



C-580-837

Administrative Review

POR: 1/1/2016 - 12/31/2016

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DATE: July 10, 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: Issues and Decision Memorandum for the Final Results of
Countervailing Duty Administrative Review and Partial
Rescission: Cut-to-Length Carbon-Quality Steel Plate from the
Republic of Korea

I. Summary

On March 12, 2018, the Department of Commerce (Commerce) published the preliminary results of the administrative review of the countervailing duty (CVD) order on cut-to-length carbon-quality steel plate (CTL plate) from the Republic of Korea.¹ The review covers Hyundai Steel Co. (Hyundai Steel) and Dongkuk Steel Mill Co., Ltd. (DSM). The period of review (POR) is January 1, 2016, through December 31, 2016. Nucor Corporation, the petitioner, timely filed a case brief on April 11, 2018.² On April 16, 2018, Hyundai Steel timely filed a rebuttal brief.³ We continue to find that Hyundai Steel benefitted from countervailable subsidies during the POR and that DSM did not. As indicated in the accompanying *Federal Register* notice, we are also rescinding the review for 12 companies.

¹ See *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; and Rescission of Review, in Part; Calendar Year 2016*, 83 FR 10661 (March 12, 2018) (*Preliminary Results*), and accompanying Decision Memorandum (Preliminary Decision Memorandum).

² See Letter from Petitioner, "Certain Cut-to-Length Carbon Quality Steel Plate from the Republic of Korea: Case Brief of the Nucor Corporation," dated April 11, 2018 (Petitioner's Case Brief).

³ See Letter from Hyundai Steel, "Certain Cut-to-Length Carbon Quality Steel Plate from the Republic of Korea. Case No. C-580-837: Rebuttal Brief," dated April 16, 2018 (Hyundai Steel Rebuttal Brief).



The “Analysis of Comments” section below contains summaries of these comments and Commerce’s positions on the issues raised in the briefs. As a result of this analysis, we made no changes to the *Preliminary Results*. We recommend that you approve the positions described in this memorandum.

Below is a complete list of the issue in this review for which we received comments from parties:

Comment 1: Whether Hyundai Steel and Hyundai Green Power are Cross-Owned Affiliates

Comment 2: Whether the Government of Korea (GOK) Purchased Electricity from Hyundai Green Power for More Than Adequate Remuneration During the POR

II. 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.

III. Period of Review

The POR is January 1, 2016, through December 31, 2016.

IV. Subsidies Valuation Information

A. Allocation Period

We made no changes to the allocation period and the allocation methodology used in the *Preliminary Results*. No issues were raised by interested parties in case briefs, nor was any new factual information provided that would lead us to reconsider our preliminary finding regarding the allocation period or the allocation methodology for the respondent companies. For a description of allocation period and the methodology used for these final results, *see* the *Preliminary Results* and accompanying Preliminary Decision Memorandum at 5.

B. Attribution of Subsidies

Commerce has made no changes to the methodologies used in the *Preliminary Results* for attributing subsidies. No issues were raised by interested parties in case briefs, nor was any new factual information provided that would lead us to reconsider our preliminary finding regarding the attribution of subsidies. For a description of the methodologies used for these final results, *see* the *Preliminary Results* and accompanying Preliminary Decision Memorandum at 5-6.

C. Benchmark Interest Rates

Commerce made no changes to benchmarks or discount rates used in the *Preliminary Results*. No issues were raised by interested parties in case briefs, nor was any new factual information provided that would lead us to reconsider our preliminary finding regarding benchmarks or discount rates. For a description of the benchmarks and discount rates used for these final results, *see* the *Preliminary Results* and accompanying Preliminary Decision Memorandum at 6-7.

D. Denominator

Commerce has made no changes to the denominators used in the *Preliminary Results*. No issues were raised by interested parties in case briefs, nor was any new factual information provided that would lead us to reconsider our preliminary finding regarding the appropriate denominators. For a description of the denominators used for these final results, *see* the *Preliminary Results* and accompanying Preliminary Decision Memorandum at 7.

V. Analysis of Programs

A. Programs Determined to be Countervailable

Commerce made no changes to its preliminary findings or calculations for the following programs. For the descriptions, analyses, and calculation methodologies of these programs, *see* the *Preliminary Results*, accompanying Preliminary Decision Memorandum, and calculation memoranda.⁴ Issues raised by interested parties in case briefs regarding certain of these programs are addressed in Comments 1 and 2. There was no new factual information provided by the parties. We did not revise our preliminary findings. Per Commerce's practice, we have not included program rates that are less than 0.005 percent *ad valorem* into the final net subsidy rates calculated for DSM and Hyundai Steel.⁵ Therefore, the final company-specific rates for each of the following programs are unchanged from *Preliminary Results* and are as follows:

1. Restriction of Special Location Taxation Act (RSLTA) - Local Tax Exemptions on Land Outside Metropolitan Areas Under Articles 19, 31, 46, 47.2, 78, 84, 109, and 112⁶

For the RSLTA programs listed below, the program rates for DSM and Hyundai Steel are:

RSLTA Article	<i>Ad Valorem</i> Rate for DSM	<i>Ad Valorem</i> Rate for Hyundai Steel
19	Less than 0.005%	Less than 0.005%
31	Less than 0.005%	Less than 0.005%
46	Less than 0.005%	Less than 0.005%
47.2	Not Used	Less than 0.005%
78	Less than 0.005%	0.05%
84	Less than 0.005%	Less than 0.005%
109	Not Used	Less than 0.005%
112	Not Used	Less than 0.005%

⁴ See Memorandum, "Preliminary Calculations for Hyundai Steel Company (Hyundai Steel)," dated March 5, 2018 (Hyundai Steel Preliminary Calculation Memorandum); *see also* Memorandum, "Preliminary Calculations for Dongkuk Steel Mill Co., Ltd. (DSM)," dated March 5, 2018 (DSM Preliminary Calculation Memorandum).

⁵ See, e.g., *Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51814 (November 8, 2017) (Lumber from Canada) and accompanying Issues and Decision Memorandum (IDM) (Lumber from Canada IDM) at 19.

⁶ See Preliminary Decision Memorandum at 7-9.

2. Tax Deduction Under Restriction of Special Taxation Act (RSTA) Article 26⁷

We determine the net subsidy rate that DSM and Hyundai Steel received under this program to be 0.03 percent and 0.41 percent *ad valorem*, respectively.

3. Electricity Discounts under Trading of Demand Response Resources (DRR) Program⁸

We determine the net subsidy rate that DSM and Hyundai Steel received under this program to be 0.18 percent and 0.06 percent *ad valorem*, respectively.

4. Various Research and Development Grants Provided Under the Industrial Technology Innovation Promotion Act⁹

We determine the net subsidy rate that DSM and Hyundai Steel received under this program to be less than 0.005 percent and 0.01 percent *ad valorem*, respectively.

5. Modal Shift Program¹⁰

We determine the net subsidy rate that Hyundai Steel received under this program to be 0.01 percent *ad valorem*. DSM did not use this program.

B. Programs Preliminarily Determined Not to Confer a Measurable Benefit¹¹

Commerce made no changes to its preliminary findings with regard to the following programs. No issues were raised by interested parties in case briefs regarding these programs. Therefore, we continue to find that these programs conferred no measurable benefit.

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
4. GOK Purchase of Electricity for More Than Adequate Remuneration (MTAR)
5. Restriction of Special Location Taxation Act (RSLTA) - Local Tax Exemptions on Land Outside Metropolitan Areas – Article 78

⁷ *Id.* at 9.

⁸ *See* Preliminary Decision Memorandum at 9-10.

⁹ *Id.* at 11-12.

¹⁰ *Id.* at 12-13.

¹¹ *Id.* at 13-15.

C. Programs Preliminarily Determined Not to be Used¹²

Commerce has made no changes to its preliminary findings with regard to the following programs. No issues were raised by interested parties in case briefs regarding these programs. Therefore, we continue to find that, for the final results, the following programs were not 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)
- 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

¹² *Id.* at 15-16.

- Provision of Liquefied Natural Gas (LNG) for Less than Adequate Remuneration (LTAR)

VI. Analysis of Comments

Comment 1: Whether Hyundai Steel and Hyundai Green Power are Cross-Owned Affiliates

Petitioner's Case Brief

- In the *Preliminary Results*, Commerce did not analyze whether cross-ownership exists between Hyundai Steel and Hyundai Green Power because it incorrectly found that the GOK did not purchase electricity from Hyundai Green Power for More than Adequate Remuneration (MTAR). However, substantial evidence demonstrates that cross-ownership exists between the two firms.
- Under 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 in essentially the same way it can use its own assets. The regulation notes that this standard will normally be met when there is a majority voting interest between the two corporations or through common ownership of two (or more) corporations.
- However, cross-ownership may also exist when there is less than majority voting interest between two companies.¹³
- The *Preamble* states that the “underlying rationale for attributing subsidies between two separate corporations (with cross-ownership) is that the interests of those two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same ways it can use its own assets (or subsidy benefits).”¹⁴
- In *CFS from Indonesia*, Commerce found that the respondent was cross-owned with certain affiliates although the respondent did not own a majority interest in those affiliates.¹⁵ Commerce based its finding in that case on the fact that the family that held majority ownership of the respondent firm was in a position to control several cross-owned affiliates’ debt through the family’s ability to negotiate the cross-owned affiliates’ debt and the fact that the family was liable for the affiliates’ debt.¹⁶ In the same case, Commerce also based its cross-ownership finding on the fact that an affiliate had an exclusive long-term supply and financing relationship with the respondent firm.¹⁷
- Thus, in *CFS from Indonesia*, Commerce concluded that the respondent and the cross-owned affiliates at issue were “intertwined to such a degree that they cannot operate independently of each other.”¹⁸

¹³ See e.g., *Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 72 FR 60642 (October 25, 2007) (*CFS from Indonesia*) and accompanying Issues and Decision Memorandum (IDM) (*CFS from Indonesia IDM*) at 55.

¹⁴ See *Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998) (*Preamble*).

¹⁵ See *CFS from Indonesia IDM* at 10-12.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 12.

- Applying an analysis similar to that employed in *CFS from Indonesia* demonstrates that Hyundai Steel and Hyundai Green Power are cross-owned.
- Hyundai Green Power is co-owned primarily by Hyundai Steel and the GOK, with the remaining owners serving as passive investors. Further the shareholder agreement for Hyundai Green Power provides Hyundai Steel and the GOK with significant oversight powers, and Hyundai Steel's financial statement indicates that Hyundai Steel is an operating investor of Hyundai Green Power.¹⁹
- Combining Hyundai Steel's ownership share in Hyundai Green Power with the ownership share held by one of Hyundai Steel's affiliated companies results in Hyundai Steel owning substantially more than 50 percent of Hyundai Green Power.
- The interests of Hyundai Steel and Hyundai Green Power have merged to such an extent that Hyundai Steel is able to control the assets of Hyundai Green Power. For example, the shareholder agreement indicates that five years after the completion of Hyundai Green Power's facilities, Hyundai Steel has the right to buy the shares of Hyundai Green Power from all other shareholders and, at its own discretion, to determine whether to transfer Hyundai Green Power's electricity power plant into Hyundai Steel's internal electricity power plant.
- Hyundai Steel is the only party that benefits from the goods produced by Hyundai Green Power.
- Hyundai Steel is responsible for the debts of Hyundai Green Power in a manner similar to the facts Commerce examined in *CFS from Indonesia*. The financial statements of Hyundai Steel indicate that it has guaranteed the existence of Hyundai Green Power by agreeing to purchase the shares of any other shareholder that decides to sell its stock.
- In addition, proprietary information contained in the shareholder agreement commit Hyundai Steel and Hyundai Green Power to an exclusive, long-term commercial relationship.²⁰
- The location of Hyundai Green Power's electricity generating facility, which is inside Hyundai Steel's facilities, enables Hyundai Steel to exert control over Hyundai Green Power. Hyundai Steel was a co-project proponent of the Hyundai Green Power construction project and all team members are from Hyundai Steel or Hyundai Green Power. Additionally, proprietary information on the record indicates that the backgrounds of Hyundai Green Power's managers and senior staff contribute to the intertwined nature of Hyundai Steel and Hyundai Green Power.²¹
- Thus, the totality of circumstances demonstrate that Hyundai Steel and Hyundai Green Power are cross-owned affiliates.
- Under 19 CFR 351.525(b)(6)(iv), Commerce attributes the subsidies received by a cross-owned affiliate when it supplies an input to the downstream producer of subject merchandise. As discussed above, record evidence demonstrates that Hyundai Green Power is cross-owned with Hyundai Steel. Because Hyundai Green Power supplies an input (steam) to Hyundai Steel that is used by Hyundai Steel "primarily in the production of subject merchandise," pursuant to 19 CFR 351.525(b)(6)(iv), Commerce should attribute subsidies received by Hyundai Green Power to the combined sales of Hyundai Green Power and Hyundai Steel.²²

¹⁹ See Petitioner's Case Brief at 5, citing the proprietary shareholder agreement of Hyundai Green Power.

²⁰ See Petitioner's Case Brief at 8, discussing the proprietary terms of the shareholder agreement for Hyundai Green Power.

²¹ See Petitioner's Case Brief at 9.

²² The nature of the input supplied by Hyundai Green Power is proprietary. See Petitioner's Case Brief at 11.

Hyundai Steel Rebuttal Brief

- Under 19 CFR 351.525(b)(6)(vi), Commerce places an emphasis on majority ownership when determining whether cross-ownership exists. This is logical because for companies governed by a board of directors, majority ownership and hence majority representation on the board of directors is a vehicle for controlling the corporation.
- The record demonstrates that Hyundai Steel owned 29 percent of Hyundai Green Power during the POR, which is not a majority ownership that would otherwise grant Hyundai Steel *de facto* control of Hyundai Green Power.
- Consistent with its minority ownership in Hyundai Green Power, Hyundai Steel only had one former employee who was a member of Hyundai Green Power's board during the POR. Due to the number of Hyundai Green Power's board members, of which the exact number is proprietary, this former employee of Hyundai Steel was not, individually, able to exert unilateral control over the remaining board members.
- As a result, Hyundai Steel had no means to direct the board members to use the assets (or subsidy benefits) of Hyundai Green Power as if they were the assets (or subsidy benefits) of Hyundai Steel.
- The petitioner's case brief is silent regarding the composition of Hyundai Green Power's board make-up and is also silent on the fact that Hyundai Steel has no ability to control Hyundai Green Power via a majority voting interest.
- Instead, the petitioner attempts to argue that the facts of the case are akin to *CFS from Indonesia*. However, the facts of *CFS from Indonesia* are distinct from the facts of the instant review.
- In *CFS from Indonesia*, the central fact on which Commerce based its cross-ownership finding was that one family controlled the assets of various entities.²³ There is no similar information on the record of the instant review regarding family control of Hyundai Steel and Hyundai Green Power.
- The petitioner wrongly claims that proprietary information in the shareholder agreement grants Hyundai Steel oversight powers of Hyundai Green Power. The specific passage from the shareholder agreement cited by the petitioner uses certain terms to differentiate among the various investors in Hyundai Green Power; however, the fact remains that the fundamental duties of all the investors in Hyundai Green Power are the same, as evidenced by the language in Article 3 of the shareholders agreement.
- Contrary to the petitioner's claims that Hyundai Steel is the sole operator of Hyundai Green Power, the record demonstrates that Hyundai Steel and Korea Midland Power are both "operational investors" in the firm.²⁴
- The petitioner attempts to inflate the Hyundai Steel's cumulative ownership of Hyundai Green Power by cumulating the shares held by Korea Midland Power and one of Hyundai Steel's affiliates with Hyundai Steel's total share of Hyundai Green Power. There is no basis to attribute these firms' shares of Hyundai Green Power to Hyundai Steel as these shareholders have their own shareholding rights and are not cross-owned with Hyundai Steel.
- The shareholder agreement, specifically Articles 17 and 18, cited by the petitioner, does not grant Hyundai Steel the ability to control the assets of Hyundai Green Power as if they were its own.

²³ See *CFS from Indonesia* IDM at 9.

²⁴ See Hyundai Steel Rebuttal Brief at 5, citing Hyundai Steel NSA QNR Response at 17 and Exhibit NSA-22.

- Article 17 of the shareholder agreement states that upon completion of the power plant, Hyundai Steel has the option to buy the shares of Hyundai Green Power and to transfer the power plant into Hyundai Steel's internal power plant if certain proprietary conditions are met. However, the language in Article 17, which is proprietary, makes clear that Hyundai Steel lacks the ability to unilaterally force sales of shares from other shareholders, as claimed by the petitioner. Moreover, the provision discussed in Article 17 cannot be invoked until October 2019, a date which post-dates the POR.
- The language in Article 18 of the shareholder agreement also undercuts the petitioner's claims. Under Article 18, five years after the completion date of Hyundai Green Power's electricity plant, Hyundai Steel has the option to ask the other shareholders to sell their shares to Hyundai Steel or a third party designated by Hyundai Steel. However, this date will not occur until October 2019.
- Further, under Article 18, 25 years after completion of the power plant, or in a case where Hyundai Green Power no longer exists, Hyundai Steel has the option to buy the other shareholders' shares. However, this provision of Article 18 cannot be invoked until October 2039.
- The petitioner's claim that Hyundai Steel is responsible for the debts of Hyundai Green Power is also baseless. The loans and options discussed in the shareholder agreement are distinct from the financing on which Commerce based its cross-ownership decision in *CFS from Indonesia*.²⁵ Unlike *CFS from Indonesia*, the shareholder agreement at issue here makes no mention of familial obligations, relies on the financial recommendations of outside parties, and the provisions cited by the petitioner have not been exercised as of the end of POR and cannot be exercised until well after the POR.
- Hyundai Steel sells a by-product gas to Hyundai Green Power that Hyundai Green Power, in turn, uses to produce electricity. Meanwhile, Hyundai Green Power supplies steam to Hyundai Steel. The fact that Hyundai Steel is the only party that purchases steam from Hyundai Green Power does not give Hyundai Steel the ability to control the assets of Hyundai Green Power as if they were its own.
- While the existence of a close supplier relationship may be sufficient to demonstrate affiliation, it does not demonstrate cross-ownership, which requires a significantly higher standard of control.²⁶ In fact, contrary to the petitioner's claims, in *CFS from Indonesia*, Commerce found that long-term supply agreements did not support a finding of affiliation for certain suppliers.²⁷
- While Hyundai Green Power's plant is located inside the bounds of Hyundai Steel's Dangjin Works, it is untrue to claim that Hyundai Green Power's plant is located inside the steel plant of Hyundai Steel. Further, there is nothing in the CVD regulations indicating that proximity of facilities may serve as a basis for an affirmative cross-ownership finding.²⁸
- None of the employees or managers of Hyundai Green Power were employed by Hyundai Steel during the POR, and only a handful of Hyundai Green Power's employees were *former* employees of Hyundai Steel. A small number of former Hyundai Steel employees working at Hyundai Green Power may not serve as the basis for finding the two firms to be cross-owned.

²⁵ See *CFS from Indonesia* IDM at 9.

²⁶ See *Preamble*, 63 FR at 65401.

²⁷ See *CFS from Indonesia* IDM at 10.

²⁸ See 19 CFR 351.525(b)(6)(iv).

- Commerce has found Hyundai Steel and Hyundai Green Power not to be cross-owned in the two prior administrative reviews and should continue to reach the same conclusion in the instant review.
- Even if Hyundai Steel and Hyundai Green Power were cross-owned, which they are not, record evidence demonstrates that Hyundai Green Power did not sell any input products to Hyundai Steel that were primarily dedicated to the downstream production of subject merchandise, as required under 19 CFR 351.525(b)(6)(iv).
- The petitioner’s conclusory and short assertion to the contrary that “Hyundai Green Power was an input producer (of steam)” does nothing to rebut this record evidence.²⁹
- Steam is simply not an input product that is primarily dedicated to the production of subject merchandise as required under 19 CFR 351.525(b)(6)(iv). Hyundai Steel does not use the steam it purchases from Hyundai Green Power as an input product. Rather, it uses the steam to maintain temperature settings for certain equipment and/or materials and for hot-water supply for its workers’ shower room.
- Further, steam, by its nature, is not primarily dedicated to the production of the subject merchandise produced by Hyundai Steel in that it cannot, as required by the regulations, be dedicated almost exclusively to the production of a higher value-added product such that it is a type of input product that is a merely a link in the overall production chain.³⁰ Rather, steam is akin to the inputs discussed in the *Preamble* where it is not reasonable to assume that the purpose of a subsidy to the input product is to benefit the downstream product.
- Thus, in the absence of an input supplied by Hyundai Green Power to Hyundai Steel that was primarily dedicated to the production of subject merchandise, as required under 19 CFR 351.525(b)(6)(iv), there is no basis on which to attribute any subsidies allegedly received by Hyundai Green Power to Hyundai Steel.

Commerce’s Position: Under 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 in essentially the same way it can use its own assets. The regulation further states that the cross-ownership standard “normally” will be met “where there is majority ownership interest between two corporations or through common ownership of two (or more) corporations.” The *Preamble* further states that, “In certain circumstances, a large minority voting interest (for example, 40 percent) or a ‘golden share’ may also result in cross-ownership.”³¹ However, the *Preamble* makes clear that the standard for finding cross-ownership is higher than the standard for finding affiliation and that a cross-ownership finding hinges on the ability of one party to have unilateral control over the other party’s assets, including subsidy benefits:

The underlying rationale for attributing subsidies between two separate corporations is that the interests of those two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same ways it can use its own assets (or subsidy benefits). The affiliation standard does not sufficiently limit the relationships we would examine to those where corporations have reached such a commonality of interests. Therefore, reliance upon the affiliated party definition would result in the Department expending

²⁹ See Hyundai Rebuttal Brief at 10, citing the Petitioner’s Case Brief at 10-11.

³⁰ See *Preamble*, 63 FR at 65401.

³¹ *Id.*

unnecessary resources collecting information from corporations about subsidies which are not benefitting the production of the subject merchandise, or diluting subsidies more properly attributed to input producers by allocating such subsidies over the production of remotely related and affected downstream producers. In response to the second comment, we note that varying degrees of control can exist in any relationship.

Therefore, we believe the more precise definition of cross-ownership that we have adopted in these Final Regulations is more appropriate. Contrary to the assertions of the commenters, in limiting our attribution rules to situations where there is cross-ownership, we are not reading “affiliated” out of the CVD law—we simply do not find the affiliation standard to be a helpful basis for attributing subsidies. Nowhere in the statute or the SAA is there any indication that the affiliated party definition was intended to be used for subsidy attribution purposes . . . we do not intend to investigate subsidies to affiliated parties unless cross-ownership exists or other information, such as a transfer of subsidies, indicates that such subsidies may in fact benefit the subject merchandise produced by the corporation under investigation.³²

In the instant review, Hyundai Steel’s ownership share of Hyundai Green Power was 29 percent during the POR, which is significantly less than the 40 percent minority ownership referenced in the *Preamble*.³³ The petitioner argues that Hyundai Steel’s actual share of Hyundai Green Power is larger than 29 percent when the shares of another affiliated shareholder are cumulated with those of Hyundai Steel. However, as the above-referenced language from the *Preamble* makes clear, for purposes of the CVD law, mere affiliation does not equal cross-ownership. Thus, while the additional shareholder may be affiliated with Hyundai Steel, absent cross-ownership between Hyundai Steel and the other shareholder, there is no basis to combine the firms’ shares when determining Hyundai Steel’s share of ownership in Hyundai Green Power.

Additionally, there is no evidence indicating that Hyundai Steel possessed a “golden share” or other means of corporate governance that would have enabled it to exert disproportionate or unilateral control over the assets of Hyundai Green Power during the POR.³⁴ For example, Chapter 2, Article 7 of the articles of incorporation of Hyundai Green Power, which lists the form of shares that the firm shall issue, makes no mention of “golden shares” or any of type of share that would carry a disproportionate ownership value.³⁵

Further, no current employee of Hyundai Steel was on the corporate board of Hyundai Green Power during the POR.³⁶ Also, while a former of employee of Hyundai Steel was on the board of Hyundai Green Power during the POR, there is no evidence indicating the individual acted on Hyundai Steel’s behalf.³⁷ Further, the number of Hyundai Green Power’s other board members during the POR was such that the former Hyundai Steel employee serving on the board could

³² *Id.*

³³ See Hyundai Steel NSA QNR Response at Exhibit NSA-18.

³⁴ *Id.* at Exhibit NSA-20, which contains the articles of incorporation for Hyundai Green Power.

³⁵ *Id.*

³⁶ See Hyundai Steel NSA QNR Response at Exhibit NSA-19, which identifies members of Hyundai Green Power’s board and the board members previous employer.

³⁷ *Id.*

not, by himself, exert unilateral control over the Hyundai Green Power's board of directors on behalf of Hyundai Steel.³⁸

Much of the petitioner's arguments on the purported existence of cross-ownership between Hyundai Steel and Hyundai Green Power focus on the terms contained in Hyundai Green Power's shareholder agreement.³⁹ Contrary to the petitioner's claims, we find that the language and terms of the shareholder agreement demonstrate a lack of cross-ownership between the two firms. The petitioner argues that the shareholder agreement's designation of Hyundai Steel as an "operational investor" in Hyundai Green Power demonstrates that Hyundai Steel has operational control of the company. However, the shareholder agreement also designates Korea Midland Power, a party that is not affiliated with Hyundai Steel and that also owns 29 percent of Hyundai Green Power, as an "operational investor," a fact that undercuts the petitioner's claim that Hyundai Steel is able to exert control over Hyundai Green Power.⁴⁰ Further, Article 3 of the shareholder agreement designates the same duties and obligations to all investors.⁴¹ In a situation where separate corporations possess an equal ownership stake in another corporation, and certain terms regarding their ownership, as reflected in the shareholder agreement, are also on equal terms, it cannot be said that either corporation is able to "use or direct the individual assets of the other corporation in essentially the same way it can use its own assets".

We also find that Articles 17 and 18 of the shareholder agreement do not, as claimed by the petitioner, indicate that Hyundai Steel was able to use or direct the individual assets (or subsidy benefits) of Hyundai Green Power during the POR as Hyundai Steel would use or direct its own assets (or subsidy benefits). For example, Article 17 of the shareholder agreement provides that upon completion of the power plant, Hyundai Steel has the option to buy the shares of Hyundai Green Power and to transfer the power plant into Hyundai Steel's internal power plant if certain proprietary conditions are met.⁴² However, the proprietary language in Articles 16 and 17 of the shareholder agreement indicates that Hyundai Steel cannot unilaterally require other shareholders to sell their shares and that the provision discussed in Article 17 cannot be invoked until October 2019, a date that post-dates the POR.⁴³ Additionally, Article 18 of the shareholder agreement indicates that Hyundai Steel has the option to ask the other shareholders to sell their shares to Hyundai Steel or a third party designated by Hyundai Steel; however, the shareholder agreement states that Hyundai Steel may not invoke this clause until October 2019.⁴⁴ Article 18 of the shareholder agreement also states that 25 years after completion of the power plant or in a case where Hyundai Green Power no longer exists, Hyundai Steel may purchase the other shareholders' shares. However, this provision of Article 18 cannot be invoked until October 2039.⁴⁵

The petitioner also argues that Hyundai Steel is responsible for the debts of Hyundai Green Power in a manner similar to the facts examined in *CFS from Indonesia*, in which Commerce

³⁸ *Id.*

³⁹ See Hyundai Steel NSA QNR Response at Exhibit NSA-22.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

found the respondent firms in question to be cross-owned. Specifically, the petitioner cites to the following passage from Hyundai Steel's financial statement:

As of December 31, 2016, Hyundai Green Power Co., Ltd., the Company's related party is engaging in the waste gas power generation business in Dangjin, and financed through the project financing commitments with the Korea Development Bank. The Company has entered into the financing commitments for subordinated loans as an operating investor.⁴⁶

We disagree that this passage referencing financing commitments for subordinated loans demonstrates that Hyundai Steel was able to use the assets (and subsidy benefits) of Hyundai Green Power as if they were its own or that the operations of Hyundai Steel and Hyundai Green Power were intertwined to such a degree that they should be found to be cross-owned. As noted above, the level of Hyundai Steel's ownership of Hyundai Green Power and the make-up of Hyundai Green Power's board of directors does not afford Hyundai Steel the ability to unilaterally control the assets of Hyundai Green Power. Further, as discussed above, we find the provisions of the shareholder agreement, including the provisions cited by the petitioner, do not grant Hyundai Steel the ability to exert unilateral control over Hyundai Green Power.⁴⁷

Additionally, the facts of the instant administrative review are distinct from *CFS from Indonesia*. In *CFS from Indonesia*, Commerce described its affirmative cross-ownership finding as follows:

Record information, such as the GOI's recognition of the Widjaja family as personally responsible for the debt of the entire SMG/APP group including all of the companies in the CFS production and sales chain, and information showing that the Widjaja family was held responsible by the GOI for the debt restructuring negotiations and agreements for both holding companies and operating companies in the chain, demonstrates that the Widjaja family is the ultimate owner or controller of these companies. Further, with regard to the Widjaja family's control of Purinusa, the family's direct and indirect ownership of Purinusa during the POI was sufficient to exercise control of Purinusa's assets in accordance with 19 CFR 351.525(b)(6)(vi). Our examination of the record shows that IK and Lontar are each directly or indirectly owned by Purinusa, WKS is completely intertwined with Lontar, and AA is completely intertwined with IK. Record evidence further demonstrates that the companies within the SMG/APP CFS group have merged to such a degree under the control of the Widjaja family that the family can use or direct the individual assets of these companies in the same way it can use its own assets.⁴⁸

As the passage above indicates, it is not accurate to argue that the assumption of the respondent's debts by the Widjaja family served as the sole basis for Commerce's affirmative cross-ownership

⁴⁶ See Letter from Hyundai Steel, "Certain Cut-to-Length Carbon Quality Steel Plate from the Republic of Korea, Case No. C-580-837: Response to Section III of Initial Questionnaire," dated September 5, 2017 (Hyundai Steel IQR) at Exhibit 34 of Exhibit 5 at Note 36(7) of Hyundai Steel's 214/2015 Consolidated Audited Financial Statements.

⁴⁷ See Hyundai Steel NSA QNR Response at Exhibit NSA-22, which, for example, indicates that Hyundai Steel may purchase shares in Hyundai Green Power contingent upon the financial recommendations of outside parties.

⁴⁸ See *CFS from Indonesia* IDM at 13.

finding. Rather, Commerce based its affirmative cross-ownership decision on several findings, all of which involved the pervasive control exerted by members of the Widjaja family: (1) the Government of Indonesia designated Widjaja family members to conduct debt restructuring negotiations on behalf of the affiliated firms at issue, (2) the Widjaja family members' direct and indirect ownership of the firms at issue was sufficient to exercise control over the firms in question, and (3) the interests of the firms under the control of the Widjaja family had merged to such a degree that the Widjaja family was able to use the assets of the firms in the same way the family could use its own assets.⁴⁹

We also disagree with the argument that Hyundai Green Power's exclusive provision of steam to Hyundai Steel constitutes a close supplier relationship that may serve as a basis for cross-ownership. The existence of a close supplier relationship goes to the issue of affiliation.⁵⁰ However, under the CVD law the attribution of subsidies hinges on cross-ownership, which requires a higher standard of control:

In limiting our attribution rules to situations where there is cross-ownership, we are not reading 'affiliated' out of the CVD law – we simply do not find the affiliation standard to be a helpful basis for attributing subsidies.⁵¹

As noted by Hyundai Steel, even in *CFS from Indonesia*, the case cited by the petitioner in support of its argument, Commerce, as part of its attribution analysis, found that long-term supply agreements did not support a finding of cross-ownership for certain additional firms that were part of Commerce's cross-ownership analysis:

Our examination and verification of the additional unaffiliated pulpwood suppliers' ownership documents, including articles of association, licenses to harvest timber, and cooperation agreements and long-term supply agreements with AA and WKS, revealed no evidence that any companies or officials in the SMG/APP CFS group held ownership interests in these additional unaffiliated pulpwood suppliers, or that the Widjaja family or its companies can use or direct the assets of these companies in the same ways that it can use or direct its own assets. Therefore, we find that no additional pulpwood suppliers, other than the five SMG/APP forestry companies discussed above (AA, FI, RAL, SPA, and WKS), are cross-owned with the SMG/APP CFS group.⁵²

We also find that the location of Hyundai Green Power does not result in the firm being cross-owned with Hyundai Steel. Information on the record indicates that while Hyundai Green Power is located within Hyundai Steel's Dangjin Works, it is not located inside of the plant of Hyundai Steel. Moreover, there is no mention under 19 CFR 351.525(b)(6)(vi) that a firm's location near another firm may serve as the sole basis for an affirmative cross-ownership determination. Moreover, while this fact might, along with other facts support a finding of cross-ownership, absent other key factor such as those described above renders it an insufficient basis to support a finding of cross-ownership.

⁴⁹ *Id.*

⁵⁰ See 19 CFR 351.102(b)(3), which discusses affiliation under section 771(33) of Act.

⁵¹ See *Preamble*, 63 FR at 65401.

⁵² See CFR from Indonesia IDM at 13-14.

Additionally, and more fundamentally, we find that the provision of steam by Hyundai Green Power does not constitute an input that would invoke the input producer regulation under 19 CFR 351.525(b)(6)(iv). The attribution regulation regarding input producers is as follows:

If there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to production of the downstream product, the Secretary will attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).⁵³

In interpreting this regulation, the *Preamble* provides the following guidance:

The main concern we have tried to address is the situation where a subsidy is provided to an input producer whose production is dedicated almost exclusively to the production of a higher value-added product—the type of input product that is merely a link in the overall production chain. This was the case with stumpage subsidies on timber that was primarily dedicated to lumber production and subsidies to semolina primarily dedicated to pasta production . . .

. . . We believe that in situations such as these, the purpose of a subsidy provided to the input producer is to benefit the production of both the input and downstream products. Accordingly, where the input and downstream production takes place in separately incorporated companies with cross-ownership . . . and the production of the input product is primarily dedicated to the production of the downstream product, paragraph (b)(6)(iv) requires the Department to attribute the subsidies received by the input producer to the combined sales of the input and downstream products (excluding the sales between the two corporations).

Where we are dealing with input products that are not primarily dedicated to the downstream products, however, it is not reasonable to assume that the purpose of a subsidy to the input product is to benefit the downstream product. For example, it would not be appropriate to attribute subsidies to a plastics company to the production of cross-owned corporations producing appliances and automobiles. Where we are investigating products such as appliances and automobiles, we will rely on the upstream subsidy provision of the statute to capture any plastics benefits which are passed to the downstream producer.⁵⁴

The record indicates that Hyundai Steel uses the steam Hyundai Green Power supplies to maintain the temperature of equipment and materials in its plant and as a hot-water source for its employees' shower room.⁵⁵ Based on this information, we find that the steam input in question is not analogous to inputs (such as stumpage or semolina) that the *Preamble* describes as “dedicated almost exclusively to the production of a higher value-added product—the type of

⁵³ See 19 CFR 351.525(b)(6)(iv)

⁵⁴ See *Preamble*, 63, FR at 65401.

⁵⁵ See Hyundai Steel NSA QNR Response at 12-13.

input product that is merely a link in the overall production chain.”⁵⁶ Rather, we find the steam input at issue in the instant administrative review is akin to the plastic inputs discussed in the *Preamble* in that the steam is not used exclusively in Hyundai Steel’s production of subject merchandise.⁵⁷

Therefore, for the reasons discussed above we find: (1) there is no means by which Hyundai Steel could have exerted control over Hyundai Green Power in a manner that allowed Hyundai Steel to use or direct the individual assets (or subsidy benefits) of Hyundai Green Power in essentially the same ways it can use its own assets (or subsidy benefits) and, thus, that Hyundai Steel and Hyundai Green Power were not cross-owned during the POR; and (2) the steam Hyundai Green Power supplied to Hyundai Steel is not an input that is primarily dedicated to the production of subject merchandise and, thus, Hyundai Green Power’s provision of steam does not invoke the input producer regulation under 19 CFR 351.525(b)(6)(iv).

Comment 2: Whether the GOK Purchased Electricity from Hyundai Green Power for More Than Adequate Remuneration During the POR

Petitioner’s Case Brief

- In the *Preliminary Results*, Commerce improperly relied on Hyundai Steel’s characterization 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 POR.⁵⁸
- The two unit-prices Commerce used to conduct the price comparison were not comparable.
- The electricity price Hyundai Green Power charged to the GOK (hereinafter referred to as the strike price) did not include certain charges that were included in the electricity price that Hyundai Green Power paid to the GOK (hereinafter referred to as the benchmark price). Further, the strike price did not reflect the daily unit-price variances (*e.g.*, valley, mid-peak, and peak pricing) that were in effect for the benchmark price the GOK charged to Hyundai Green Power during the POR. These differences resulted in an inaccurate price comparison.
- Consistent with *Wire Rod from Italy*, Commerce should compare the electricity price the GOK charged to Hyundai Green Power and the electricity price Hyundai Green Power charged to the GOK based on the cost of electricity that is exclusive of extraneous fees.⁵⁹
- The proprietary benchmark advocated by Hyundai Steel in its questionnaire response and utilized by Commerce in the *Preliminary Results* is highly misleading because it includes multiple fees that bear no relation to the cost of electricity.⁶⁰ Further, the base charges included in the benchmark price are distortive because the inclusion of these charges result in a comparison to the strike price that is not on an apples-to-apples basis.⁶¹

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ See Preliminary Decision Memorandum at 14-15.

⁵⁹ See *Countervailing Duty Investigation of Carbon and Alloy Steel Wire Rod from Italy: Final Affirmative Determination*, 83 FR 13242 (March 28, 2018) (*Wire Rod from Italy*) and accompanying IDM (*Wire from Italy* IDM) at 16-17, where, according to the petitioner, Commerce agreed with the argument that charges and taxes are not countervailable, and using a benchmark that includes charges and taxes would significantly inflate the benchmark and, as a result, used an electricity benchmark that did not include any charges and taxes.

⁶⁰ See Petitioner Case brief at 14 where the proprietary fees at issue are discussed.

⁶¹ Certain components of the strike price are proprietary and cannot be discussed in a public document.

- The average per-unit benchmark price proposed by Hyundai Steel and used by Commerce in the *Preliminary Results* fails to account for the daily valley, mid-peak, and peak prices that Korea Electric Power Corporation (KEPCO) charged to Hyundai Steel during the POR. To make an accurate comparison, Commerce must conduct its price comparison that takes these price variances into account.
- In the *Preliminary Results* Commerce supported its price comparison by citing to *Lumber from Canada*.⁶² However, the record in *Lumber from Canada* did not appear to contain information regarding electricity prices charged during valley, mid-peak, and peak time periods, and, thus, the facts of that case are distinct from the instant review that involve such daily price variances.
- The prices that make up the benchmark price are a function of when Hyundai Green Power consumed its electricity and, thus, consistent with *Wire Rod from Italy*, it is critically important that Commerce conduct a price comparison that takes those price variances into account.⁶³ This is particularly true given that KEPCO subsidizes large industrial users based on whether electricity is consumed during valley, mid-peak, and peak time periods.
- While Hyundai Steel failed to provide information indicating the electricity quantities it sold to the GOK at each valley, mid-peak, and peak time periods, Commerce can estimate the electricity volumes sold during each of these time periods using information contained in the questionnaire response of Hyundai Steel.⁶⁴
- Conducting the price comparison in a manner that accounts for the valley, mid-peak, and peak time periods demonstrates that Hyundai Green Power sold electricity to the GOK for MTAR.

Hyundai Steel Rebuttal Brief

- In the *Preliminary Results*, Commerce correctly compared the price that the GOK, through the Korea Power Exchange (KPX), paid Hyundai Green Power to the price Hyundai Steel paid to KEPCO and, based on this comparison, found that Hyundai Green Power did not sell electricity to the GOK for MTAR.
- Commerce's analysis in the *Preliminary Results* was consistent with its approach in *Lumber from Canada*.⁶⁵
- Further, in *Lumber from Canada*, Commerce acknowledged that government electricity rates have attendant charges and fees, but determined that these did not render the prices less effective for use as a benchmark.⁶⁶
- Citing to *Wire Rod from Italy*, the petitioner argues that Commerce should not include fees and taxes in the electricity benchmark price. However, contrary to the petitioner's

⁶² See *Lumber from Canada* IDM at 165-166.

⁶³ See Petitioner Case Brief at 16, citing to *Wire Rod from Italy* IDM. The Petitioner Case Brief did not provide a page number for this citation.

⁶⁴ See Letter from Hyundai Steel, "Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, Case No. C-580-837: Response to New Subsidies Questionnaire," dated February 12, 2018 (Hyundai Steel NSA QNR Response) at Exhibit NSA-10.

⁶⁵ See *Lumber from Canada* IDM at 166, where Commerce found that the proper benchmark for a provision of electricity for MTAR program were the actual electricity prices the respondent paid under its relevant contract to the government utility.

⁶⁶ *Id.*

characterization, in *Wire Rod from Italy*, Commerce found that the attendant charges necessary for the purchase of electricity must be included in the price comparison.⁶⁷

- Further, the petitioner bases its arguments on a misunderstanding of how the average price KEPCO charged to Hyundai Green Power (aka the benchmark price) was calculated. Contrary to the petitioner's claim, the unit price proposed by Hyundai Steel does not include certain fees that are unrelated to the production of electricity. Rather, the unit price Hyundai Steel proposes includes only the daily variance charges (*e.g.*, valley, mid-peak, and peak charges) plus a base electricity charge.
- Further, the fixed per-unit strike price that the GOK paid to Hyundai Steel during the POR was derived by the GOK using a weight-average pricing formula that took valley, mid-peak, peak prices as well as base electricity charges into account.⁶⁸ Thus, it is misleading for the petitioner to claim that the strike price does not reflect the same pricing components as the benchmark price.
- The comparison method advocated by the petitioner calls for Commerce to segregate the electricity Hyundai Green Power purchased from KEPCO at valley, mid-peak, and peak rates and compare each rate to the fixed, weight-average strike price Hyundai Green Power charged to the GOK. The petitioner's proposed comparison method is distortive and Commerce should reject it.
- Contrary to the petitioner's claims, such a distortive comparison method is not supported by *Wire Rod from Italy*. Notably, in citing to the Italian CVD proceeding, the petitioner fails to provide a page cite in the decision memorandum identifying where Commerce employed such a distortive comparison method.⁶⁹
- Thus, consistent with *Lumber from Canada*, Commerce properly based its comparison on the total electricity price Hyundai Steel paid to the GOK and the total electricity price Hyundai Green Power charged to the GOK.⁷⁰
- The petitioner's argument that the comparison method utilized in the *Preliminary Results* failed to account for the fact that KEPCO sells electricity to industrial users for less than adequate remuneration (LTAR) is flawed. Commerce has consistently determined, including in prior administrative reviews of this proceeding, that KEPCO's sales of electricity are not countervailable.⁷¹
- Even if Commerce were to segregate the Hyundai Green Power's purchase *and* sale of electricity into valley, mid-peak, and peak price comparisons such an approach would not result in a benefit.

⁶⁷ See *Wire Rod from Italy* IDM at 18: "we disagree with Nucor that we should not offset the benefit under this program to account for certain costs Ferriere Nord reported related to fees incurred to participate in this program."

⁶⁸ See Hyundai Steel Rebuttal Brief for a discussion of the proprietary components the GOK used to derive the per-unit strike prices.

⁶⁹ See Hyundai Steel Rebuttal Brief at 17, citing to Petitioner Case Brief at 16.

⁷⁰ See *Lumber from Canada* IDM at 166; see also Preliminary Decision Memorandum at 15.

⁷¹ See, *e.g.*, *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49943 (July 29, 2016) (*Cold-Rolled from Korea*) and accompanying IDM (*Cold-Rolled from Korea* IDM) at Comments 1-3; see also *Nucor Corp. v. United States*, 286 F. Supp. 3d 1364 (CIT 2018) (*Nucor*).

- For example, information provided in Hyundai Steel’s questionnaire response provides the valley, mid-peak, and peak electricity prices Hyundai Green Power paid to the GOK during the POI.⁷²
- Additional information in the Hyundai Steel NSA QNR Response indicates how the GOK determined the fixed, per-unit strike price it paid to Hyundai Green Power for electricity.⁷³ Though the strike price the GOK ultimately paid to Hyundai Green Power was a single, fixed per-unit price, that price was, itself, a function of the weight-average of valley, mid-peak, and peak per-unit prices and a base electricity charge that the GOK determined pursuant to its regulation-based pricing formula.⁷⁴
- Thus, comparing the per-unit valley, mid-peak, and peak prices Hyundai Green Power paid to the GOK to the per-unit valley, mid-peak, and peak prices the GOK used to derive the single, fixed, per-unit strike price (*e.g.*, comparing the benchmark valley price to the valley strike price, benchmark mid-peak price to the mid-peak strike price, and benchmark peak price to peak strike price) indicates that the former prices were higher than the latter and, thus, that Hyundai Green Power did not sell electricity to the GOK for MTAR.⁷⁵
- In its case brief, the petitioner proposes its own price comparison method using the information contained in Exhibits NSA-8 and NSA-10 of Hyundai Steel NSA QNR Response. Under the petitioner’s approach, it separately compared the fixed, per-unit strike price (which as explained above is a function of the weight-average of a valley, mid-peak, and peak unit-prices as well as the base electricity charge, as calculated by the GOK) to the valley, mid-peak, and peak per-unit prices that Hyundai Green Power paid to the GOK. In other words, the petitioner proposes separately comparing the benchmark valley price to the strike price, benchmark mid-peak price to the strike price, and benchmark peak price to the strike price. Thus, it is evident that the petitioner’s proposed comparison method is distortive and should be rejected.
- Similarly, Commerce should reject the assumptions the petitioner employed when, under an additional proposed comparison method, it estimated the volumes of electricity that Hyundai Green Power generated and sold to the GOK during the valley, mid-peak, and peak time periods. The petitioner’s assumptions are unsubstantiated and purely speculative.

Commerce’s Position: In the *Preliminary Results*, consistent with the approach in *Lumber from Canada*, we compared the per-unit strike price Hyundai Green Power charged to the GOK during the POR to the benchmark electricity price Hyundai Steel paid to the GOK during the same period.⁷⁶ Our comparison of these two prices (the strike price and the benchmark price) indicated that no benefit was conferred under the program. In the final results, we continue to find that Hyundai Green Power’s sale of electricity to the GOK did not confer a benefit under section 771(5)(E)(iv) of the Act.

⁷² See Letter from Hyundai Steel, “Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, Case No. C-580-837: Response to New Subsidies Questionnaire,” dated February 12, 2018 (Hyundai Steel NSA QNR Response) at Exhibit NSA-8.

⁷³ *Id.* at Exhibit NSA-10.

⁷⁴ *Id.*

⁷⁵ See Hyundai Steel Rebuttal Brief at 20 where the proprietary benchmark and strike price unit prices are listed.

⁷⁶ See Preliminary Decision Memorandum at 14-15, citing to *Lumber from Canada* IDM at Comment 51.

In reporting the benchmark electricity price, Hyundai Steel provided the valley, mid-peak, and peak electricity prices as well as the base electricity charge it paid to the GOK. Hyundai Steel also reported paying seven additional monthly billing fees.⁷⁷ The unit price proposed by Hyundai Steel in its case brief is comprised of the valley, mid-peak, and peak prices plus the electricity base fee, and Hyundai Steel does not propose including the seven additional billing fees into the benchmark unit price.⁷⁸ In the *Preliminary Results*, we included all of Hyundai Steel's reported electricity prices (*e.g.*, the valley, mid-peak, and peak prices plus the electricity base fee) as well as the seven additional fees into the benchmark price.⁷⁹

However, based on comments from interested parties and to calculate a comparable benchmark that is limited to electricity pricing, we have removed seven of the eight additional fees from the benchmark price (*e.g.*, we have limited the benchmark price to the valley, mid-peak, and peak prices plus the electricity base fee). We note that even after making this adjustment, the benchmark price remains higher than the strike price and, thus, we continue to find that Hyundai Green Power did not sell electricity to the GOK for MTAR during the POR.

In conducting this comparison, we continue to find that the inclusion of the base electricity fee in the benchmark price is appropriate. Contrary to the petitioner's claim, in *Wire Rod from Italy*, Commerce offset the benefit to account for certain fees the respondent was required to pay under the program:

We disagree with Nucor that we should not offset the benefit under this program to account for certain costs Ferriere Nord's reported related to fees incurred to participate in this program.⁸⁰

Thus, it is incorrect to argue that Commerce will necessarily refrain from incorporating certain fees into its benefit calculation. Further, we find that the base electricity fee (as opposed to the seven additional fees included in preliminary benchmark price) relates to the price of electricity and, thus, should be included in the electricity benchmark price. The inclusion of the base electricity fee in the benchmark electricity price is also consistent with Commerce's approach in prior CVD proceedings. For example, in China CVD proceedings, where the alleged provision of electricity for LTAR is often at issue, we have consistently incorporated electricity base charges into the subsidy benefit analysis.⁸¹

The petitioner argues that Commerce should separately compare the valley, mid-peak, and peak electricity unit prices Hyundai Steel paid to the GOK to the single, weight-average, strike price that the GOK paid to Hyundai Green Power. For several reasons, we find that the petitioner's proposed approach is flawed. First, while the GOK relied on valley, mid-peak, and peak prices to derive the price it paid to Hyundai Green Power, the strike price the GOK ultimately paid was

⁷⁷ See Hyundai Steel NSA QNR Response at Exhibits NSA-7 and NSA-8.

⁷⁸ See Hyundai Steel Case Brief at 14-16.

⁷⁹ See Preliminary Calculations for Hyundai Steel, dated March 5, 2018.

⁸⁰ See *Wire Rod from Italy* IDM at 18.

⁸¹ See, *e.g.*, *Utility Scale Wind Towers from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 and accompanying IDM at 21 where Commerce included electricity base charges in its derivation of the benchmark used in a provision of electricity for less than adequate remuneration program.

a single, unit price that did not delineate between those three pricing tiers.⁸² Thus, in order to ensure an accurate comparison, and one that is consistent with Commerce's practice, we have calculated a single, per-unit benchmark price that is comprised of the valley, mid-peak, and peak unit prices as well as the base electricity charge. In this way, we have calculated a benchmark price that matches government price (the strike price) that we are seeking to analyze.⁸³

Second, the comparison method advocated by the petitioner is distortive because it calls for Commerce to separately compare the per-unit, strike price to the valley, mid-peak, and peak per-unit, benchmark prices. In other words, the petitioner argues we should separately compare the benchmark valley price to the strike price, benchmark mid-peak price to the strike price, benchmark peak price to the strike price. Thus, under the petitioner's approach, the resulting benefit would merely be a function of separately comparing per-unit strike price (which is comprised of all three price tiers) to each of the per-unit valley price.

Third, while record information exists for per-unit prices for the benchmark and strike price during the valley, mid-peak, and peak periods, we lack corresponding valley, mid-peak, and peak electricity sales volumes for the strike price. As noted above, the absence of such valley, mid-peak, and peak sales volumes for the strike price is due to the fact the GOK did not purchase electricity from Hyundai Green Power pursuant to such gradations.⁸⁴ In its case brief, the petitioner advocates that Commerce attempt to derive or estimate the corresponding monthly electricity sales volumes that the GOK purchased from Hyundai Green Power during the valley, mid-peak, and peak time periods. However, we find that attempting to derive such sales volumes would not reflect market conditions and actual terms of sale and thus be speculative. Moreover, as explained above, such an approach would result in Commerce conforming the government price to the benchmark rather than conforming the benchmark to government price that we are seeking to analyze.

Lastly, we disagree with the petitioner that our benchmark price from the *Preliminary Results* was inherently flawed because it relied on the subsidized prices that the GOK, through KEPCO, charged to Hyundai Steel. As Hyundai Steel notes, in this proceeding we have declined to initiate an investigation into whether KEPCO sells electricity to CTL plate producers, such as Hyundai Steel, for LTAR.⁸⁵ Further, our decision not to initiate an investigation into this particular subsidy allegation is consistent with Commerce's prior determinations in which it found that the GOK did not sell electricity to Korean steel producers for LTAR.⁸⁶

⁸² See Hyundai Steel NSA QNR Response at Exhibit NSA-13 for the invoices of Hyundai Green Power to KEPCO and NSA-10 for the Strike Price Calculation.

⁸³ See, e.g., Lumber from Canada IDM at Comment 13, in which Commerce, as part of its analysis of the provision of standing timber for LTAR program, calculated either an annual or monthly benchmark depending on the data collected by the various Provincial Governments that sold and billed government-owned trees: "In making our determination regarding what comparison methodology is most appropriate, the Department considered the specific stumpage data collected and reported by the respective provincial governments and the level of detail of such data within the context of the provincial stumpage regimes."

⁸⁴ See Hyundai Steel NSA QNR Response at Exhibit NSA-10 for the calculations to determine the amount of the "strike" price in 2016 and Exhibit NSA-13 for Hyundai Green Power invoices to KPX.

⁸⁵ See Memorandum, "New Subsidy Allegations Memorandum for Dongkuk Steel Mill Co., Ltd. and Hyundai Steel Co., Ltd.," dated January 10, 2018 (NSA Memorandum) at 7-8.

⁸⁶ *Id.* at Attachment I, which contains Commerce's New Subsidy Allegation Decision Memorandum from the 2015

Therefore, for the reasons discussed above, we continue to find that Hyundai Green Power did not sell electricity to the GOK for MTAR during the POR.

VII. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If accepted, we will publish the final results in the *Federal Register*.

☒

Agree

☐

Disagree

7/10/2018

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

administrative review conducted in this proceeding where it declined to initiate an investigation into whether KEPCO sold electricity for LTAR; *see also 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) and accompanying Issues and Decision Memorandum at Comment 1; *see also Nucor*, 286 F. Supp. 3d at 1377 (finding that Commerce's decision that KEPCO did not sell electricity to Korean steel producers for LTAR was supported by substantial evidence).