



C-580-879
Administrative Review
POR: 11/06/2015-12/31/2016
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March 18, 2019

MEMORANDUM TO: Christian Marsh
Deputy 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 and Partial
Rescission of Countervailing Duty Administrative Review:
Certain Corrosion-Resistant Steel Products from the Republic of
Korea; 2015-2016

I. Summary

The Department of Commerce (Commerce) analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the countervailing duty order on corrosion-resistant steel products (CORE) from the Republic of Korea (Korea) covering the period of review (POR) November 6, 2015, through December 31, 2016.

As a result of this analysis, we have made changes to the *Preliminary Results*.¹ We recommend that you approve the positions described in the “Discussion of Comments” section of this memorandum.

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

¹ See *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, Rescission of Review, in Part, and Intent to Rescind, in Part; 2015-16*, 83 FR 39671 (August 10, 2018) (*Preliminary Results*) and accompanying Decision Memorandum (Preliminary Decision Memorandum).



II. List of Issues

- Comment 1:** Whether Hyundai Green Power is Hyundai Steel's Cross-Owned Input Supplier
- Comment 2:** Whether Tax Benefits Should be Adjusted to Account for the Special Rural Development Tax
- Comment 3:** Whether Tax Credit Programs Under the RSTA Meet the Specificity Requirement
- Comment 4:** Whether Suncheon Harbor Usage Fee Exemptions under the Harbor Act Are Countervailable
- Comment 5:** Whether the Trading of Demand Response Resource Program is Specific
- Comment 6:** Rescission of Review with Respect to Mitsubishi International Corporation.
- Comment 7:** Whether the Non-Government-Owned Banks Participating in Dongbu's Debt Restructuring Program Provided a Financial Contribution
- Comment 8:** Whether Dongbu's Loan Restructuring by the GOK Creditors Provided a Financial Contribution and Benefit to Dongbu
- Comment 9:** Whether Loan Restructuring Provided to Dongbu was Specific Pursuant to Section 771(5A)(D)(iii) of the Act
- Comment 10:** Whether Commerce Should Use the Interest Rate of Commercial Banks Participating in the Creditor Bank Committee as the Loan Benchmark
- Comment 11:** Whether the Debt-To-Equity Swaps in Dongbu's Debt Restructuring Program Conferred a Benefit

III. Background

On August 10, 2018, Commerce published the *Preliminary Results* of this review.² On December 6, 2018, Commerce postponed the final results of review by sixty days until February 6, 2019.³ Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.⁴ 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 is now March 18, 2019.

In the *Preliminary Results*, Commerce expressed its intent to seek additional information from the Government of Korea (GOK) with respect to the specificity of the Restriction of Special Taxation Act (RSTA) Article 25(3), RSTA Article 10(1)(3) and the Restriction of Special Local Taxation Act (RSLTA) Article 57-2.⁵ Accordingly, Commerce sent a supplemental questionnaire to the GOK after the *Preliminary Results* and the GOK filed a timely response on

² See *Preliminary Results*.

³ See memorandum, "Certain Corrosion-Resistant Steel Products from the Republic of Korea: Extension of Deadline for Final Results of Countervailing Duty Administrative Review – 2015-2016," dated December 6, 2018.

⁴ See memorandum to the Record from 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, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

⁵ See Preliminary Decision Memorandum at 18, 21 and footnote 110.

August 17, 2018.⁶ The petitioners timely filed a case brief on September 24, 2018.⁷ On the same day, Hyundai Steel, Dongbu, and the Government of Korea (GOK) also timely filed case briefs.⁸ In addition, Mitsubishi International Corporation (Mitsubishi), a non-selected respondent, also timely filed a case brief.⁹ On October 1, 2018, the petitioners, Hyundai Steel, Dongbu and the GOK each timely filed rebuttal briefs.

We are conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

IV. Changes Since the *Preliminary Results*

The “Discussion of Comments” section below contains summaries of the comments and Commerce’s positions on the issues raised in the briefs. As a result of this analysis, we made certain changes to the *Preliminary Results* indicated in the “Analysis of Programs” section below.

V. Scope of the Order

For a full description of the scope of this order, *see* Attachment.

VI. Period of Review

The POR is November 6, 2015, through December 31, 2016.

Given that the POR covers part of 2015 and all of 2016, we have analyzed data for the period January 1, 2015, through December 31, 2015, to determine the countervailable subsidy rate for exports of subject merchandise made during the period in 2015 when liquidation of entries was suspended. In addition, we have analyzed data for the period January 1, 2016, through December 31, 2016, to determine the countervailable subsidy rate for exports during that period and to establish the cash deposit rate for exports of subject merchandise subsequent to these final results.

⁶ See GOK Supplemental Questionnaire Response dated August 17, 2018 (GOK August 17, 2018 SQR).

⁷ The petitioners identified themselves as AK Steel Corporation, California Steel Industries, Inc., Steel Dynamics Inc., ArcelorMittal USA LLC, Nucor Corporation, and United States Steel Corporation. See Letter from Petitioners, “Certain Corrosion-Resistant Steel Products from the Republic of Korea: Case Brief,” dated September 24, 2018 (Petitioners Case Brief).

⁸ See Letter from Hyundai Steel, “Corrosion-Resistant Steel Products from the Republic of Korea, Case No.C-580-879: Case Brief,” dated September 24, 2018; (Hyundai Steel Case Brief); Letter from Dongbu, “Certain Corrosion-Resistant Steel Products from the Republic of Korea, Case No.C-580-879: Case Brief,” dated September 24, 2018 (Dongbu Case Brief); Letter from GOK, “Administrative Review on Certain Corrosion-Resistant Steel Products from the Republic of Korea: Case Brief,” dated September 24, 2018 (GOK Case Brief).

⁹ See Letter from Mitsubishi, “Corrosion-Resistant Steel Products from the Republic of Korea, Case Brief,” dated September 24, 2018 (Mitsubishi Case Brief).

VII. Rescission of Administrative Review, in Part

Mitsubishi International Corporation (Mitsubishi) claimed no shipments during the POR, and Customs and Border Protection (CBP) did not provide any contradictory information.¹⁰ Therefore, in the *Preliminary Results* Commerce indicated its intent to rescind the review with respect to Mitsubishi.¹¹ We received no comments from parties other than Mitsubishi concerning our preliminary intent to rescind the administrative review.¹² Therefore, we have rescinded the review with respect to Mitsubishi.

VII. 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 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 9.

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 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 9-10.

C. Benchmark Interest Rates

Commerce made no changes to benchmarks or discount rates used in the *Preliminary Results*. We addressed the comments raised by interested parties at Comment 10 below. For a description of the benchmarks and discount rates used for these final results, *see* the *Preliminary Results* and accompanying Preliminary Decision Memorandum at 10-11.

D. Creditworthiness

In accordance with 19 CFR 351.505(a)(6)(i), Commerce continues to find that Dongbu was uncreditworthy during the POR, the years in which it received countervailable long-term loans from the government policy banks and restructured long-term debt held by government policy banks. Parties did not comment on this issue since the issuance of the *Preliminary Results*. For a description of our analysis used for the final results, *see* the *Preliminary Results*.¹³

¹⁰ *See* Preliminary Decision Memorandum at 8.

¹¹ *See Preliminary Results* at 39671.

¹² *See* Comment 6.

¹³ *See* Preliminary Decision Memorandum at 12.

E. Equityworthiness

In the *Preliminary Results*, we found that Dongbu's equity infusions were consistent with the usual investment practice of private investors, and there was no benefit from Dongbu's debt-to-equity conversions.¹⁴ Parties have raised comments on this issue; *see* Comment 11 below. For the final results, we continue to find that Dongbu did not benefit from the debt-to-equity conversions. The record continues to show that private commercial banks: 1) purchased a significant percentage of the shares of the debt that were converted to equity; and 2) paid the same per share price as the government-controlled policy banks.

F. Denominators

Commerce has made no changes to the denominators used in the *Preliminary Results*. No issues were raised by interested parties in case briefs 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 12-13.

IX. Analysis of Programs

A. Programs Determined to be Countervailable

1. Dongbu's Debt Restructuring

Commerce made no changes to the *Preliminary Results* regarding this program. We continue to find this program to be countervailable for the final results. *See* Comments 7-11.

	<u>2015</u>	<u>2016</u>
Dongbu:	7.62 percent <i>Ad Valorem</i>	8.45 percent <i>Ad Valorem</i>

2. Korea Development Bank (KDB) and Industrial Base Fund (IBF) Short-Term Discounted Loans for Export Receivables

Commerce made no changes to the *Preliminary Results* regarding this program.

	<u>2015</u>	<u>2016</u>
Dongbu:	0.01 percent <i>Ad Valorem</i>	0.02 percent <i>Ad Valorem</i>
Hyundai:	Not used	Not used

¹⁴ *Id.*

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

Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Results*. See Comment 2.

	<u>2015</u>	<u>2016</u>
Dongbu ¹⁵ :	Less than 0.005 percent	Less than 0.005 percent
Hyundai Steel:	0.14 percent <i>Ad Valorem</i>	0.05 percent <i>Ad Valorem</i>

4. RSLTA 57-2 – Tax Exemption for Acquisition of Property through Corporate Merger

As prescribed in RSLTA 57-2(1), an acquisition tax exemption is available for acquisitions of property through corporate merger that occurred no later than December 31, 2015, and that meets the requirements in Article 28-2 of the Enforcement Decree of the RSLTA. Hyundai Steel's acquisition of Hyundai HYSCO via merger qualified for the exemption because the acquisition met the requirements in Article 57-2(1) of the RSLTA.¹⁶ Hyundai Steel reported that during 2015, the Ulsan Works, Yesan Works, Euiwang R&D Institute and properties located in various locations received acquisition tax exemptions pursuant to RSLTA Article 57-2.¹⁷ The Special Rural Development Tax is not imposed on the acquisition tax exempted under RSLTA Article 57-2.¹⁸ Hyundai Steel reported it did not receive a tax exemption under RSLTA Article 57-2 in 2016.

The tax exemptions under Article RSLTA 57-2 constitute a financial contribution in the form of revenue foregone, as described under section 771(5)(D)(ii) of the Act and confer a benefit to Hyundai Steel pursuant to section 771(5)(E) of the Act, and 19 CFR 351.509(a). Dongbu reported it did not benefit from this program.

With respect to specificity, we preliminarily found the program not to be specific for the *Preliminary Results* with the intent of examining this aspect further for the final results. Based on information provided by the GOK after the *Preliminary Results*, we find that only 1,524 out of 591,694 taxpayers claimed an exemption in 2015 and 873 out of 645,061 taxpayers claimed an exemption in 2016.¹⁹ Thus, we find the program to be *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

The tax exemptions 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.²⁰ To calculate the benefit to Hyundai Steel we divided the tax exemption amount by the sum of

¹⁵ Rates are less than 0.005 percent and therefore not measurable.

¹⁶ See Hyundai Steel February 12, 2018 Initial QR at 24 and Exhibit C-10.

¹⁷ *Id.* at 24-25.

¹⁸ *Id.* at 25.

¹⁹ See GOK August 17, 2018 SQR.

²⁰ See 19 CFR 351.524(a).

its total sales. The resultant subsidy rate for 2015 is 0.03 percent *ad valorem*.²¹ As stated earlier, Hyundai Steel did not receive a tax exemption under this program in 2016.

5. Tax Credit for Investment in Environmental and Safety Facilities under RSTA Article 25(3)

We continue to find this program *de facto* specific. In the *Preliminary Results*, Commerce stated its intent to seek necessary information to further examine the specificity of this program. Based on information provided by the GOK after the *Preliminary Results*, we continue to find this program to be *de facto* specific for the final results.²² See Comment 3.

	<u>2015</u>	<u>2016</u>
Dongbu:	Not used	Not used
Hyundai:	0.07 percent <i>Ad Valorem</i>	Not used

6. Tax Deduction under Restriction of Special Taxation Act (RSTA) Article 26: GOK Facilities Investment Support

Commerce made no changes to the *Preliminary Results* regarding this program.

	<u>2015</u>	<u>2016</u>
Dongbu:	Not used	Not used
Hyundai:	0.27 percent <i>Ad Valorem</i>	0.42 percent <i>Ad Valorem</i>

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

We continue to find this program *de facto* specific. In the *Preliminary Results*, Commerce stated its intent to seek additional information to examine the specificity of this program. Based on information provided by the GOK after the *Preliminary Results*, we continue to find this program to be *de facto* specific for the final results.²³ See Comment 3.

	<u>2015</u>	<u>2016</u>
Dongbu:	Not used	Not used
Hyundai:	0.02 percent <i>Ad Valorem</i>	Not used

²¹ See memorandum, “Final Results Calculation for Hyundai Steel Company,” dated March 18, 2019 (Hyundai Steel Final Results Calculation Memorandum).

²² See GOK August 17, 2019 SQR.

²³ *Id.*

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

Commerce made no changes to the *Preliminary Results* regarding this program.

	<u>2015</u>	<u>2016</u>
Dongbu ²⁴ :	Less than 0.005 percent	Less than 0.005 percent
Hyundai:	0.05 percent <i>Ad Valorem</i>	0.06 percent <i>Ad Valorem</i>

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

Commerce made no changes to the *Preliminary Results* regarding this program.

	<u>2015</u>	<u>2016</u>
Dongbu:	Not used	Not used
Hyundai:	0.02 percent <i>Ad Valorem</i>	0.01 percent <i>Ad Valorem</i>

10. Modal Shift Program

Commerce made no changes to the *Preliminary Results* regarding this program.

	<u>2015</u>	<u>2016</u>
Dongbu:	Not used	Not used
Hyundai:	0.01 percent <i>Ad Valorem</i>	0.01 percent <i>Ad Valorem</i>

11. Suncheon Harbor

Commerce made no changes to the *Preliminary Results* regarding this program.

	<u>2015</u>	<u>2016</u>
Dongbu:	Not used	Not used
Hyundai ²⁵ :	Less than 0.005 percent	0.02 percent <i>Ad Valorem</i>

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

Hyundai Steel

1. KEXIM Bank Import Financing
2. KEXIM Short-Term Export Credits
3. KEXIM Export Factoring
4. KEXIM Export Loan Guarantees
5. KEXIM Loan Guarantees for Domestic Facility Loans
6. KEXIM Trade Bill Rediscounting Program
7. KEXIM Bankers Usance
8. KEXIM Overseas Investment Credit Program
9. KDB and IBK Short-Term Discounted Loans for Export Receivables

²⁴ Rates are less than 0.005 percent and therefore not measurable.

²⁵ The rate for 2015 is less than 0.005 percent and therefore not measurable.

10. Loans under the Industrial Base Fund
11. K-SURE Export Credit Guarantees
12. K-SURE Short-Term Export Credit Insurance
13. Long-Term Loans from KORES and KNOC
14. Clean Coal Subsidies
15. GOK Subsidies for “Green Technology R&D” and its Commercialization
16. Support for SME “Green Partnerships”
17. Tax Deduction under RSTA Article 10(1)(1)
18. RSTA Article 10(1)(2)
19. RSTA Article 11
20. RSTA 104(14)
21. RSLTA Articles 19, 31, 46, 47-2, 84, 109, and 112
22. Tax Reductions and Exemptions in Free Economic Zones
23. Grants and Financial Support in Free Economic Zones
24. Sharing of Working Opportunities/Employment Creating Incentives
25. GOK Infrastructure Investment at Incheon North Harbor
26. Machinery & Equipment (KANIST R&D) Project
27. Grant for Purchase of Electrical Vehicle
28. Power Business Law Subsidies
29. Provision of Liquefied Natural Gas (LNG) for LTAR
30. Energy Savings Programs
 - Electricity Savings for Designated Period Program
 - Electricity Savings through the Bidding Process Program
 - Electricity Savings upon an Emergent Reduction Program
 - Electricity Savings through General Management Program
 - Management of the Electricity Load Factor Program
31. The GOK’s Purchases of Electricity for MTAR
32. Incentives for Compounding and Prescription Cost Reduction
33. Subsidies for Employment Security during Period of Childbirth and Childcare
34. Incentives for Usage of Yeongil Harbor in Pohang City
35. VAT Exemptions on Imported Goods
36. Import Duty Exemptions
37. Incentives for Usage of Gwangyang Port
38. Incentives for Natural Gas Facilities
39. Subsidies for Construction and Operation of Workplace Nursery
40. Subsidies for Hyundai Steel Red Angels Women’s Football Club
41. Co-existence Project for Large- Medium- Small Enterprises as Energy Companies
42. One Company for One Street Clean Management Agreement
43. Support for Smoking Cessation Treatment
44. Seoul Guarantee Insurance
45. Purchase of Land from Government Entities
46. Fast-Track Restructuring Program

Dongbu

1. KEXIM Bank Import Financing
2. RSTA Article 25(2): Tax Deductions for Investments in Energy Economizing Facilities
3. RSTA Article 26: GOK Facilities Investment Support
4. Power Business Law Subsidies
5. Provision of Liquefied Natural Gas (LNG) for LTAR
6. Energy Savings Programs
 - Electricity Savings for Designated Period Program
 - Electricity Savings through the Bidding Process Program
 - Electricity Savings upon an Emergent Reduction Program
 - Electricity Savings through General Management Program
 - Management of the Electricity Load Factor Program
7. KEXIM Short-Term Export Credits
8. KEXIM Export Factoring
9. KEXIM Export Loan Guarantees
10. KEXIM Trade Bill Rediscounting Program
11. KEXIM Overseas Investment Credit Program
12. KDB and IBF Loans under the Industrial Base Fund
13. K-SURE Export Credit Guarantees
14. K-SURE Short-Term Export Credit Insurance
15. Long-Terms Loans from KORES and KNOC
16. Special Accounts for Energy and Resources (SAER) Loans
17. Clean Coal Subsidies
18. GOK Subsidies for “Green Technology R&D” and its Commercialization
19. Support for SME “Green Partnerships”
20. Daewoo International Corporation Debt Work Out
21. Research, Supply or Workforce Development Investment Tax Deduction for “New Growth Engines” under RSTA Article 10(1)(1)
22. Research, Supply, or Workforce Development Expense Tax Deductions for “Core Technologies” under RSTA Article 10(1)(2)
23. Tax Reduction for Research and Human Resources Development under RSTA Article 10(1)(3)
24. Tax Credit for Investment in Facilities for Research and Manpower under RSTA Article 11
25. Tax Deduction for Investment in Environmental and Safety Facilities under RSTA Article 25(3)
26. Tax Program for Third-Party Logistics Operations under RSTA Article 104(14)
27. RSLTA Articles 46, 84
28. Tax Reductions and Exemptions in Free Economic Zones
29. Exemptions and Reductions of Lease fees in Free Economic Zones
30. Grants and Financial Support in Free Economic Zones
31. Modal Shift Program
32. Sharing of Working Opportunities/Employment Creating Incentives
33. R&D Grants under Industrial Technology Innovation Promotion Act (ITIPA)

- 34. GOK Infrastructure Investment at Incheon North Harbor
- 35. Machinery & Equipment (KANIST R&D) Project
- 36. Grant for the Purchase of an Electric Vehicle
- 37. The GOK's Purchases of Electricity from Corrosion-Resistant Steel Producers for MTAR
- 38. Land Purchase at Asan Bay
- 39. Dongbu's Exemptions from Payment of Harbor Fees
- 40. Grants from the Korea Agency for Infrastructure Technology Advancement

X. Discussion of Comments

Comment 1: Whether Hyundai Green Power is Hyundai Steel's Cross-Owned Input Supplier.

Petitioners' Case Brief

- In the *Preliminary Results*, Commerce found that cross-ownership did not exist between Hyundai Steel and Hyundai Green Power and also did not address the issue of benefit. Significant record evidence undermines this finding.²⁶ In pre-preliminary comments, the petitioners called Commerce's attention to evidence in Hyundai Green Power's questionnaire response.²⁷
- This record presents an economic reality in which the operations of Hyundai Steel and Hyundai Green Power are so intertwined that they cannot operate independently of each other. Based strictly on shareholding, Hyundai Green Power is owned and controlled by the GOK. However, as a matter of commercial reality, Hyundai Green Power was created with massive infusions of state capital to be an intertwined component of Hyundai Steel's steelmaking operations and, to accrue a benefit effectively at a time of Hyundai Steel's choosing.²⁸
- Moreover, Hyundai Green Power operates as an integrated and interdependent part of Hyundai Steel's steelmaking operations, as record evidence indicates each could not operate independently of the other without substantial financial and operational disruption.
- Hyundai Steel's application for carbon credits makes clear that it has overall control of and responsibility for the project, whereas none of the government investors in Hyundai Green Power are mentioned in the application. Further, Korea Electric Power Corporation (KEPCO) (the parent of Korea Midland) has described Hyundai Steel as "*the* operating investor" in Hyundai Green Power.²⁹
- The record also establishes that Hyundai Steel relies on Hyundai Green Power for the input steam for its steelmaking operations, approximately 55 percent of Hyundai Steel's power demand in Dangjin is supplied by Hyundai Greenpower. While Hyundai Steel asserts it has never *purchased* electricity from Hyundai Green Power, Commerce's regulations contemplate an "input *supplier*" relationship, and not an "input purchaser" relationship.³⁰
- In similar contexts, Commerce has focused on the economic reality of transactions in which inputs are supplied from government suppliers through private trading companies and, should do the same here, treating Hyundai Green Power as an electricity *supplier*, whether or not Hyundai Steel actually "purchased" electricity directly from Hyundai Green Power.³¹
- Information that was not available at that time of the new subsidy allegation is now on the record which strongly suggests that the GOK loans and equity infusions that created Hyundai Green Power conferred a benefit. Thus, Commerce should clarify that because the record establishes that subsidies received by Hyundai Green Power are attributable to Hyundai Steel by virtue of a cross-owned input supplier relationship, it intends to seek additional information regarding subsidies received by Hyundai Green Power in the next administrative review.³²

Hyundai Steel Rebuttal Brief

- In the *Preliminary Results*, Commerce found cross-ownership did not exist between Hyundai Steel and Hyundai Green Power. In addition, Commerce stated that it did not even find it necessary to determine whether cross-ownership exists because there was no benefit provided to Hyundai Green Power.³³
- The *Preliminary Results* determination is in accord with the recent final results of *CTL Plate 2016*³⁴ in which Commerce concluded that there was no cross-ownership between Hyundai Steel and Hyundai Green Power, and the steam produced by Hyundai Green Power was not primarily dedicated to the production of the downstream product. There is no basis to revisit or decide differently.³⁵
- The regulations provide that cross-ownership will normally only be shown where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. This focus on majority voting ownership is thus the starting point for any analysis of cross-ownership. This focus makes sense because in a company that is governed by a board of directors and majority ownership, majority representation on the board of directors is a vehicle for controlling a corporation. Thus, majority ownership provides a basis to control decisions of a corporation, while conversely, minority ownership does not.³⁶
- The record demonstrates that Hyundai Steel owned 29 percent of Hyundai Green Power during the POR, which is not a majority share or even a particularly large minority voting interest.³⁷
- 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, Hyundai Steel has no ability to use or direct the individual assets of Hyundai Green Power as if they were their own. As a result, Hyundai Steel has no ability to control Hyundai Green Power via control of the board of directors.³⁸
- The petitioners assert that Hyundai Steel and Hyundai Green Power's operations are intertwined and attempt to argue that the facts of the case are akin to *CFS from Indonesia*. However, the facts of *CFS from Indonesia* are inapposite and do not support the petitioners' argument that Hyundai Steel and Hyundai Green Power are cross-owned.³⁹

²⁶ See Petitioners Case Brief at 12.

²⁷ *Id.*

²⁸ *Id.* at 13.

²⁹ *Id.* at 14.

³⁰ *Id.* at 16-17.

³¹ *Id.* at 17-18.

³² *Id.* at 18.

³³ See Hyundai Steel Rebuttal Brief at 2-3.

³⁴ *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*, 83 FR 32840 (July 16, 2018) (*CTL Plate 2016*).

³⁵ See Hyundai Steel Rebuttal Brief at 3.

³⁶ *Id.* at 3-4.

³⁷ *Id.* at 4.

³⁸ *Id.*

³⁹ *Id.* at 5.

- 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.⁴⁰ There is no similar information on the record of the instant review regarding family control of Hyundai Steel and Hyundai Green Power.⁴¹
- Also, the petitioners’ allegations of intertwined operations between Hyundai Steel and Hyundai Green Power and that the latter is a state-owned enterprise are incorrect and unsupported by the record. The fact that Korea Midland Power owns 29 percent of Hyundai Green Power and a financing consortium made of private and government owned banks loaned money to Hyundai Green Power does not make it a state-owned enterprise, and the assertion that Hyundai Green Power “was created with massive infusions of state capital to be an intertwined component of Hyundai’s steelmaking operations” is not supported by the record.⁴²
- The petitioners’ claim with regard to the Shareholders’ Agreement is also unsupported. As proprietary information within the agreement shows, both Hyundai Steel and Korea Midland Power are equally responsible for obligations. Further, contrary to the petitioners’ statements, Korea Midland Power is responsible for and helps to operate Hyundai Green Power.⁴³
- The shareholder agreement, specifically Articles 17 and 18, cited by the petitioners, does not grant Hyundai Steel the ability to control the assets of Hyundai Green Power as if they were its own.⁴⁴
- 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 petitioners. Moreover, the provision discussed in Article 17 cannot be invoked until October 2019, a date which post-dates the POR.⁴⁵
- The petitioners’ attempts to demonstrate that Hyundai Green Power operates as an integrated and interdependent part of Hyundai Steel’s steelmaking operations fail as well. 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.⁴⁶ Mere proximity of facilities provides no evidence of the ability to control and does not serve as a sole basis for an affirmative cross-ownership finding.⁴⁷
- Further, as evidenced by the record Hyundai Steel did not purchase electricity from Hyundai Green Power during calendar years 2015 and 2016; the record shows that the purchases were of steam and this steam is not an input for steelmaking.⁴⁸

⁴⁰ See *Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 72 FR 60642 (October 25, 2007) (*CFS from Indonesia*) and accompanying IDM at 9.

⁴¹ See Hyundai Steel Rebuttal Brief at 5.

⁴² *Id.* at 6.

⁴³ *Id.* at 6-7.

⁴⁴ *Id.* at 6.

⁴⁵ *Id.* at 6-7.

⁴⁶ *Id.* at 7-8.

⁴⁷ *Id.* at 8 citing 19 CFR 351.525(b)(6)(iv).

⁴⁸ *Id.* at 10-11.

- The petitioners’ citation to a carbon credits application where Hyundai Steel is identified as a “project proponent” and Hyundai Green Power as a “project owner” does nothing to rebut the evidence on the record that the companies are not cross-owned.⁴⁹
- While Hyundai Steel sells a by-product gas to Hyundai Green Power that Hyundai Green Power, in turn, uses to produce electricity, it does not give Hyundai Steel the ability to control Hyundai Green Power.⁵⁰
- 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. In fact, contrary to the petitioners’ claims, in *CFS from Indonesia*,⁵¹ Commerce found that long-term supply agreements did not support a finding of affiliation for certain suppliers.⁵²
- Commerce has found Hyundai Steel and Hyundai Green Power not to be cross-owned in *CTL Plate 2016* and other prior administrative reviews. Commerce should continue to reach the same conclusion in the instant review.⁵³
- Alternatively, Commerce should continue to find, as stated in the *Preliminary Results*, that it is not necessary to determine whether cross-ownership exists because there was no benefit provided to Hyundai Green Power. There is also no reason to consider this issue anew in the next administrative review.⁵⁴
- 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.⁵⁵
- In *CTL Plate 2016*, Commerce found that the provision of steam by Hyundai Green Power did not constitute an input that would invoke the input producer regulation under 19 CFR 351.525(b)(6)(iv). The petitioners point to nothing on this record that would require a different result.⁵⁶
- 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 for maintenance of equipment and materials.⁵⁷
- 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. 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. For example,

⁴⁹ *Id.* at 13.

⁵⁰ *Id.*

⁵¹ See *CFS from Indonesia* IDM at 12.

⁵² See Hyundai Steel Rebuttal Brief at 13.

⁵³ *Id.* at 14.

⁵⁴ *Id.*

⁵⁵ *Id.* at 15.

⁵⁶ *Id.*

⁵⁷ *Id.* at 15-16.

it would not be appropriate to attribute subsidies to a plastics company to the production of cross-owned corporations producing appliances and automobiles.⁵⁸

- Steam produced as a by-product during Hyundai Green Power's production of electricity cannot be said to be primarily dedicated to the production of CORE and is not "merely a link in the overall production chain" of CORE. Further, the steam sold to Hyundai Steel in 2016 does not come close to meeting the primary dedication standard. Rather, it is a by-product that is being put to use for environmental reasons, so it is not wasted.⁵⁹
- The petitioners' citation to a 2011 bond Circular and a 2014 application for carbon credits have no bearing on a 2015-2016 POR. Further, there is no evidence to show that the steam is used as an input to make steel.⁶⁰
- Commerce should not revisit whether Hyundai Green Power supplied inputs primarily dedicated to the downstream product to Hyundai Steel and if it does, should conclude for the final that's that Hyundai Green Power has not supplied a primarily dedicated input to Hyundai Steel.⁶¹

Commerce's Position: We continue to find that Hyundai Steel and Hyundai Green Power are not cross-owned. 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."⁶² 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 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.

⁵⁸ *Id.* at 16.

⁵⁹ *Id.* at 16-17.

⁶⁰ *Id.* at 17.

⁶¹ *Id.*

⁶² See *Preamble*, 63 FR at 65401.

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.⁶³

In *CTL Plate 2016*, Commerce conducted a detailed analysis on whether Hyundai Steel and Hyundai Green Power were cross-owned and found they were not. Further, Commerce found that the input Hyundai Green Power supplied to Hyundai Steel was not primarily dedicated to the production of subject merchandise. More specifically, Commerce found:

(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).⁶⁴

The POR in *CTL Plate 2016* covers calendar year 2016 which also forms the majority of the POR in the instant review. Consistent with the finding in *CTL Plate 2016*, we did not find cross-ownership between Hyundai Steel and Hyundai Green Power in the *Preliminary Results*,⁶⁵ and there is no new information on the record that would require a change to our preliminary finding. As noted above, the standard for finding cross-ownership is higher than the standard for finding affiliation, and only when the companies are found to be cross-owned will Commerce then consider the subsidies received by the cross-owned company and how they must be attributed. Absent cross-ownership, we find petitioners’ arguments regarding subsidies received by cross-owned companies and any consequent attribution to be moot and, thus, do not need to be addressed. We will continue to examine whether cross-ownership between Hyundai Steel and Hyundai Green Power exists in the next administrative review if warranted by the facts in that review.

⁶³ *Id.*

⁶⁴ See *CTL Plate 2016* IDM at 17.

⁶⁵ See Preliminary Decision Memorandum at 10.

Comment 2: Whether Tax Benefits Should be Adjusted to Account for the Special Rural Development Tax.

Petitioners' Case Brief

- In the *Preliminary Results*, Commerce used benefit amounts net of the Special Rural Development Tax (SRDT) which is inconsistent with the statute and Commerce's practice.⁶⁶
- In previous investigations, Commerce has found that Korea's SRDT does not fall within the bases provided by the statute to qualify for an offset.⁶⁷
- Commerce should base its calculation on the total benefit amounts and should deny any offset based on the SRDT or other subsequent taxes levied on the initial tax exemptions and reductions.⁶⁸

Hyundai Steel Rebuttal Brief

- Commerce's calculation of benefit net of the SRDT for the RSLTA Article 78 program in the *Preliminary Results* is supported by the statute and should not be changed.⁶⁹
- The statute provides that for the purpose of determining the net countervailable subsidy, the administering authority may subtract from the gross countervailable subsidy the amount of (A) any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy, (B) any loss in the value of the countervailable subsidy resulting from its deferred receipt, if the deferral is mandated by Government order, and (C) export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received.⁷⁰
- In accordance with Article 5 of the ACT on SRDT and accompanying Presidential Decree, 20 percent of total tax credits, except those related to technological or human resources development, remain payable to tax authorities to support rural development programs. This means that 20 percent of the total tax credits that Hyundai Steel "received" are not actually received, resulting in a "loss in the value of the benefit," fall squarely under the plain language of the statute as an amount that may be subtracted from the gross countervailable subsidy.⁷¹

Commerce's Position: We agree with the petitioners. In the *Preliminary Results*, we used the benefit amounts net of the SRDT tax which is inconsistent with the statute and past practice. Section 771(6) of the Act limits the circumstances under which Commerce may recognize an offset to a subsidy, and thereby reduce the subsidy measured. The Act limits offsets to amounts related to application fees, to the loss of value of the subsidy from a deferral required by the government, and to any export taxes, duties or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received. As such, the SRDT does not satisfy the statutory definition of an offset to the countervailable benefit

⁶⁶ See Petitioners Case Brief at 18.

⁶⁷ *Id.* at 19.

⁶⁸ *Id.* at 19-20.

⁶⁹ See Hyundai Steel Rebuttal Brief at 18.

⁷⁰ *Id.*, citing 19 U.S.C. § 1677(6).

⁷¹ See Hyundai Steel Rebuttal Brief at 18-19.

conferred. Commerce has previously stated that:

The application of the Special Rural Development Tax is a consequence of the exemption of acquisition or registration taxes; the Special Rural Development Tax obligation arises only when the exemption is granted. It is not a prerequisite to the exemption the way an application fee might be.⁷²

Accordingly, we have revised our calculation of the subsidy rates under the RSLTA Article 78 program to include the SRDT in the benefit amounts for 2015 and 2016 for Hyundai Steel.⁷³ We continue to find the benefits received by Dongbu to be not measurable.

Comment 3: Whether Tax Credit Programs Under the RSTA Meet the Specificity Requirement.

GOK's Case Brief

- In the *Preliminary Results*, Commerce found RSTA 25(3) is specific because Hyundai Steel received a disproportionate amount of the subsidy compared to the average amount received by all other companies. The analysis was based on a comparison of the number of recipients that received benefits under the program during the tax year to the number of companies that filed tax returns during the same period. This analysis is simplistic and insufficient.⁷⁴
- The determination on whether the program was used should be made by considering the number of companies that could possibly use this program, and not on the basis of the ratio between the number of companies that used the program versus the total number of corporations that filed tax returns.⁷⁵
- The relevant ratio for determining disproportionate use is not the ratio of companies that took the deduction to all Korean taxpayers, but instead the ratio of taxpayers who took the deduction to the number of taxpayers who were eligible for it. In the absence of such an analysis, there is no basis for finding any of the RSTA tax programs to be *de facto* specific.⁷⁶
- Commerce's *Preliminary Results* finding that RSTA 26 is specific because benefits are limited to enterprises located within designated geographical regions is erroneous. The GOK has continuously explained that the purpose of RSTA 26 is not to encourage investments into the area outside the Seoul Metropolitan Area, but rather to encourage investments into Korea regardless of region. However, due to the concentration of population into the Seoul Metropolitan Area, the GOK decided to restrain the population from moving into this area. In short, benefits are open to all enterprises in Korea except for a very small portion of the Korean territory, *i.e.*, the Seoul Metropolitan Area, solely for overcrowding control purpose of the region.⁷⁷

⁷² See *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015) (*Welded Line Pipe*) IDM at comment 4. See also *Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) (*Large Residential Washers*) IDM at comment 10.

⁷³ See Hyundai Steel Final Results Calculation Memorandum.

⁷⁴ See GOK Case Brief at 16.

⁷⁵ *Id.*

⁷⁶ *Id.* at 16-17.

⁷⁷ *Id.*

- With respect to RSTA 10(1)(3) that ‘actual recipients are limited in number’ is not in accordance with the interpretation made by the U.S. Court of International Trade (CIT) or the Statement of Administrative Action (SAA).⁷⁸
- In *Bethlehem Steel Corporation v United States*,⁷⁹ the CIT’s opinion on the Voluntary Curtailment Adjustment program was based on the fact that the number of enterprises was limited in number, and not the fact that the ratio of the number of enterprises that benefitted from the program in contrast to the total number of tax returns filed was large.⁸⁰
- The SAA implies that *de facto* specificity for a program should be rejected if the actual users are too large in number to reasonably be considered as a specific group. Thus, it is not the ratio between the number of enterprises that actually utilized the program and the total number of tax returns filed during the investigation period but whether the number of enterprises or group of enterprises is small enough to be considered as to be specific in order to determine whether the conditions of *de facto* specificity are met.⁸¹
- Considering the opinion of the CIT and the SAA, Commerce’s method should be to consider whether the number of enterprises or group of enterprises are small enough to be considered specific, and not a comparison to the total number of tax returns filed.⁸²

Petitioners’ Rebuttal Brief

- Commerce’s practice with regard to *de facto* specificity is well established and neither the respondents or the GOK have appealed recent applications of this practice. Commerce has explained this approach in *CTL Plate from Korea* and *CR Steel from Korea*.⁸³
- Commerce’s regional specificity determination is also consistent with *CTL Plate from Korea*.
- The GOK has presented no new information or argument to compel a different result in this review.⁸⁴

Commerce’s Position: With respect to the RSTA Article 25(3) and Article 10(1)(3) programs, we have reassessed our preliminary findings in light of new record evidence. In the *Preliminary Results*, we found that subsidies under RSTA Article 25(3) are specific pursuant to section 771(5A)(D)(iii)(III) of the Act because the tax credits were provided disproportionately to Hyundai Steel.⁸⁵ We also found that subsidies under RSTA Article 10(1)(3) are specific pursuant to section 771(5A)(D)(iii)(I) of the Act because the recipients are limited in number.⁸⁶ For these final results, we find that both subsidy programs are specific pursuant to section 771(5A)(D)(iii)(I) of the Act.

⁷⁸ *Id.* at 17.

⁷⁹ See 140 F. Supp. 2d 1354.

⁸⁰ See GOK Case Brief at 17-18.

⁸¹ See GOK Case Brief at 18-21.

⁸² See GOK Case Brief at 21.

⁸³ See Petitioners Rebuttal Brief at 20 citing *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 82 FR 16341 (April 4, 2017) (*CTL Plate from Korea*) and accompanying IDM at 58-59; and *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49946 (July 29, 2016) (*CR Steel from Korea*) and accompanying IDM at 88-89.

⁸⁴ See Petitioners Rebuttal Brief at 21.

⁸⁵ See Preliminary Decision Memorandum at 18-19.

⁸⁶ *Id.* at 21-22.

Section 771(5A)(D)(iii)(I) of the Act states that a subsidy is specific as a matter of fact if the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number. Further, section 771(5A) of the Act states that “any reference to an enterprise or industry is a reference to a foreign enterprise or industry and includes a group of such enterprises or industries.” The SAA states that “{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.”⁸⁷

Under section 771(5A)(D)(iii)(I) of the Act, we may find a subsidy program *de facto* specific if the actual recipients of a subsidy, whether on an enterprise or industry basis, are limited in number. The tax incentives at issue in this case are tax incentives that are available to all types of business and corporations in Korea. Thus, it is appropriate to include all corporate tax returns in our analysis of *de facto* specificity. Since the *Preliminary Results*, Commerce requested and the GOK provided additional information on the record of this review. Based on this information, and in order to determine whether these RSTA tax credits are broadly available and widely used throughout an economy, we examined both the nominal number of recipients of the RSTA Article 25(3) and Article 10(1)(3) tax incentives and compared the actual number of the users of these RSTA tax incentives to the actual number of corporate tax returns. On this basis, we find that under Article 25(3) only 311 recipients claimed a tax deduction out of a total of 645,061 corporate tax returns filed in 2016; and 293 recipients claimed a tax deduction out of a total of 591,694 corporate tax returns filed in 2015.⁸⁸ Similarly, less than 4 percent of total tax filers benefitted under RSTA Article 10(1)(3) in 2015 and 2016.⁸⁹

With respect to RSTA Article 26, we disagree with the GOK’s contention that this program is not regionally specific. In the underlying investigation, we countervailed this program, finding it to be specific because benefits were limited to enterprises located within designated geographical regions.⁹⁰ In an administrative review, Commerce does not revisit a finding of countervailability for a program found countervailable in the investigation, absent new evidence.⁹¹ Here, the GOK has presented no new evidence with respect to this program. In fact, the GOK stated there were

⁸⁷ See SAA at 929. The SAA “shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act...” 19 U.S.C. § 1352(d).

⁸⁸ See GOK August 17, 2018 SQR; *see also* Hyundai Steel Final Results Calculation Memorandum.

⁸⁹ *Id.*

⁹⁰ See *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Preliminary Affirmative Determination*, 80 FR 68842 (November 6, 2015) and accompanying Preliminary Decision Memorandum at 16-17 and *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35310, (June 2, 2016), (*CORE from Korea Final Determination*) (unchanged in final).

⁹¹ See *Magnola Metallurgy, Inc. v. United States*, 508 F.3d 1349 (Fed. Cir. 2007) (*Magnola*). See also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, From the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015) (*Solar Cells 2012 Final Results*) and accompanying IDM at 27 n.130 (“In a CVD administrative review, we do not revisit past determinations of countervailability made in the proceeding, absent new information.”).

no changes made to this program during the POR.⁹² Therefore, we continue to find that subsidies under RSTA Article 26 are regionally specific, within the meaning of section 771(5A)(D)(iv) of the Act.

Further, we note that this determination is consistent with *Large Diameter Welded Pipe, Large Residential Washers* and other prior cases.⁹³ Moreover, the CIT sustained our findings on this issue in *Washers from Korea* investigation.⁹⁴ It is clear from the text of Article 23 of the Enforcement Decree and the amendment of the Seoul Metropolitan Area Readjustment Planning Act that benefits provided under RSTA Article 26 are limited to a designated geographical region. That designated region is all parts of the Korean territory outside of the Seoul Metropolitan Area (SMA). It is not relevant to our determination the geographic size of the landmass outside of the SMA in Korea that is eligible to receive benefits under the program, so long as the GOK designates a geographical region (*i.e.*, the SMA) that it intends to exclude from these benefits. Thus, we continue to find that the GOK established a designated geographical region to which this program is available, and that subsidies under this program are specific within the meaning of section 771(5A)(D)(iv) of the Act.

Comment 4: Whether Suncheon Harbor Usage Fee Exemptions Under the Harbor Act are Countervailable.

Hyundai Steel's Case Brief

- Commerce's preliminary finding that Suncheon Harbor Usage Fee Exemptions are countervailable should be reversed because it stands contrary to recent precedent from the Count of International Trade⁹⁵ and Commerce's own prior precedent.⁹⁶
- The record is clear that Hyundai Steel's usage fee exemptions are reimbursements by the GOK for construction costs expended for the wharf at Suncheon Harbor. The *Preliminary Results* recognize that the Harbor Act was established "to compensate companies that have constructed port facilities with their own funds and have made donations to the government." Immediately after construction of the wharf, the ownership reverted to the GOK and Hyundai Steel (after it acquired Hyundai HYSCO) had a right to use the harbor facilities free of charge to the extent the exempted amount reaches the total project cost. Thus, the exemptions are nothing other than reimbursements for construction of the wharf and not a financial contribution in the "form of revenue foregone." Further, the wharf was not a

⁹² See GOK February 12, 2018 Initial QR at 42.

⁹³ See *Large Diameter Welded Pipe from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 84 FR 6369 (February 27, 2019) (*Large Diameter Welded Pipe*) IDM at comment 4. See also *Large Residential Washers* IDM at comment 9. See also *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) (*CTL Plate 2016 Preliminary Results*) and accompanying Preliminary Decision Memorandum at 9 (unchanged in *CTL Plate 2016 Final Results*).

⁹⁴ See *Samsung Electronics Co. v. United States*, 973 F. Supp. 2d 1321, 1329 (CIT 2014) ("Because access to Art.26 tax credits was conditioned upon investment in a 'designated geographical region,' Commerce's regional specificity determination was reasonable.") (internal citations omitted).

⁹⁵ See Hyundai Steel Case Brief at 2 citing *Government of Sri Lanka v. United States*, 308 F. Supp. 3d 1373 (CIT 2018) (*Government of Sri Lanka v. United States*).

⁹⁶ See Hyundai Steel Case Brief at 3 citing *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30636 (June 8, 1999) (*Stainless Steel Sheet and Strip*).

- “donation” because it automatically reverted to the GOK as required under Korean law.⁹⁷
- The CIT’s decision in *Government of Sri Lanka v. United States* is instructive on the point that reimbursements of this kind are not benefits and thus not countervailable. The program at issue was the Guaranteed Price Scheme (GPS), where Commerce assessed reimbursements in isolation from the overall GPS program and concluded they were a financial contribution in the form of a direct transfer of funds and a benefit. The CIT reversed Commerce’s determination concluding that the reimbursement was not a financial contribution and did not constitute a benefit.⁹⁸
 - In *Stainless Steel Sheet and Strip*, after verification Commerce reversed its preliminary determination and found the exact program at issue in this proceeding, were not countervailable because the exemptions were merely a vehicle for a company to “recover its investments costs.” Similarly, Commerce should revisit its finding and find that the usage fee exemptions are not countervailable in this case.⁹⁹

GOK’s Case Brief

- In the *Preliminary Results*, Commerce found that since the number of companies that were approved/received assistance is limited in number, the program is *de facto* specific.¹⁰⁰
- Commerce clearly stated that Hyundai Steel was exempted from port usage fees until the fee amount reached the amount invested to construct the port.¹⁰¹
- Hyundai Steel was exempted from paying port usage fee because a loss occurred to Hyundai Steel by constructing the port with its own funds and transferring its ownership to the GOK. In other words, Hyundai Steel was just getting a remuneration for what it had done and there was no benefit making Hyundai Steel “better off” than it would otherwise have been, absent that contribution. Thus, exemption of port usage fee in Suncheon Harbor is not a countervailable subsidy under section 771(5)(B) of the Tariff Act of 1930.¹⁰²

Petitioners’ Rebuttal Brief

- Relying on the CIT’s opinion in *Government of Sri Lanka v. United States* and Commerce’s 1999 determination in *Stainless Steel Sheet and Strip*, Hyundai Steel argues that the fee exemptions do not provide a financial contribution or a benefit because they are reimbursements for construction costs incurred by companies that build infrastructure on the government’s behalf.¹⁰³
- Hyundai Steel’s citation to *Stainless Steel Sheet and Strip*¹⁰⁴ is unavailing; that determination did not address financial contribution at all, and found instead that the program was not specific based on usage data “since 1991” showing that “a diverse grouping of private sector companies across a broad range of industrial sectors have made a number of investments in infrastructure facilities at various ports in Korea,” and that “{i}n each case,

⁹⁷ See Hyundai Steel Case Brief at 4.

⁹⁸ *Id.* at 4-5.

⁹⁹ *Id.* at 6-10.

¹⁰⁰ See GOK Case Brief at 22.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ See Petitioners Rebuttal Brief at 21.

¹⁰⁴ See *Stainless Steel Sheet and Strip* at 30649.

the company which built the infrastructure” received fee exemptions and the right to charge fees to other users. In other words, Commerce did not base its specificity finding on the fact that the program is purportedly “widely available,” as Hyundai Steel argues here, but the actual users in fact were many and diverse, based on information on the record in that case.¹⁰⁵

- Commerce has flatly rejected the “widely available” theory of *de facto* specificity as directly at odds with the purpose of the statute.¹⁰⁶
- In the *Preliminary Results*, Commerce found that this program is *de facto* specific because “the number of companies that were approved/received assistance were limited in number, and neither Hyundai Steel nor the Korean government has challenged the factual basis for this conclusion.”¹⁰⁷
- Regarding *Government of Sri Lanka v. United States* there are distinctions – that case involved reimbursements to a purchaser of an input, ostensibly to cover the above market price that the purchaser paid to its input supplier as a result of a government-mandated “guarantee price” scheme with three parties involved, the government, the input supplier, and the input purchaser, whereas in this case only two parties are involved, the GOK and Hyundai Steel. Moreover, the disposition of this case is not yet final as it has been appealed at the Federal Circuit.¹⁰⁸

Commerce’s Position: We continue to find the exemption of usage fees under the Harbor Act to be countervailable because it meets the statutory criteria required to find a program countervailable. In determining whether a subsidy is specific, we look to section 771(5A) of the Act. Under subsection (D)(iii)(I) of this section a subsidy may be specific as a matter of fact if the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number. Based on information provided by the GOK we found the program to be *de facto* specific in the instant review.¹⁰⁹ Section 771(5)(D)(ii) of the Act provides that a financial contribution exists in the “foregoing or not collecting revenue that is otherwise due.” We find the port usage fee exemptions Hyundai Steel received from the GOK to be revenue foregone pursuant to section 771(5)(D)(ii) of the Act. Lastly, Commerce looks for whether a benefit was conferred on the recipient under section 771(5)(E) of the Act. We find that a benefit was conferred in the amount of the fees not collected by the GOK.¹¹⁰ Thus, we found the exemptions of usage fees the GOK granted Hyundai Steel were countervailable. This determination is consistent with numerous prior cases where Commerce countervailed exemptions received under the Harbor Act.¹¹¹

¹⁰⁵ See Petitioners Rebuttal Brief at 22.

¹⁰⁶ *Id.* citing *CORE from Korea Final Determination* IDM at 28.

¹⁰⁷ See Petitioners Rebuttal Brief at 22.

¹⁰⁸ *Id.* at 23-24.

¹⁰⁹ See Preliminary Decision Memorandum at 26.

¹¹⁰ See 19 CFR 351.503(b).

¹¹¹ See *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 11. See also *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*; 2011, 79 FR 5378 (January 31, 2014) and accompanying IDM at 3. See also *Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from the Republic of Korea*, 67 FR 62102 (October 3, 2002) and accompanying IDM at 20. See also *Notice of Final Results of Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 72 FR 38565 (July 13, 2007) and accompanying IDM at 6 and 10-11.

We disagree with Hyundai Steel with respect *Stainless Steel Sheet and Strip*. In that determination, Commerce found that POSCO and Incheon were only two out of a large number of companies from a diverse range of industries that used the program. Thus, Commerce determined that the program was not specific under section 771(5A)(D)(iii) of the Act and, therefore, not countervailable.¹¹² In the instant review, we examined specificity as it relates to the POR of this review. Specifically, we requested that the GOK provide the total number of companies that were approved for assistance under the program during the POR, and based on the GOK's response, we found the program to be *de facto* specific because the actual recipients, on an enterprise or industry basis, were limited in number.¹¹³ Further, as noted earlier, since *Stainless Steel Sheet and Strip*, Commerce has found this program countervailable in several other proceedings. Therefore, we also disagree with Hyundai Steel's arguments that Commerce's findings in *Stainless Steel Sheet and Strip* mean that there is no financial contribution or benefit from this program in this review.

The facts in *Government of Sri Lanka v. United States* are in contrast to facts in this review and are distinguishable. In *Government of Sri Lanka v. United States*, the court characterized payments under the Guaranteed Price Scheme for Rubber (GPS) program as interest-free repayment of a debt rather than "a direct transfer of funds" and held that the payments constituted reimbursement of an interest-free debt that did not benefit the tire producer.¹¹⁴ In the *Sri Lankan tires* case, we determined that the government's payments to the respondent were a direct transfer of funds and countervailable in their full amount (treating the respondent's earlier payment of the "guaranteed price" to its producer as irrelevant). However, the court found that we had erroneously assessed the reimbursements in isolation from the GPS program because the tire producer was being required to provide the government an interest free loan by paying an above-market price for which it was later reimbursed. The court concluded that we ignored record evidence that the respondent received payment corresponding exactly to the above-market portion of its payment to the small-scale farmer, paid on behalf of the government.¹¹⁵

The Harbor Act program in this review is not comparable to the GPS program that the CIT analyzed in *Government of Sri Lanka v. United States*. The two programs are distinguishable in the way that they work (producer overpayment for an input in Sri Lankan tires versus exemption of the usage fee thereby granting Hyundai Steel free usage of the facility in this review) and, importantly, the type of benefit at issue (a direct transfer of funds in *Sri Lankan tires* versus revenue foregone (*i.e.*, not charging a harbor usage fee) in this program). The court in *Government of Sri Lanka v. United States* characterized the transaction at issue as the government repaying a debt to the respondent company.¹¹⁶ In this review, the exemption of the port usage fees cannot be characterized as the repayment of a debt to Hyundai Steel by the GOK. It is not a payment or repayment at all, but rather a selective exemption from fees. Further, in *Government of Sri Lanka v. United States*, the court characterized the transaction at issue as resulting in a detriment, rather than a benefit, to the respondent in that case.¹¹⁷ In this review,

¹¹² See *Stainless Steel Sheet and Strip*, "Port Facility Fees" at 30649.

¹¹³ See GOK June 20, 2018 SQR Appendix Volume, pages 61-62.

¹¹⁴ See *Government of Sri Lanka v. United States*, 308 F. Supp. 3d at 1381.

¹¹⁵ *Id.* at 1380-83.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 1382.

however, there is no evidence on the record demonstrating that Hyundai's building of a port, the GOK's subsequent assumption of ownership of the port, and Hyundai's exemption from payment of port usage fees resulted in a detriment to Hyundai Steel. Therefore, Hyundai Steel's reliance on *Government of Sri Lanka v. United States* is inapposite.

Comment 5: Whether the Trading of Demand Response Resource Program is Specific.

GOK's Case Brief

- In the *Preliminary Results*, Commerce concluded that payments received by Hyundai Steel under the Demand Response Resource (DRR) program were countervailable because they are a financial contribution in the form of a direct transfer of funds from KPX and KEPCO. However, this analysis is inadequate because the DRR program does not involve any payments to electricity users participating in the program by the GOK or any entities owned or controlled by the GOK. Instead, DRR is a market-driven program and payments received by participants come from purchasers of electricity in the market. The KPX merely operates and administers the program by delivering payments to Demand Management Business Operators (Operators), who pay Hyundai Steel and other DRR program participants pursuant to contracts between the Operators and the electricity users.¹¹⁸
- The DRR program was launched in November 2016 and is a totally different program compared to the energy savings program that Commerce has found to be specific in *Hot-rolled Steel Products*.¹¹⁹
- Under the energy savings program prior to November 2016, companies had to enter into an agreement with KEPCO in advance for commitment to reduce electricity consumption and the companies would get remuneration from the energy savings funds of KEPCO. However, under the current program, neither KEPCO nor KPX is a party to the agreements between the Operators and the individual DRR program participants.¹²⁰
- Also, electricity users are automatically eligible to participate in the DRR program on satisfying requirements set forth in relevant Rules on Operation of Electric Utility Market. Thus, there is no need for KPX or KEPCO to be involved, and thus the GOK is not a party to the program.¹²¹
- The DRR program does not provide a benefit because private operators contract individual participants obtaining commitments to curtail electricity demand when requested and provide payments in return. These payments are necessarily equal to the market value of their commitment to curtail electricity usage and so, in other words, participants were just getting remuneration for being restrained from using electricity.¹²²
- Further, even though KPX decided the amount of curtailment to be requested from the Operators, it does not involve in the actions of the Operators to obtain that curtailment from electricity users. The payments between the Operators and participants are private

¹¹⁸ See GOK Case Brief at 12.

¹¹⁹ *Id.* citing *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016) (*Hot-Rolled Steel Products*) and accompanying IDM at 22.

¹²⁰ See GOK Case Brief at 12.

¹²¹ *Id.*

¹²² *Id.* at 13.

transactions, without government interference and represent a market price for electricity-usage curtailment. Thus, there is no benefit.¹²³

- The DRR program is also not specific because participation was open to all electricity users and the range of recipient industries is quite diverse and not limited.¹²⁴
- In *Bethlehem Steel Corporation v United States* (140 F. Supp. 2d 1354) and *Royal Thai Govt. v. United States* (341 F. Supp. 2d 1315, 1319), the CIT found the programs at issue in those cases were not limited when participant industries were numerous and diverse.¹²⁵

The petitioners did not rebut this issue.

Commerce’s Position: We continue to find the DRR program to be countervailable, consistent with the approach in *CTL Plate 2016* and *Large Diameter Welded Pipe*. In *Large Diameter Welded Pipe*, after verifying information on the record, Commerce stated:

We disagree with the GOK that the DRR program is not countervailable and continue to find that this program is countervailable for the final determination. While the GOK claims that there is no separate budget allocated by the GOK to operate this program and that the source of payments to the aggregators comes from Korea Power Exchange (KPX), in the *Preliminary Determination*, we found that KEPCO pays KPX to administer this program through funds KEPCO collects from electricity consumers. The GOK further reiterated during verification that funding for this program comes through KEPCO. Commerce has previously found KEPCO and KPX to each be an “authority” within the meaning of section 771(5)(B) of the Act and continued to do so in the *Preliminary Determination*. Further, section 771(5)(D)(i) of the Act defines the term “financial contribution” as “the direct transfer of funds, such as grants, ...” and 19 CFR 351.504(a) states that, in the case of a grant “a benefit exists in the amount of the grant.” Accordingly, because there is no information on the record regarding the source of the funds used by KPX to make payments to the aggregators other than information demonstrating that the funds are passed to KPX from KEPCO, and record evidence supports a continued finding that KEPCO and KPX are “authorities,” we continue to find 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 that a benefit exists in the amount of the grant provided to Hyundai Steel and SeAH Steel in accordance with 19 CFR 351.504(a).¹²⁶

The DRR program found countervailable in the above cases is the same program examined in the instant review that was launched by the GOK in November 2016. Contrary to the GOK’s arguments in this review that the DRR is a market-driven program and the GOK is not a party to the program, the GOK confirmed at verification in *Large Diameter Welded Pipe* that funding for this program passes through KEPCO and KPX. Further, Commerce has previously determined in numerous cases that KEPCO and KPX are each an “authority” within the meaning of section 771(5)(B) of the Act.

¹²³ *Id.*

¹²⁴ *Id.* at 13-14.

¹²⁵ *Id.* at 14-15.

¹²⁶ See *Large Diameter Welded Pipe* IDM at 35-36.

With regard to the GOK's contention that the program is not specific because participation was open to all electricity users and recipient industries were diverse and not limited, we note that information submitted by the GOK showed that a limited number of companies were approved for assistance under the program in the POR.¹²⁷ Thus, we find 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, and this finding is consistent with *Large Diameter Welded Pipe* and *CTL Plate 2016*. We therefore, continue to find the DRR program countervailable.

Comment 6: Rescission of Review with Respect to Mitsubishi International Corporation.

Mitsubishi's Case Brief

- In the *Preliminary Results*, Commerce properly announced its intention to rescind the review with respect to Mitsubishi International Corporation (Mitsubishi) on the grounds that it had no entries of subject merchandise.¹²⁸
- Mitsubishi believes that no data contrary to the *Preliminary Results* has been submitted by any party, nor does any contrary data otherwise exist and therefore Commerce should rescind the review with respect to Mitsubishi.¹²⁹

The petitioners did not rebut this issue.

Commerce's Position: No further information is on the record of this review since the *Preliminary Results* and no other party has commented on this issue. Commerce is therefore rescinding the review with respect to Mitsubishi International Corporation.

Comment 7: Whether the Non-Government-Owned Banks Participating in Dongbu's Debt Restructuring Program Provided a Financial Contribution

Petitioners' Case Brief

- Commerce previously has found that where a government entrusted or directed the provision of a subsidy through a private party, the subsidy was countervailable.¹³⁰
- In the context of Dongbu's Creditor Bank Committee, the participating private commercial banks acted in the exact same way as the government banks.¹³¹
- Commerce should revise its *Preliminary Results* to include all loans and equity infusions from both GOK majority-owned banks and commercial banks provided to Dongbu through the debt restructuring process in its final subsidy calculations.¹³²

¹²⁷ See GOK February 12, 2018 Initial QR at 263.

¹²⁸ See Mitsubishi Case Brief at 1-2.

¹²⁹ *Id.*

¹³⁰ See Petitioners Case Brief at 4-6.

¹³¹ *Id.*

¹³² *Id.*

GOK Rebuttal Brief

- GOK majority-owned banks did not provide any benefit to Dongbu since their interest rates provided to Dongbu were exactly the same as the benchmark rate.¹³³
- Commercial banks on the Creditor Bank Committee were not controlled by GOK banks or the Creditor Bank Committee's decision.¹³⁴
- Commercial banks had the legal right to request that the other Creditor Bank Committee members to buy out their shares but did not exercise this legal right.¹³⁵
- Non-government owned banks exercised their voting rights whenever the Creditor Banks Committee made decisions, and they were not entrusted and directed by the Korean government.¹³⁶

Dongbu Rebuttal Brief

- The loans from private creditors provided no direct financial contribution to Dongbu, as private creditors are not government authorities.¹³⁷
- There is no legal or factual basis to treat the restructured loans from private creditors as providing a direct financial contribution to Dongbu.¹³⁸
- There is no evidence of any entrustment or direction of private banks by the GOK and no legal basis to find that the private banks provided an indirect financial contribution through the provision of restructured loans to Dongbu.¹³⁹

Commerce's Position: We continue to find that the commercial banks on the Creditor Bank Committee are not "authorities," within the meaning of section 771(5)(B) and that the restructured loans by these commercial banks to Dongbu are not financial contributions within the meaning of section 771(5)(D)(i) of the Act.

In the underlying investigation, we determined that non-government-owned banks in the Creditor Bank Committee were private commercial banks and therefore, were not either the government or public entities as defined by section 771(5)(B) of the Act.¹⁴⁰ Furthermore, we did not find that the dominant voting position of GOK-controlled banks indicated that the private lenders on the Creditor Bank Committee were entrusted or directed to accept the terms of the restructuring package, and we recognized that those private banks accepted those terms voluntarily based on their own risk assessments and commercial analyses.¹⁴¹ In an administrative review, we do not revisit findings of countervailability or non-countervailability that were made in an earlier segment of the proceeding, absent new evidence.¹⁴² There is no new evidence on the record of the instant review that would cause us to reach a different determination. Therefore, we continue to find that these restructured loans from private commercial banks are not financial

¹³³ See GOK Rebuttal Brief at 5-7.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ See Dongbu Rebuttal Brief at 3-8.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ See *CORE from Korea Final Determination* IDM at Comment 4.

¹⁴¹ *Id.*

¹⁴² See *Magnola*, 508 F.3d 1349; *PPG Industries, Inc. v. United States*, 978 F.2d 1232 (Fed. Cir. 1992). See also *Solar Cells 2012 Final Results* and accompanying IDM at 27 n.130.

contributions as defined by section 771(5)(B) or 771(5)(D)(i) of the Act.

Comment 8: Whether Dongbu's Loan Restructuring by the GOK Creditors Provided a Financial Contribution and Benefit to Dongbu.

Dongbu's Case Brief

- The restructuring of Dongbu's existing loans did not result in a new financial contribution. Moreover, since the private banks and the GOK-controlled banks offered the same terms, the restructured loans did not result in a benefit to Dongbu.¹⁴³
- As the GOK and private banks agreed to restructure Dongbu's existing loans on the same terms, the decision was based on commercial considerations and the recommendations of an independent auditor, thus it was not motivated or influenced by the GOK.¹⁴⁴

Petitioners' Rebuttal Brief

- Commerce's treatment of restructured loans from GOK-controlled banks as financial contributions in the *Preliminary Results* was identical to its treatment of those financial contributions in the investigation. Dongbu's arguments are effectively the same as those it presented during the investigation. Dongbu has presented no new information that would lead Commerce to re-examine this program's countervailability.¹⁴⁵
- Not only Dongbu's arguments were contradicted by record evidence of the circumstances surrounding the original loans, the issue of whether a loan was provided according to commercial consideration is irrelevant to the financial contribution issue.¹⁴⁶
- Commerce treats restructuring of loans as new financial contributions. Dongbu has presented no justification for departing from Commerce's practice.¹⁴⁷

Commerce's Position: We agree with the petitioners that Dongbu presented no new information that would lead us to conclude that the loans made by GOK-controlled banks through this program are not countervailable. In the *CORE from Korea Final Determination* and in the *Preliminary Results*, we found that the GOK-controlled policy banks (*i.e.*, the KDB, Korea Export-Import Bank (KEXIM), Woori Bank (Woori), Industrial Bank of Korea (IBK) and Korea Financial Corporation (KoFC)) are authorities within the meaning of section 771(5)(B) of the Act.¹⁴⁸ We also determined that under this debt restructuring these six authorities provided a financial contribution to Dongbu as defined under section 771(5)(D)(i) of the Act.¹⁴⁹ This debt restructuring program remains specific to Dongbu as the actual recipients of financing pursuant to restructurings by creditors' councils are limited in number, making this subsidy specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.¹⁵⁰

¹⁴³ See Dongbu Case Brief at 3-6.

¹⁴⁴ *Id.*

¹⁴⁵ See Petitioners Rebuttal Brief at 4-11.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ See *CORE from Korea Final Determination* and *Preliminary Results*.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

Comment 9: Whether Loan Restructuring Provided to Dongbu was Specific Pursuant to Section 771(5A)(D)(iii) of the Act.

Dongbu's Case Brief

- The voluntary restructuring is generally available to a wide array of debtors from all industries. It is not specific and cannot be countervailable.¹⁵¹
- The voluntary restructuring operates in a similar manner as a formal bankruptcy proceeding. It is Commerce's practice not to treat concessions made by creditors in the context of a formal bankruptcy as specific and countervailable.¹⁵²
- Dongbu's choice of going through a voluntary restructuring, as opposed to a formal bankruptcy or corporate workout procedure, was not motivated or influenced by the GOK, but was based on commercial considerations and the recommendations of an independent auditor.¹⁵³
- The fact that Dongbu's voluntary restructuring was overseen by a GOK-controlled Creditor Banks Committee and not a bankruptcy court alone does not justify a different result in a case such as this where the record shows that the normal procedures were followed, and no preferences were given to Dongbu.¹⁵⁴

Petitioners' Rebuttal Brief

- Dongbu's argument on specificity should be rejected for the same reasons that it was rejected in the original investigation. Subsidies may be broadly available in theory but if they are used in fact by only a limited number of enterprises or industries.¹⁵⁵
- Commerce's specificity finding is consistent with the statute and its practice and is supported by the record of this review. Commerce should continue to find that benefits conferred under Dongbu's debt restructuring program to be specific and therefore countervailable.¹⁵⁶

Commerce's Position: In the *CORE from Korea Final Determination*, we found this program specific, and Dongbu has presented no new evidence that would lead us to re-examine this program's specificity.¹⁵⁷ Our position in the *Preliminary Results* still stands, where we found that Dongbu was one of a very limited number of companies that went through restructuring by a creditors bank during the POR and 2014. The restructuring of Dongbu's debt was not overseen by an independent party. Instead, Dongbu's debt restructuring was controlled by the Creditor Bank Committee, which in turn was controlled by GOK policy banks such as the KDB. We continue to find that because the actual recipients of financing pursuant to restructurings by creditors' councils are limited in number, this subsidy is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.¹⁵⁸

¹⁵¹ See Dongbu Case Brief at 13-22.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ See Petitioners Rebuttal Brief at 15-19.

¹⁵⁶ *Id.*

¹⁵⁷ See *Magnola*, 508 F.3d 1349.

¹⁵⁸ See *CORE from Korea Final Determination* and *Preliminary Results*.

Comment 10: Whether Commerce Should Use the Interest Rate of Commercial Banks Participating in the Creditor Bank Committee as the Loan Benchmark.

GOK's Case Brief

- Dongbu's Debt Restructuring was executed under the Corporate Restructuring Promotion Act (CRPA), which provides an opt out option to commercial banks that do not agree to the Creditor Bank Committee's decision.¹⁵⁹
- The fact that no creditor bank within the Creditor Bank Committee exercised its right to opt out shows that the interest rates adopted by the Creditor Bank Committee were in accordance with the market rate.¹⁶⁰
- The interest rates for loans from commercial banks in the Creditor Banks Committee should serve as benchmark in Dongbu's debt restructuring.¹⁶¹

Dongbu's Case Brief

- There is nothing in the statute or regulations to prevent loans from the private banks in Dongbu's Creditor Bank Committee from meeting the "comparable commercial loans" standard for use as a benchmark.¹⁶²
- The financing that Dongbu received from the private banks constitutes "comparable commercial loans" that Dongbu "could actually obtain in the market".¹⁶³
- Dongbu's private creditors had the option of selling their credits to the other creditors if they wanted to opt out of the voluntary restructuring.¹⁶⁴
- Unlike *Refrigerators from Korea*, Dongbu's loan restructuring was a voluntary process and was undertaken by Dongbu's existing creditors and none of the GOK-owned banks held any shares in Dongbu at the time of the voluntary restructuring.¹⁶⁵
- The restructured loans constitute comparable commercial loans that Dongbu actually received from private banks. The interest rates from these loans should be used as the benchmark for measuring any benefit in the final results.¹⁶⁶

Petitioners' Rebuttal Brief

- Dongbu has conceded that it did not receive comparable commercial loans for the purpose of creditworthiness. Commerce should reject its attempt to argue that it received comparable commercial loans for the purpose of a benefit calculation.¹⁶⁷

Commerce's Position: We continue to disregard the interest rates from restructured loans provided by private commercial banks in the Creditor Bank Committee as the benchmarks for restructured loans provided by GOK-controlled banks to Dongbu.

¹⁵⁹ See GOK Case Brief at 7-10.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² See Dongbu Case Brief at 6-13.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ See Petitioners Rebuttal Brief at 11-15.

In the *Preliminary Results*, we did not rely on the interest rates of loans from commercial banks in the Creditor Bank Committee as the benchmarks for Dongbu's restructured loans provided by GOK-controlled banks.¹⁶⁸ We stated that given the influence of the GOK-controlled banks in setting the restructured loan terms, the private banks necessarily took into account the behavior of the GOK-controlled banks when evaluating the terms of their own loans, and that those private loans do not reflect credit that would have been available to Dongbu in the market outside of the Creditor Bank Committee.¹⁶⁹ Accordingly, the refinanced loans provided by the private banks through the restructuring program cannot be used as a commercial benchmark when measuring the benefit conferred by the restructuring program.¹⁷⁰ No new information has been provided on the record since the *Preliminary Results* that would cause us to reach a different determination. Therefore, for the final results, we continue to disregard the interest rates of restructured loans provided by commercial banks in the Creditor Bank Committee as benchmarks. We have continued to use the benchmarks developed in the *Preliminary Results* as loan benchmarks for these final results.

Comment 11: Whether the Debt-To-Equity Swaps in Dongbu's Debt Restructuring Program Conferred a Benefit.

Petitioners' Case Brief

- Commerce should treat these non-government banks as providing a financial contribution because they were participating in a single, government-led restructuring and were entrusted and directed to provide the financial contribution.¹⁷¹
- The record shows that the participation of non-government-owned banks on the Creditor Bank Committee does not represent the behavior of normal private investors, and that Dongbu was not equityworthy at the time of the transactions.¹⁷²
- Because Dongbu was not equityworthy, Commerce should treat the entire amount of the equity infusions as a countervailable benefit.¹⁷³
- In the alternative, Commerce should use the market price of Dongbu's publicly traded shares at the time of the debt-to-equity swap agreements as a benchmark and treat the difference between this price and the debt-to-equity swap price as a countervailable benefit.¹⁷⁴

GOK Rebuttal Brief

- Considering the commercial banks' right to opt-out under the CRPA, Commerce correctly determined that the benchmark for this program should be the debt-to-equity conversion ratio provided by commercial banks on the Creditor Bank Committee.¹⁷⁵
- The price of shares that Dongbu received from the debt-to-equity conversions accurately reflects the price of publicly traded shares.¹⁷⁶

¹⁶⁸ See *CORE from Korea Final Determination and Preliminary Results*.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ See Petitioners Case Brief at 7-11.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ See GOK Rebuttal Brief at 7-9.

¹⁷⁶ *Id.*

Dongbu Rebuttal Brief

- The statute and regulations dealing with the provision of loans and equity are completely different and there is no legal basis to treat them in an identical fashion.¹⁷⁷
- The private creditors' percentage of debt that was swapped for equity was larger than their percentage of restructured loans. The contrast between the level of private creditor participation in the debt-equity-swaps as compared to private creditors' participation in the restructured loans supports Commerce's determination that the debt-equity swaps provided no countervailable benefit.¹⁷⁸
- There is no basis to use the price of Dongbu's publicly-traded shares at the time of the debt-equity-swap transactions as the benchmark.¹⁷⁹

Commerce's Position: We continue to find that the debt-to-equity swaps in Dongbu's debt restructuring program did not confer a benefit to Dongbu. No new information has been provided on the record since the *Preliminary Results* that would cause us to reach a different determination. As we explained in the *Preliminary Results*, the participating banks for the debt conversions included both GOK-controlled policy banks (*i.e.*, KDB, KEXIM, Woori, IBK, and KoFC),¹⁸⁰ and private commercial banks (*i.e.*, the Nonghyup Bank, Shihan Bank, Hana Bank, Korea Exchange Bank).¹⁸¹ In addition, information on the record indicates that private commercial banks: 1) participated in the two equity infusions at issue;¹⁸² 2) paid the same per share price as the government-controlled policy banks;¹⁸³ and 3) purchased a significant percentage of the shares of debt that were converted to equity.¹⁸⁴ Because of the private commercial banks actively participated and paid the same price as government banks, we find that Dongbu's equity infusions are consistent with usual investment practice of private investors. Therefore, we continue to find there is no benefit from Dongbu's debt-to-equity conversions.

¹⁷⁷ See Dongbu Rebuttal Brief at 8-13.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ See GOK July 6, 2018 SQR at 11-12.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

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

3/18/2019

X 

Signed by: CHRISTIAN MARSH

Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance,

Attachment

Scope of the Order

The products covered by this order are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

- (2) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and
- (2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this order are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or

- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (“IF”)) steels and high strength low alloy (“HSLA”) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (“AHSS”) and Ultra High Strength Steels (“UHSS”), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this order unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this order:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin free steel”), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the order may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.