power.⁷⁷

For purposes of the preliminary results, we find that it is not necessary to examine whether Hyundai Green Power constitutes an input supplier that was cross-owned with Hyundai Steel

⁷² See DSM Primary QNR Response at 8 and Appendix D-11-A; see also the GOK Primary QNR Response at 2.

⁷³ See 19 CFR 351.505(a).

⁷⁴ See, e.g., *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Notice of Preliminary Results and Preliminary Partial Rescission of Countervailing Duty Administrative Review*, 72 FR at 65299-65300 (November 20, 2007) (2006 Preliminary Results), unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Notice of Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 73 FR 14770 (March 19, 2008).

⁷⁵ The petitioner also alleged that KPX was itself owned by the state-owned Korea Electric Power Corporation (KEPCO). See NSA Memorandum at 2.

⁷⁶ See NSA Memorandum at 2-4.

⁷⁷ See NSA Memorandum at 2-4.

within the meaning of 19 CFR 351.525(b)(6)(iv). Assuming, *arguendo*, that cross-ownership between the two firms existed and that KPX's purchase of electricity constituted a financial contribution and was specific under 771(5)(D)(iv) and 771(5A) of the Act, respectively, the program's countervailability is not relevant because the data indicate that no benefit was conferred under the alleged subsidy program during the POR within the meaning of section 771(5)(E)(iv) of the Act. Specifically, we preliminarily determine that the price the GOK paid Hyundai Green Power during the POR is less than the electricity price that the GOK charged to Hyundai Green Power during the same period.⁷⁸ We note that this method of comparison is consistent with the comparison method used by Commerce in a prior CVD proceeding involving a government's alleged sale of electricity for MTAR.⁷⁹ We will continue to examine this issue for the final results.

C. Programs Preliminarily Determined Not to be Used

DSM reported non-use of the following programs:

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

Hyundai Steel reported non-use of the following programs:

- GOK Pre-1992 Directed Credit Program
- GOK Infrastructure Investment at Incheon North Harbor
- Tax Program Under the Restriction of Special Taxation Act (RSTA) and/ or the Tax Reduction and Exemption Control Act (TERCL) -Asset Revaluation (TERCL 56(2))

⁷⁸ See Hyundai Steel Preliminary Calculation Memorandum.

⁷⁹ See *Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51814 (November 8, 2017) and accompanying IDM at Comment 51.

- 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 Less than Adequate Remuneration (LTAR)

VII. Recommendation

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

☒

☐

Agree

Disagree

3/5/2018

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