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Administrative Review
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August 12, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of
Countervailing Duty Administrative Review: Cut-to-Length
Carbon-Quality Steel Plate from the Republic of Korea; 2017

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 (CVD) order on cut-to-length carbon-quality steel plate (CTL plate) from the Republic of Korea (Korea) covering the period of review (POR) January 1, 2017 through December 31, 2017. As a result of this analysis, we have made no 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 interested parties:

- Comment 1: Whether Commerce Should Adjust Hyundai Steel Company’s (Hyundai Steel) Tax Benefit Calculations to Account for Special Rural Development Taxes (SRDTs)
- Comment 2: Whether Hyundai Green Power is Cross-Owned with Hyundai Steel
- Comment 3: Whether Hyundai Green Power Supplied Inputs to Hyundai Steel that Were Primarily Dedicated to the Production of the Downstream Product

¹ See *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; and Rescission of Review, in Part; Calendar Year 2017*, 84 FR 15182 (April 15, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).



II. BACKGROUND

On April 15, 2019, Commerce published the preliminary results of the administrative review of the CVD order on CTL plate from Korea.² The review covers Hyundai Steel and Dongkuk Steel Mill Co., Ltd. (DSM). Nucor Corporation, the petitioner, timely filed a case brief on May 15, 2019.³ On May 20, 2019, Hyundai Steel timely filed a rebuttal brief.⁴ We are conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

III. SCOPE OF THE ORDER

The products covered by the order are certain hot-rolled carbon-quality steel: (1) universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

Steel products to be included in the scope of the order are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been “worked after rolling”) -- for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in the scope of the order are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is two percent or less, by weight; and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of this order unless otherwise specifically excluded. The following products are specifically excluded from the order: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades

² *Id.*

³ See Petitioner’s Letter, “Certain Cut-to-Length Carbon Quality Steel Plate from the Republic of Korea: Nucor’s Case Brief, dated May 15, 2019 (Petitioner’s Case Brief).

⁴ See Hyundai Steel’s Letter, “Certain Cut-to-Length Carbon Quality Steel Plate from the Republic of Korea, Case No. C-580-837: Rebuttal Brief,” dated May 20, 2019 (Hyundai Steel Rebuttal Brief).

(formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel. The merchandise subject to the order is currently classifiable in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise covered by the order is dispositive.

IV. PERIOD OF REVIEW

The POR is January 1, 2017 through December 31, 2017.

V. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

We made no changes to the allocation period and the allocation methodology used in the *Preliminary Results*. No issues were raised by interested parties in case briefs, nor was any new factual information provided that would lead us to reconsider our preliminary finding regarding the allocation period or the allocation methodology for the respondent companies. For a description of allocation period and the methodology used for these final results, *see Preliminary Results* PDM at 4.

B. Attribution of Subsidies

Commerce has made no changes to the methodologies used in the *Preliminary Results* for attributing subsidies. No issues were raised by interested parties in case briefs, nor was any new factual information provided that would lead us to reconsider our preliminary finding regarding the attribution of subsidies. For a description of the methodologies used for these final results, *see Preliminary Results* PDM at 4-5.

C. Benchmark Interest Rates

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

D. Denominator

Commerce has made no changes to the denominators used in the *Preliminary Results*. No issues were raised by interested parties in case briefs, nor was any new factual information provided that would lead us to reconsider our preliminary finding regarding the appropriate denominators. For a description of the denominators used for these final results, *see Preliminary Results PDM* at 6.

VI. ANALYSIS OF PROGRAMS

A. Programs Determined to be Countervailable

Commerce made no changes to its preliminary findings or calculations for the following programs and continue to find these programs to be countervailable for the final results. For the descriptions, analyses, and calculation methodologies of these programs, *see the Preliminary Results*, accompanying PDM, and calculation memoranda.⁵ Issues raised by interested parties in case briefs regarding certain of these programs are addressed in Comments 1 through 3. As explained above, we have not revised our preliminary findings. Per Commerce's practice, we have not included program rates that are less than 0.005 percent *ad valorem* into the final net subsidy rates calculated for DSM and Hyundai Steel.⁶ Therefore, the final company-specific rates for each of the following programs are unchanged from *Preliminary Results* and are as follows:

1. Trading of Demand Response Resources (DRR) Program⁷

We determine the net subsidy rates that DSM and Hyundai Steel received under this program to be 0.16 percent and 0.06 percent *ad valorem*, respectively.

2. Acquisition and Property Tax Benefits to Companies in Industrial Complexes (Restriction of Special Location Taxation Act (RSLTA) Articles 78)⁸

We determine the net subsidy rates that DSM and Hyundai Steel received under this program to be less than 0.005 percent and 0.02 percent *ad valorem*, respectively.

⁵ See Memorandum, "Preliminary Calculations for the Hyundai Steel Company Ltd. (Hyundai)," dated April 8, 2019 (Hyundai Steel Preliminary Calculation Memorandum); *see also* Memorandum, "Preliminary Calculations for Dongkuk Steel Mill Co., Ltd. (DSM)," dated April 8, 2019.

⁶ See, e.g., *Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51814 (November 8, 2017), and accompanying Issues and Decision Memorandum (IDM) at 19.

⁷ See *Preliminary Results PDM* at 6-8.

⁸ *Id.* at 8-9.

3. Restriction of Special Taxation Act (RSTA) Article 25(2)⁹

We determine the net subsidy rate that Hyundai Steel received under this program to be 0.02 percent *ad valorem*. DSM did not use this program.

4. RSTA Article 25(3)¹⁰

We determine the net subsidy rate that Hyundai Steel received under this program to be 0.05 percent *ad valorem*. DSM did not use this program.

5. Tax Deduction Under RSTA Article 26¹¹

We determine the net subsidy rates that DSM and Hyundai Steel received under this program to be 0.08 percent and 0.28 percent *ad valorem*, respectively.

6. Modal Shift Program¹²

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

7. Big Data Project Grant Under the Industrial Technology Innovation Promotion Act (ITIPA) Program¹³

We determined that the Big Data Grant was the only ITIPA grant DSM received that resulted in a measurable benefit and that was not otherwise tied to non-subject merchandise. Specifically, we determine the net subsidy that DSM received for the ITIPA Big Data grant was 0.01 percent *ad valorem*. Concerning the ITIPA grants received by Hyundai Steel, none of the grants resulted in measurable benefits during the POR.

B. Programs Preliminarily Determined Not to Confer a Measurable Benefit¹⁴

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

1. KEXIM Financing
2. Government of Korea (GOK) Directed Credit: 1992-2001 Directed Credit
3. Usance Loans from the Korea Development Bank
4. Tax Deductions Under RSTA Articles 24 and 25
5. Tax Deductions Under RSTA Article 25
6. Tax Deductions Under RSTLA Articles 19, 31, 46, 84

⁹ *Id.* at 9-10.

¹⁰ *Id.* at 10-11.

¹¹ *Id.* at 11-12.

¹² *Id.* at 12-13.

¹³ *Id.* at 13-14.

¹⁴ *Id.* at 14-15.

7. Local Property Tax Exemptions Under Articles 109 and 112
8. Tax Exemptions Under Jeju Tax Ordinance Article 31-10
9. Natural Gas Promotion Grants
10. Electric Vehicle Purchase Grants
11. Incentives Under the Employment Insurance Act
12. Wharfage Exemptions at Asan Bay
13. Various Industrial Grants Pursuant to the ITIPA
14. Grants Under Demand Adjustment Program of Emergent Reduction Program (formerly known as the Emergency Road Reduction Program)
15. Electricity Load Factor Program
16. Yeongil Harbor Grants
17. Gwangyang Port Grants
18. Workplace Nursery Grants
19. Suncheon Harbor Fee Exemptions
20. Art Festival Grants

C. Other Programs

We determined that the following programs are not countervailable.¹⁵

1. VAT Exemptions on Imports of Anthracite Coal
2. Earthquake Rebar Project Grants under the ITIPA Program

D. Programs Determined Not to be Used

In addition to certain programs identified above, DSM reported non-use of the following programs:

- GOK Pre-1992 Directed Credit Program
- GOK Infrastructure Investment at Incheon North Harbor
- Tax Program Under the RSTA and/or the Tax Reduction and Exemption Control Act (TERCL) - Asset Revaluation (TERCL 56(2))
- Reserve for Investment (Special Case of Tax for Balanced Development Among Areas) (RSTA Article 58) (TERCL Articles 42, 43, 44, and 45)
- Price Discounts for DSM Land Purchase at Asan Bay
- Exemption of VAT on Imports of Anthracite Coal
- Provision of Land for Less than Adequate Remuneration in the Godae Complex
- Lease Discounts Provided to Companies Operating in Free Economic Zones
- Tax Reductions Granted to Companies Operating in the Godae Complex
- Tax Subsidies Provided to Companies Operating in Free Economic Zones
- Government Grants and Financial Support to Companies Operating in Free Economic Zones
- Provision of Liquefied Natural Gas (LNG) for LTAR
- Electricity Discount under the Power Business Law Program

¹⁵ *Id.* at 15-16.

- Approval under the Special Act on Corporation on Corporation Revitalization

Hyundai Steel reported non-use of the following programs:

- GOK Pre-1992 Directed Credit Program
- GOK Infrastructure Investment at Incheon North Harbor
- Tax Program Under the Restriction of Special Taxation Act (RSTA) and/or the Tax Reduction and Exemption Control Act (TERCL) - Asset Revaluation (TERCL 56(2))
- Reserve for Investment (Special Case of Tax for Balanced Development Among Areas) (RSTA Article 58) (TERCL Articles 42, 43, 44, and 45)
- Price Discounts for DSM Land Purchase at Asan Bay
- Exemption of VAT on Imports of Anthracite Coal
- Provision of Land for Less than Adequate Remuneration in the Godae Complex
- Lease Discounts Provided to Companies Operating in Free Economic Zones
- Tax Reductions Granted to Companies Operating in the Godae Complex
- Tax Subsidies Provided to Companies Operating in Free Economic Zones
- Government Grants and Financial Support to Companies Operating in Free Economic Zones
- Provision of LNG for LTAR

VII. ANALYSIS OF COMMENTS

Comment 1: Whether Commerce Should Adjust Hyundai Steel's Tax Benefit Calculations to Account for SRDTs

*Petitioner's Case Brief*¹⁶

- In the *Preliminary Results*, Commerce found that certain tax benefits, including deductions under various Restriction of Special Taxation Act (RSTA) programs, conferred countervailable benefits during the POR and found that certain programs did not confer a countervailable benefit.¹⁷ In so doing, Commerce utilized benefit amounts net of SRDTs, as reported by Hyundai Steel.
- If it was a methodological decision, it is inconsistent with the statute and Commerce's practice and should be changed for the final results. If it was a ministerial error, it should be corrected.
- Section 771(6) of the Act provides that Commerce may subtract from the gross countervailable subsidy the amount of: (1) any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy; (2) any loss in the value of the countervailable subsidy resulting from its deferred receipt, if the deferral is mandated by government order; and (3) export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received.
- In previous Korean CVD proceedings, Commerce has found that SRDTs do not fall under the offsets specified under section 771(6) of the Act and, as a result, in those cases, Commerce determined not to reduce tax benefits in the amount equal to the SRDTs.

¹⁶ See Petitioner's Case Brief at 2-4.

¹⁷ See *Preliminary Results* PDM at 9-12.

- In *Welded Line Pipe from Korea*, Commerce explained that “the {SRDT} obligation arises only when the exemption is granted. It is not a prerequisite to the exemption the way an application fee might be.”¹⁸
- Similarly, in *Corrosion Resistant Steel from Korea*, Commerce found that the “SRDT does not satisfy the statutory definition of an offset to the countervailable benefit conferred 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.”¹⁹
- Accordingly, consistent with its practice, Commerce should base the subsidy rate calculations for Hyundai Steel on the total benefits it received under the RSTA tax programs at issue without including an offset for SRDTs.

*Hyundai’s Rebuttal Brief*²⁰

- In the *Preliminary Results*, contrary to the petitioner’s argument, Commerce calculated the tax benefits for the RSTA programs without including an offset for SRDTs.
- However, because the statute supports the subtraction of the SRDTs from the gross benefit amount, Commerce should revise its calculations for the RSTA tax programs to include an offset for SRDTs.
- In accordance with Article 5 of the Act on Special Rural Development Tax and Article 5 of the 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.²¹
- Thus, due to the SRDT, 20 percent of the total tax credits are not received by Hyundai Steel, resulting in a loss in the value of the benefit, as prescribed by Korean law. This falls squarely under section 771(6) of the Act as an amount that may be subtracted from the gross countervailable subsidy.

Commerce’s Position: In accordance with 19 CFR 351.509(a), Commerce defines the benefit received under income tax programs as the amount of taxes that would have been paid absent the program. Further, under 19 CFR.351.509(b), Commerce normally will consider benefits under income tax reduction programs to have been received corresponding to the income tax return filed during the POR. Under the RSTA income tax programs at issue (*e.g.*, the RSTA programs administered under Articles 25, 25-2, 25-3, and 26), eligible firms receive tax credits that they use to reduce their income taxes payable.²² Thus, we find the benefits under the programs at issue are equal to the amount of tax credits these programs provide as indicated on the tax return filed during the POR. All the tax credits that Hyundai Steel reported receiving in the narrative of its initial questionnaire response under the RSTA programs at issue tie to the 2016 tax return that

¹⁸ See *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015) (*Welded Line Pipe from Korea*), and accompanying IDM at 36-37.

¹⁹ See *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2015-2016*, 84 FR 11749 (March 28, 2019) (*CORE from Korea*), and accompanying IDM at 18-19.

²⁰ See Hyundai Steel’s Rebuttal Brief at 3-4.

²¹ See Hyundai Steel’s Letter, “Certain Cut-to-Length Carbon-Quality Steel Plate from Korea, Case No. C-580-837: Response to Section III of Initial Questionnaire,” dated July 6, 2018 (Hyundai Steel Initial QR), at 17 and Exhibit TAX-7.

²² See *Preliminary Results* PDM at 9-12.

Hyundai Steel filed during the POR.²³ The tax credit values listed in Hyundai Steel's 2016 tax return indicate the amount by which the programs at issue reduced Hyundai Steel's taxes payable, and, contrary to the petitioner's claims, the tax credits listed on the tax return for the programs at issue do not include offsets for SRDTs.²⁴ Accordingly, consistent with 19 CFR 351.509(a) and (b), in *Preliminary Results*, we used the tax credit amounts listed in Hyundai Steel's 2016 tax return as the benefit when calculating the firm's net subsidy rates under the RSTA income tax programs at issue.²⁵ Our approach in this review is consistent with the calculations performed in *Corrosion Resistant Steel from Korea*²⁶ and *Welded Line Pipe from Korea*.²⁷

We disagree with Hyundai Steel that the SRDTs qualify as a subsidy offset under section 771(6) of the Act. In *Corrosion Resistant Steel from Korea*, Commerce rejected the argument that SRDTs constitute a subsidy offset, as described under section 771(6) of the Act.²⁸ Hyundai Steel has raised no arguments in the instant review that warrants a revision to Commerce's prior determination in *Corrosion Resistant Steel from Korea*, which is consistent with the Act and Commerce practice.

Therefore, consistent with our practice and our regulations, we have continued to calculate the benefit under the RSTA programs at issue using the tax credits listed on the 2016 income tax return that Hyundai Steel filed during the POR.

Comment 2: Whether Hyundai Green Power is Cross-Owned with Hyundai Steel

*Petitioner's Case Brief*²⁹

- On September 10, 2018, the petitioner filed new subsidy allegations (NSA) arguing, in part, that Hyundai Steel's affiliate, Hyundai Green Power, received subsidies in the form of exemptions from electricity demand charges. Commerce declined to initiate on this allegation because it found that Hyundai Steel and Hyundai Green Power were not cross-owned and, as a result, there were no means by which to attribute subsidies allegedly received by Hyundai Green Power to Hyundai Steel.³⁰
- Commerce should reconsider its finding from the NSA Memorandum and determine that Hyundai Green Power is cross-owned with Hyundai Steel and that any subsidies received by Hyundai Green Power are attributable to Hyundai Steel.
- Under 19 CFR 351.525(b)(6)(iv), "{i}f there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to production of the downstream product," the agency "will attribute subsidies received by the

²³ See Hyundai Steel Initial QR at Exhibit 38.

²⁴ *Id.*

²⁵ See Hyundai Steel Preliminary Calculation Memorandum.

²⁶ See *CORE from Korea* IDM at 18-19.

²⁷ See *Welded Line Pipe from Korea* IDM at 36-37.

²⁸ See *CORE from Korea* IDM at 18-19.

²⁹ See Petitioner's Case Brief at 4-11.

³⁰ See Petitioner's Letter, "Cut-to-Length Carbon Quality Steel Plate from the Republic of Korea: New Subsidy Allegations," dated September 10, 2018; see also Memorandum, "New Subsidy Allegations Memorandum for Dongkuk Steel Mill Co., Ltd. and Hyundai Steel Co., Ltd.," dated October 25, 2018 (NSA Memorandum), at 3-4.

input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).”

- Under 19 CFR 525(b)(6)(vi) cross-ownership, “exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets.”
- Each administrative review record is separate and distinct in that the findings and conclusions of a different review concerning a different product line cannot be relied upon without substantial evidence on the record of this review.
- The Court of International Trade (CIT) explained in *Hyundai Steel Co. v. United States*, “the question before the court is whether {the Department}’s determination in this case is supported by substantial evidence on this record. What {the Department} may have concluded in a parallel investigation of a different product with a separate record is of little moment.”³¹
- While Commerce may have concluded that Hyundai Green Power was not cross-owned with Hyundai Steel in a prior review, the agency cannot simply rely on those findings here, especially when the record evidence substantially undermines the agency’s prior conclusions.
- Commerce has found cross-ownership in situations where the operations of two corporations “are intertwined to such a degree that they cannot operate independently of each other.”³²
- The operations of Hyundai Steel and Hyundai Green Power are so intertwined that they cannot operate independently of each other. Hyundai Green Power is essentially a joint venture between Hyundai Steel and the entity providing the subsidy (*i.e.*, the Korean government).
- In terms of ownership, Hyundai Steel is one of two substantial minority owners of Hyundai Green Power. Both Hyundai Steel and Korea Midland Power, a state-owned subsidiary of the Korea Electric Power Corporation (KEPCO), own 29 percent of Hyundai Green Power’s voting shares. Other Hyundai affiliates and an investment vehicle owned by the GOK own the remaining shares of Hyundai Green Power.
- 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 to Hyundai Steel’s benefit effectively at a time of Hyundai Steel’s choosing.
- Hyundai Green Power operates as an integrated and interdependent part of Hyundai Steel’s steelmaking operations. Hyundai Steel, in turn, has warned its own investors of the economic consequences it would suffer if Hyundai Green Power were to experience a disruption in operations.
- In addition, proprietary information contained in the shareholder agreement and from a previous verification in this proceeding demonstrate that Hyundai Steel and Hyundai Green Power could not operate independently of the other without substantial financial and operational disruption, if at all.

³¹ See *Hyundai Steel Co. v. United States*, 319 F. Supp. 3d 1327, 1342 n.13 (CIT 2018) (citing *Yama Ribbons & Bows Co. v. United States*, 865 F. Supp. 2d 1294, 1298 (CIT 2012) (*Yama Ribbons*) (“{The Department} must base its decisions on the record before it in each investigation.”); see also *Shandong Huarong Mach. Co. v. United States*, 29 CIT 484, 491 (2005) (“{E}ach administrative review is a separate segment of proceedings with its own unique facts.”).

³² See *Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 72 FR 60642 (October 25, 2007), and accompanying IDM at 12.

- Thus, Commerce should find Hyundai Steel and Hyundai Green Power to be cross-owned and find that any subsidies received by Hyundai Green Power are attributable to the combined sales of the two firms.

*Hyundai Steel Rebuttal Brief*³³

- As the petitioner acknowledges, Commerce declined to initiate on the petitioner's new subsidy allegation relating to Hyundai Green Power because it found that Hyundai Steel and Hyundai Green Power were not cross-owned.
- In the NSA Memorandum, Commerce stated that "there is no new information in the NSA submission, regarding Hyundai Green Power that warrants reconsideration of our prior finding {in the 2016 review} that Hyundai Green Power and Hyundai Steel are not cross-owned."³⁴
- Further, Commerce concluded in the *Preliminary Results* that, for the reasons discussed in the NSA Memorandum and consistent with Commerce's finding in the previous review, it would not reconsider its prior finding that Hyundai Steel is not cross-owned with Hyundai Green Power.³⁵
- The arguments the petitioner makes in its case brief provide no basis to revisit Commerce's decision in the *Preliminary Results* or decide differently from the other proceedings in which Commerce has examined this issue.
- Commerce explained in the NSA Memorandum that the petitioner had not presented any new information that would cause it to revisit its determination.³⁶
- There is no new information on the record since Commerce issued its NSA Memorandum. While the petitioner is correct that Commerce decides the issues in each review based on the record of that review, the record of the instant review with respect to Hyundai Green Power is identical to the information Commerce examined in prior proceedings.

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 *CVD 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."³⁷ However, the *CVD 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

³³ See Hyundai Steel's Case Brief at 4-15.

³⁴ See NSA Memorandum at 3.

³⁵ See *Preliminary Results* PDM at 5, footnote 21.

³⁶ *Id.*

³⁷ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

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.

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.³⁸

In the prior review, we conducted a detailed analysis regarding whether Hyundai Steel and Hyundai Green Power were cross-owned affiliates based on the evidence in that segment of the proceeding.³⁹ This evidence indicated that:

- Hyundai Steel’s ownership share of Hyundai Green Power was 29 percent during the POR, which is significantly less than the 40 percent minority ownership referenced in the *CVD Preamble*.⁴⁰
- {T}here is no evidence indicating that Hyundai Steel possessed a “golden share” or other means of corporate governance that would have enabled it to exert disproportionate or unilateral control over the assets of Hyundai Green Power during the POR.⁴¹
- {N}o current employee of Hyundai Steel was on the corporate board of Hyundai Green Power during the POR. Also, while a former of employee of Hyundai Steel was on the board of Hyundai Green Power during the POR, there is no evidence indicating the individual acted on Hyundai Steel’s behalf. Further, the number of Hyundai Green Power’s other board members during the POR was such that the former Hyundai Steel

³⁸ *Id.*

³⁹ See *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 from Korea 2016 Review*), and accompanying IDM at Comment 1.

⁴⁰ *Id.*; see also Hyundai Steel’s Letter, “Certain Cut-to-Length Carbon Quality Steel Plate from the Republic of Korea, Case No. C-580-837: Rebuttal Comments to Nucor Corporation’s Comments on Hyundai Steel’s Questionnaire Response,” dated June 5, 2018 (Hyundai Steel’s Affiliation Rebuttal Filing) at 6.

⁴¹ See *CTL Plate from Korea 2016 Review* IDM at Comment 1; see also Hyundai Steel’s Affiliation Rebuttal Filing at Exhibit 5.

employee serving on the board could not, by himself, exert unilateral control over Hyundai Green Power's board of directors on behalf of Hyundai Steel.⁴²

- {T}he language and terms of the shareholder agreement demonstrate a lack of cross-ownership between the two firms. The petitioner argues that the shareholder agreement's designation of Hyundai Steel as an "operational investor" in Hyundai Green Power demonstrates that Hyundai Steel has operational control of the company. However, the shareholder agreement also designates Korea Midland Power, a party that is not affiliated with Hyundai Steel and that also owns 29 percent of Hyundai Green Power, as an "operational investor," a fact that undercuts the petitioner's claim that Hyundai Steel is able to exert control over Hyundai Green Power.⁴³
- Article 3 of the shareholder agreement designates the same duties and obligations to all investors. In a situation where separate corporations possess an equal ownership stake in another corporation, and certain terms regarding their ownership, as reflected in the shareholder agreement, are also on equal terms, it cannot be said that either corporation is able to "use or direct the individual assets of the other corporation in essentially the same way it can use its own assets".⁴⁴
- Articles 17 and 18 of the shareholder agreement do not, as claimed by the petitioner, indicate that Hyundai Steel was able to use or direct the individual assets (or subsidy benefits) of Hyundai Green Power during the POR as Hyundai Steel would use or direct its own assets (or subsidy benefits). For example, Article 17 of the shareholder agreement provides that upon completion of the power plant, Hyundai Steel has the option to buy the shares of Hyundai Green Power and to transfer the power plant into Hyundai Steel's internal power plant if certain proprietary conditions are met. However, the proprietary language in Articles 16 and 17 of the shareholder agreement indicates that Hyundai Steel cannot unilaterally require other shareholders to sell their shares and that the provision discussed in Article 17 cannot be invoked until October 2019, a date that post-dates the POR. Additionally, Article 18 of the shareholder agreement indicates that Hyundai Steel has the option to ask the other shareholders to sell their shares to Hyundai Steel or a third party designated by Hyundai Steel; however, the shareholder agreement states that Hyundai Steel may not invoke this clause until October 2019. Article 18 of the shareholder agreement also states that 25 years after completion of the power plant or in a case where Hyundai Green Power no longer exists, Hyundai Steel may purchase the other shareholders' shares. However, this provision of Article 18 cannot be invoked until October 2039.⁴⁵

⁴² See *CTL Plate from Korea 2016 Review* IDM at Comment 1; see also Hyundai Steel's Affiliation Rebuttal Filing at 8-9 (citing "Certain Cut-to-Length Carbon Quality Steel Plate from the Republic of Korea, Case No. C-580-837: Response to Affiliated Companies Section of Initial Questionnaire," dated May 15, 2018, (Hyundai Steel Affiliation QR) at Exhibit 27).

⁴³ See *CTL Plate from Korea 2016 Review* IDM at Comment 1; see also Hyundai Steel's Affiliation Rebuttal Filing at Exhibit 3.

⁴⁴ See *CTL Plate from Korea 2016 Review* IDM at Comment 1; see also Hyundai Steel's Affiliation Rebuttal Filing at 9 (citing Petitioner's Letter, "Certain Cut-to-Length Carbon Quality Steel Plate from the Republic of Korea: Comments on Hyundai Steel's Affiliation Questionnaire Response," dated May 29, 2018 (Nucor's Affiliation Comments) at Exhibit 14, which contains Hyundai Steel's Shareholder Agreement.

⁴⁵ See *CTL Plate from Korea 2016 Review* IDM at Comment 1; see also Nucor's Affiliation Comments at Exhibit 14.

- We disagree that {a} passage referencing financing commitments for subordinated loans {in Hyundai Steel’s financial statement} demonstrates that Hyundai Steel was able to use the assets (and subsidy benefits) of Hyundai Green Power as if they were its own or that the operations of Hyundai Steel and Hyundai Green Power were intertwined to such a degree that they should be found to be cross-owned. As noted above, the level of Hyundai Steel’s ownership of Hyundai Green Power and the make-up of Hyundai Green Power’s board of directors does not afford Hyundai Steel the ability to unilaterally control the assets of Hyundai Green Power. Further, as discussed above, we find the provisions of the shareholder agreement, including the provisions cited by the petitioner, do not grant Hyundai Steel the ability to exert unilateral control over Hyundai Green Power.⁴⁶
- We also disagree with the argument that Hyundai Green Power’s exclusive provision of steam to Hyundai Steel constitutes a close supplier relationship that may serve as a basis for cross-ownership. The existence of a close supplier relationship goes to the issue of affiliation. However, under the CVD law, the attribution of subsidies hinges on cross-ownership, which requires a higher standard of control.⁴⁷
- We also find that the location of Hyundai Green Power does not result in the firm being cross-owned with Hyundai Steel. Information on the record indicates that while Hyundai Green Power is located within Hyundai Steel’s Dangjin Works, it is not located inside of the plant of Hyundai Steel.⁴⁸

In consideration of this evidence, we stated:

Therefore, for the reasons discussed above we find: (1) there is no means by which Hyundai Steel could have exerted control over Hyundai Green Power in a manner that allowed Hyundai Steel to use or direct the individual assets (or subsidy benefits) of Hyundai Green Power in essentially the same ways it can use its own assets (or subsidy benefits) and, thus, that Hyundai Steel and Hyundai Green Power were not cross-owned during the POR.⁴⁹

As the petitioner correctly notes in its case brief, “each administrative review record is separate and distinct in that the findings and conclusions of a different review.”⁵⁰ Accordingly, in the instant review, Commerce examined the petitioner’s allegation of cross-ownership between Hyundai Steel and Hyundai Green Power and explained its findings in the NSA Memorandum:

We find that there is no new information in the NSA submission, regarding Hyundai Green Power, that warrants reconsideration of our prior finding that Hyundai Green Power and Hyundai Steel are not cross-owned. Indeed, the petitioner did not provide new information that Hyundai Green Power was

⁴⁶ See *CTL Plate from Korea 2016 Review* IDM at Comment 1; see also Hyundai Steel Affiliation QR at Exhibit 5.

⁴⁷ See *CTL Plate from Korea 2016 Review* IDM at Comment 1.

⁴⁸ *Id.*; see also Nucor’s Affiliation Comments at 11-12, which indicate that Hyundai Green Power is located in Hyundai Steel’s Dangjin Works, as opposed to being located inside the steel plant of Hyundai Steel.

⁴⁹ See *CTL Plate from Korea 2016 Review* IDM at Comment 1.

⁵⁰ See Petitioner’s Case Brief at 6 (citing *Yama Ribbons*, 865 F. Supp. 2d at 1298).

cross-owned with Hyundai Steel in its NSA submission; nor did the petitioner address Commerce's prior finding that there was no cross-ownership between these corporations. Thus, in the absence of information alleging cross-ownership between Hyundai Green Power and Hyundai Steel and based on the information on the record of the current review, we find there is no basis to initiate an investigation into subsidies allegedly received by Hyundai Green Power.⁵¹

In the *Preliminary Results*, Commerce reiterated its decision to not find cross-ownership between Hyundai and Hyundai Green Power.⁵² Since the *Preliminary Results*, there has been no new information submitted on the record of this review to change Commerce's analysis. Specifically, there has been no new information submitted on the record since Commerce issued its NSA Memorandum regarding this issue.

In its case brief, the petitioner also points to additional proprietary information, such as provisions from the shareholder agreement and a prior verification report, to argue that Hyundai Steel and Hyundai Green Power could not operate independently of one another without significant financial and operational disruption. However, all this information was on the record of the prior review and considered by Commerce in reaching its determination that Hyundai Steel and Hyundai Green Power are not cross-owned under 19 CFR 351.525(b)(6)(vi).

The petitioner also argues that information in a 2011 bond offering prospectus: (1) demonstrates Hyundai Green Power provides electricity to Hyundai Steel; (2) discusses the severe economic consequences that will befall Hyundai Steel if Hyundai Green Power ceases its operations; and (3) the provision of electricity to Hyundai Steel by Hyundai Green Power demonstrates the intertwined operations and interdependency of the two firms that, in turn, should lead Commerce to treat them as cross-owned entities under 19 CFR 351.525(b)(6)(vi).⁵³ We disagree. The document cited by the petitioner dates from 2011⁵⁴ and does not reflect the actual operational relations between the two firms. Specifically, record evidence demonstrates that Hyundai Green Power does not supply Hyundai Steel with electricity; rather as of the end of the 2017 POR Hyundai Green Power only supplies steam to Hyundai Steel.⁵⁵

Thus, Commerce continues to find that Hyundai Steel and Hyundai Green Power are not cross-owned under 19 CFR 351.525(b)(6)(vi).

⁵¹ See NSA Memorandum at 3.

⁵² See *Preliminary Results* PDM at 5, footnote 21.

⁵³ See Petitioner's Case Brief at 8.

⁵⁴ See Nucor's Affiliation Comments at Exhibit 17, which contains a copy of the 2011 prospectus.

⁵⁵ See Hyundai Steel Affiliation QR at Exhibit 21 and 22, which provides a breakout of all purchases by Hyundai Steel from affiliated parties and ties these purchases to Hyundai Steel's 2017 financial statement.

Comment 3: Whether Hyundai Green Power Supplied Inputs to Hyundai Steel that Were Primarily Dedicated to the Production of the Downstream Product

*Petitioner's Case Brief*⁵⁶

- The record establishes that Hyundai Green Power supplies inputs to Hyundai Steel. Specifically, Hyundai Steel has stated that Hyundai Green Power supplies steam that it uses to maintain the temperature for equipment and/or materials and for hot-water supply for the shower room for its workers.
- The amount of steam that Hyundai Steel acquired from Hyundai Green Power is too large for the purposes cited by Hyundai Steel and suggests that it is, in fact, using the steam as part of its steel production process.
- Hyundai Steel claims in its questionnaire response that steam is not an input product since it is being used to maintain the temperature of equipment and/or materials.⁵⁷ However, Commerce has found steelmaking equipment and services are indeed inputs into the downstream production of steel.⁵⁸
- Hyundai Steel also has explained to investors that Hyundai Green Power “supplies approximately 55 percent of the Company’s power demand in Dangjin,”⁵⁹ confirming that Hyundai Green Power is an input supplier to Hyundai Steel, whether or not there is a direct sale transaction between the two companies for electricity. Under 19 CFR 351.525(b)(6)(iv), Commerce examines “input supplier” relationships, and not “input purchaser” relationships. Further, nothing in the regulation suggests any requirement of a direct “purchaser” relationship between the input “supplier” and the downstream producer.⁶⁰
- Commerce has yet to require Hyundai Steel to resolve these conflicting characterizations of its relationship with Hyundai Green Power, and in similar contexts, Commerce has focused on the economic reality of transactions in which inputs are supplied from government suppliers through private trading companies.
- Commerce should find that Hyundai Green Power is Hyundai Steel’s cross-owned input supplier. Commerce should therefore clarify that, because the record establishes that subsidies received by Hyundai Green Power are attributable to Hyundai Steel through a cross-owned input supplier relationship, it intends to seek additional information regarding subsidies received by Hyundai Green Power in the next administrative review.

Hyundai Steel Rebuttal Brief

- Even if Hyundai Steel and Hyundai Green were cross-owned, the record evidence demonstrates that Hyundai Green Power did not sell any input products to Hyundai Steel that were primarily dedicated to the production of subject merchandise, or downstream products used to produce subject merchandise.

⁵⁶ See Petitioner’s Case Brief at 9-11.

⁵⁷ See Petitioner’s Case Brief at 9 (citing Hyundai Steel’s Letter, “Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, Case No. C-580-837: Response to Affiliated Companies Section of Initial Questionnaire,” dated May 16, 2018 (Hyundai Steel Affiliation QR) at 12).

⁵⁸ See *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Final Affirmative Determination*, 81 FR 49940 (July 29, 2016), and accompanying IDM at 55-56.

⁵⁹ See Petitioner’s Case Brief at 10 (citing Hyundai Steel Affiliation QR at Exhibit 17, p. 10).

⁶⁰ See Petitioner’s Affiliation Questionnaire Comments at Exhibit 17, at 10.

- Commerce concluded in the *CTL Plate from Korea 2016 Review* that “{a}dditionally, and more fundamentally, we find that the provision of steam by Hyundai Green Power does not constitute an input that would invoke the input producer regulation under 19 CFR 351.525(b)(6)(iv).”⁶¹
- The petitioner has not pointed to anything on this record that would require a different result in this proceeding.
- The cross-owned input supplier regulation requires that, for subsidies received by an input supplier to be attributed to the respondent producer, the input product must be primarily dedicated to the production of the downstream product. Steam is not an input product that is primarily dedicated to the production of the downstream product produced by Hyundai Steel.
- Steam that is only produced as a by-product during Hyundai Green Power’s production of electricity cannot be said to be primarily dedicated to the production of CTL Plate and is not a link in the overall production chain of CTL Plate, as required by the *CVD Preamble*.⁶²
- Further, Hyundai Steel uses the steam acquired from Hyundai Green Power to maintain the temperature of equipment and/or materials and for hot-water supply for the shower room for its workers. The steam is not being used as an input in the production of the downstream product or subject merchandise and thus does not constitute an “input product.”
- The *CVD Preamble* makes plain that the attribution of subsidies received by input producers is limited to situations in which the input producer’s production “is dedicated almost exclusively to the production of a higher value-added product - the type of input product that is merely a link in the overall production chain.”⁶³
- There is no evidence that Hyundai Steel purchased electricity from Hyundai Green Power during the POR. Hyundai Steel’s 2016-2017 financial statement demonstrates that all of its purchases from Hyundai Green Power were limited to steam.⁶⁴
- Therefore, Commerce should conclude in the final results that Hyundai Green Power has not supplied an input that is primarily dedicated to the production of Hyundai Steel’s downstream products.

Commerce’s Position: As an initial matter, as discussed in more detail under Comment 2, above, we find that Hyundai Steel and Hyundai Green Power were not cross-owned during the POR and, thus, that any subsidies allegedly received by Hyundai Green Power are not attributable to Hyundai Steel. Therefore, the issue of whether the steam that Hyundai Green Power provided to Hyundai Steel during the POR constitutes an input that is primarily dedicated to Hyundai Steel’s production of downstream products is moot.

In the *CTL Plate from Korea 2016 Review*, we addressed whether Hyundai Green Power’s supply of steam to Hyundai Steel constitutes an input primarily dedicated to the production of the downstream product and found:

⁶¹ See *CTL Plate from Korea 2016 Review* IDM at Comment 1.

⁶² See *CVD Preamble*, 63 FR at 65401.

⁶³ *Id.*

⁶⁴ See Hyundai Steel Initial QR at Exhibit 22, which contains Hyundai Steel’s 2016-2017 financial statements. Note 36(3) indicates that all its purchases from Hyundai Green Power were limited to steam.

{that} 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).⁶⁵

Additionally, in the instant review, the petitioner has not presented any record evidence that Hyundai Steel uses the steam in a manner that results in it being primarily dedicated to the production of the downstream product. Commerce explained, in the previous review, that when:

we are dealing with input products that are not primarily dedicated to the downstream products . . . it is not reasonable to assume that the purpose of a subsidy to the input product is to benefit the downstream product. For example, it would not be appropriate to attribute subsidies to a plastics company to the production of cross-owned corporations producing appliances and automobiles. Where we are investigating products such as appliances and automobiles, we will rely on the upstream subsidy provision of the statute to capture any plastics benefits which are passed to the downstream producer.⁶⁶

Furthermore, we continue to find that there is no basis to find that Hyundai Steel purchased electricity from Hyundai Green Power during the POR. Hyundai Steel's 2016-2017 financial statement indicates that Hyundai Steel's purchases from Hyundai Green Power were limited to steam.⁶⁷

Accordingly, for the reasons stated above, and because of there is no new information on the record of this review that supports changing our prior determination, we continue to find that the steam Hyundai Green Power supplied to Hyundai Steel is not an input primarily dedicated to the production of subject merchandise.

⁶⁵ See *CTL Plate from Korea 2016 Review* IDM at 17.

⁶⁶ *Id.* at 16 (citing *CVD Preamble*, 63 FR at 65401).

⁶⁷ See Hyundai Steel Initial QR at Exhibit 22.

VIII. 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

8/12/2019

X 

Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance