C-580-837
Administrative Review
POR: 1/1/2018-12/31/2018
Public Document
E&C/OIII: JSC, JL

December 18, 2020

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; 2018

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, 2018 through December 31, 2018. As a result of our analysis, we have made minor 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:

Dongkuk Steel Mill Co., Ltd. (DSM)

Comment 1: Whether Commerce's Findings that the Demand Response Resources (DRR) Program Constitutes a Countervailable Subsidy is in Accordance with the

[1] *See Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2018*, 85 FR 13136 (March 6, 2020) (*CTL 2018 Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

Requirements of the Statute or the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (SCM Agreement)
Comment 2: Whether the "Energy Savings System" (ESS) Discount Program Is Not a Subsidy Relating to Subject Merchandise
Comment 3: Whether Commerce Incorrectly Calculated the Benefit from the KEXIM Import Financing Used by DSM
Comment 4: Whether Commerce Incorrectly Calculated the Benefit from the R&D Project for the Development of Earthquake-Proof Reinforced Steel Bars (ITIPA R&D)
Comment 5: Whether Commerce Incorrectly Described Unaffiliated Trading Companies as DSM Affiliates

Hyundai Steel Company (Hyundai Steel)

Comment 6: Whether Commerce Erred in its Preliminary Finding that the Reduction for Sewerage Fees Program is Countervailable
Comment 7: Whether Commerce should continue to determine that the Upstream Electricity Subsidy program is not Countervailable
Comment 8: Whether the GOK Provided Carbon Emission Credits for Less Than Adequate Remuneration (LTAR) to Hyundai Steel

II. BACKGROUND

On March 6, 2020, Commerce published the *CTL 2018 Preliminary Results*.[2] On March 6, 2020, and May 29, 2020, Commerce issued the GOK Post-Preliminary Supplemental Questionnaires concerning an alleged upstream subsidy.[3] On March 25, 2020, and June 19, 2020, we received the GOK's questionnaire responses.[4] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.[5] On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.[6] On August 6, 2020, Commerce issued its CTL Post-Preliminary Memorandum.[7]

[2] *See CTL 2018 Preliminary Results*, 85 FR at 13136.
[3] *See* Commerce's Letters, "Countervailing Duty Administrative Review of Certain Cut-to-Length Carbon Quality Steel Plate from Korea: Post-Preliminary Results Supplemental Questionnaire for the Government of the Republic of Korea," dated March 6, 2020; and "Countervailing Duty Administrative Review of Certain Cut-to-Length Carbon Quality Steel Plate from Korea: Supplemental Questionnaire for the Government of the Republic of Korea," dated May 29, 2020.
[4] *See* GOK's Letters, "Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 01/01/2018-12/31/2018 Administrative Review, Case No. C-580-837: Response to the Supplemental Questionnaire," dated March 25, 2020 (GOK SQR); and "Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 01/01/2018-12/31/2018 Administrative Review, Case No. C-580-837: Response to the Supplemental Questionnaire," dated June 19, 2020.
[5] *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.
[6] *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.
[7] *See* Memorandum, "Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Post-Preliminary Analysis Memorandum," dated August 6, 2020 (CTL Post-Preliminary Memorandum).

Hyundai Steel, DSM, Nucor Corporation (the petitioner), and the Government of Korea (GOK) timely filed case briefs on August 19, 2020.[8] On September 2, 2020, all four parties also timely filed rebuttal briefs.[9] On September 25, 2020, Commerce extended the deadline for issuing the final results of this review by 29 days.[10] On November 2, 2020, Commerce further extended the final results of this review by 28 days to December 18, 2020.[11]

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.

---

[8] *See* Hyundai Steel's Letter, "Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, Case No. C-580-837: Hyundai Steel's Case Brief," dated August 19, 2020 (Hyundai Steel's Case Brief); *see also* DSM's Letter, Administrative Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon-Quality Steel Plate from Korea for the 2018 Review Period – Case Brief of Dongkuk Steel Mill Co. Ltd.," dated August 19, 2020 (DSM's Case Brief); Nucor Corporation's Letter, "Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Case Brief," dated August 19, 2020 (Petitioner's Case Brief); and GOK's Letter, "Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 01/01/2018-12/31/2018 Administrative Review, Case No. C-580-837: The GOK's Case Brief," dated August 19, 2020 (GOK's Case Brief).

[9] *See* Hyundai Steel's Letter, "Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, Case No. C-580-837: Hyundai Steel's Rebuttal Brief," dated September 2, 2020 (Hyundai Steel's Rebuttal Brief); *see also* DSM's Letter, "Administrative Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon-Quality Steel Plate from Korea for the 2018 Review Period – Rebuttal Brief of Dongkuk Steel Mill Co. Ltd.," dated September 2, 2020 (DSM's Rebuttal Brief); Nucor Corporation's Letter, "Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Rebuttal Brief," dated September 2, 2020 (Petitioner's Rebuttal Brief); and GOK's Letter, "Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 01/01/2018-12/31/2018 Administrative Review, Case No. C-580-837: The GOK's Rebuttal Brief," dated September 2, 2020 (GOK's Rebuttal Brief).

[10] *See* Memorandum, "Extension of Deadline for Final Results of Countervailing Duty Administrative Review," dated September 25, 2020.

[11] *See* Memorandum, "Extension of Deadline for Final Results of Countervailing Duty Administrative Review," dated November 2, 2020.

Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is two percent or less, by weight; and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of this order unless otherwise specifically excluded. The following products are specifically excluded from the order: (1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel. The merchandise subject to the order is currently classifiable in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

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

IV. PERIOD OF REVIEW

The POR is January 1, 2018 through December 31, 2018.

V. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

We made no changes to the allocation period and the allocation methodology used in the *2018 CTL 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 2018 CTL Preliminary Results.*[12]

B. Attribution of Subsidies

[12] *See 2018 CTL Preliminary Results* PDM at 5.

Commerce has made no changes to the methodologies used in the *2018 CTL 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 2018 CTL Preliminary Results.*[13]

C. Benchmark Interest Rates

Commerce made no changes to benchmarks or discount rates used in the *2018 CTL 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 2018 CTL Preliminary Results.*[14]

D. Denominator

Commerce has made no changes to the denominators used in the *2018 CTL 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 2018 CTL Preliminary Results.*[15]

VI. ANALYSIS OF PROGRAMS

A. Programs Determined to be Countervailable

Commerce made changes to its preliminary findings and calculations in the CTL Post-Preliminary Memorandum for the Energy-Saving System Electricity Discounts program for DSM.[16] We continue to find programs that were countervailed in the *2018 CTL Preliminary Results* to be countervailable for the final results. For the descriptions, analyses, and calculation methodologies of these programs, *see* the *2018 CTL Preliminary Results*, accompanying PDM, preliminary calculation memoranda, and the CTL Post-Preliminary Memorandum.[17]

Issues raised by interested parties in case briefs regarding certain of these programs are addressed in Comments 1 through 8. As explained above, we have revised our preliminary

[13] *Id.* at 5-6.
[14] *Id.* at 6-7.
[15] *Id.* at 7.
[16] *See* CTL Post-Preliminary Memorandum at 1-4.
[17] *Id; see also 2018 CTL Preliminary Results*; Memorandum, "Preliminary Calculations for the Hyundai Steel Company, Ltd.," dated February 28, 2020; Memorandum, "Preliminary Calculations for Dongkuk Steel Mill Co., Ltd.," dated February 28, 2020 (Dongkuk Preliminary Calculations); Memorandum, "Post-Preliminary Analysis Calculation Memorandum for Hyundai Steel Company, Ltd. (Hyundai Steel)," dated August 6, 2020; and Memorandum, "Post-Preliminary Analysis Calculation Memorandum for Dongkuk Steel Mill Co., Ltd. (DSM)," dated August 6, 2020.

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.[18]

Therefore, the final company-specific rates for each of the following programs are as follows:

1. Trading of Demand Response Resources (DRR) Program[19]

We determine the net subsidy rates that DSM and Hyundai Steel received under this program to be 0.15 percent and 0.05 percent *ad valorem*, respectively.

2. Acquisition and Property Tax Benefits to Companies in Industrial Complexes (Restriction of Special Location Taxation Act (RSLTA) Articles 78)[20]

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.

3. Restriction of Special Taxation Act (RSTA) Article 25(2)[21]

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.

4. RSTA Article 25(3)[22]

We determine the net subsidy rate that Hyundai Steel received under this program to be 0.09 percent *ad valorem*. The net subsidy rate that DSM received under this program was less than 0.005 percent.

5. Tax Deduction Under RSTA Article 26[23]

We determine the net subsidy rates that Hyundai Steel received under this program was 0.27 percent *ad valorem*. DSM did not use this program.

6. Modal Shift Program[24]

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.

---

[18] *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.
[19] *See 2018 CTL Preliminary Results* PDM at 11-13.
[20] *Id.* at 8-9.
[21] *Id.* at 9.
[22] *Id*. at 10.
[23] *Id*. at 11.
[24] *Id.* at 13-14.

7. Reduction for Sewerage Fees[25]

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.

8. Energy-Saving System Electricity Discounts[26]

We determine the net subsidy rate that DSM received under this program to be 0.13 percent *ad valorem*. The net subsidy rate that Hyundai Steel received under this program was less than 0.005 percent.

B. Programs Determined Not to Confer a Measurable Benefit

DSM and Hyundai Steel reported receiving assistance under the programs listed below. We find that none of the information from the GOK, DSM, or Hyundai Steel indicate that the programs are contingent upon export activities. Therefore, to determine whether benefits under the programs listed below resulted in measurable benefits, we used the companies' total sales as the denominator. Based on this analysis, we preliminarily determine that the following programs did not confer a measurable benefit during the POR:

9. **Receipt of Payment from KOGAS under Natural Gas Promotion Program (DSM)**
10. **Demand Adjustment Program of Emergent Reduction (ER) (former Emergency Road Reduction (ELR) (Hyundai Steel)**
11. **GOK Directed Credit: 1992-2001 Directed Credit (Hyundai Steel)**
12. **Tax Exemptions Under Jeju Tax Ordinance Article 31-10 (DSM)**
13. **Electric Vehicle Purchase Grants (DSM)**
14. **Incentives Under the Employment Insurance Act (DSM)**
15. **Import-Duty Exemptions on Imports of Small-Sum Goods (DSM)**
16. **Reduction on Value-Added Taxes Due to Electronic Submission (DSM)**
17. **GOK Directed Credit: 1992-2001 Directed Credit (Hyundai Steel))**
18. **Korean Export Import Bank (KEXIM) Import Financing Program[27]**

C. Programs Determined Not to be Used

DSM reported non-use of the following programs:

- GOK Pre-1992 Directed Credit Program
- GOK Infrastructure Investment at Inchon 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

[25] *See* CTL Post-Preliminary Memorandum at 2-4.
[26] *Id.* at 4-5.
[27] For a discussion of the change from the *2018 CTL Preliminary Results*, *see* Comment 3.

- 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
- 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 Inchon 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's Findings that the DRR Program Constitutes a Countervailable Subsidy is in Accordance with the Requirements of the Statute or the WTO SCM Agreement

DSM's Case Brief [28]

- Commerce erred in finding that payments received by DSM under the DRR program constituted countervailable subsidies within the meaning of the statute or the WTO SCM Agreement for two reasons:
  - (1) The DRR program constitutes a purchase of a service by the Operators from the electricity users that participate in the program, and the statute and SCM Agreement excludes government purchases of a service from the definition of "financial contribution";

[28] *See* DSM's Case Brief at 2-8.

    - (2) The payments to electricity users that participate in the program are made by Operators, and not by the GOK; thus, these payments cannot be classified as "financial contributions" under the statute or the WTO SCM Agreement."[29]
- Even if the Korea Electric Power Company (KEPCO) constitutes an authority, its payments under the DRR program do not represent financial contributions within the meaning of the statute and WTO SCM Agreement because KEPCO did not make payments to the individual electricity users that participated in the DRR program. KEPCO provided funding to Korean Power Exchange (KPX), which made payments to individual private "Demand Management Business Operators," who in turn made payments to the individual electricity users.
- There is no countervailable benefit because the amounts paid by the Operators to the electricity users that participate in the DRR program are made in arm's-length, private-to-private transactions, without government interference, and represent the market price for an electricity-usage curtailment.
- Even if the payments could be considered subsidies, the arm's-length, private nature of the payments means that the payments reflected the market price of the commitment by participants to curtail electricity usage when requested.
- There is no basis for finding that the program is *de facto* specific because:
    - (1) The evidence shows that participation in the program was open to all electricity users; and
    - (2) Eligibility was automatic, and not specific to DSM or the Korean Steel Industry.
- Thus, under both the statute and the WTO SCM Agreement, the DRR program is not specific.[30]

Petitioner's Rebuttal Brief [31]

- Commerce should follow its established practice and continue to find the DRR program countervailable.
- Contrary to DSM's claims, this program has not changed from prior reviews.
- DSM failed to point to any evidence on the record of this review to distinguish the facts of this proceeding from numerous prior cases where Commerce has found this program to be countervailable.
- Commerce has already rejected the same arguments made by DSM in other proceedings where Commerce found the DRR program countervailable.[32]
- Thus, consistent with its findings in prior reviews, Commerce should reject DSM's arguments and continue to countervail the DRR program in the final results.

[29] *See* section 771(5)(D) of the Act; *see also* WTO SCM Agreement, Art. 1.1(a)(1)(iii).
[30] *See* section 771(5A)(D)(ii) of the Act; *see also* WTO SCM Agreement, Article 2.1(b).
[31] *See* Petitioner's Rebuttal Brief at 2-4.
[32] *See, e.g., Certain Corrosion-Resistant Steel Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2017*, 85 FR 15112 (March 17, 2020), and accompanying IDM at 24-25.

Commerce's Position: Consistent with Commerce's prior determination, we continue to find that the DRR program is countervailable.[33]

The legal basis for this program is Article 31(5) of the Electricity Business Law (EBL) and Chapter 12 of the Rules on Operation of Electricity Utility Market (ROEUM).[34] Chapter 12 of the ROEUM governs the program's operations, the purpose of which is to smooth imbalances between supply and demand of power provision by creating a competitive marketplace for the price of demand response resources.[35] The program is divided into two sub-programs, Demand Response Peak for Peak Curtailment and the Demand Response Program for Payment Saving. The former program is designed to curtail load during peak electricity demand periods, and the latter is intended to minimize power generation costs through price competition. The KPX operates both programs.[36] Under this program, KPX pays multiple private Demand Management Business Operators, also called "aggregators," which have contractual relationships with end users of the program. End users receive payments from those aggregators. Prior to that exchange between the KPX and the aggregators, KEPCO pays the KPX for the latter's role in electricity demand curtailment under the program. The GOK indicates that the end users of the DRR program are firms, which include DSM.[37]

Consistent with Commerce's findings in prior Korean CVD proceedings, we find KEPCO to be an "authority" within the meaning of section 771(5)(B) of the Act.[38] Concerning KPX, (1) information from the GOK indicates that KEPCO owns 50 percent of KPX with KEPCO subsidiaries owning KPX's remaining shares;[39] (2) the Electricity Business Law is the legal basis for the establishment of the KPX; [40] (3) KPX is "responsible for managing the Trading of Demand Response Resources Program;" (4) under the Demand Response Program for Peak

[33] *See Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 63168 (September 14, 2016) (*Carbon and Alloy Steel Plate from Korea Preliminary Determination*), and accompanying PDM at 17-18, unchanged in *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*, FR 16341 (April 4, 2017) (*Carbon and Alloy Steel Plate from Korea*), and accompanying IDM at 16*; see also Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Final Results of Countervailing Duty Administrative Review and Rescission of Countervailing Duty Administrative Review, in Part.* 82 FR 39410 (August 18, 2017), and accompanying IDM at Comment 3.

[34] *See* GOK's Letter, "Response of the Government of Korea to Section II of the Department's June 7 Questionnaire," dated July 29, 2019 at p. 320 of Appendix 26.

[35] *Id.*

[36] *Id.* at p. 321 of Appendix 26.

[37] *Id.* at p. 321-322 of Appendix 26.

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

[39] *See* GOK's IQR at p 327-328 of Appendix 26.

[40] *Id.* at p. 320 of Appendix 26.

Curtailment sub-program, KPX "can order participants to reduce consumption by the demand curtailment volume between 9 a.m. and 8 p.m. on weekdays, up to 60 hours per year, provided that the participants that curtail consumption are compensated for doing so;"[41] (5) payments to the Management Business Operators are "made by KEPCO (through KPX);" and (6) KPX is responsible for maintaining records regarding transactions between itself and Management Business Operators.[42] Based on this information, we find that KPX was established by the GOK, is wholly-owned by the GOK, and that KPX manages the DRR program and assists in transmitting funds to Management Business Operators. Therefore, we continue to find KPX to be an "authority" within the meaning of section 771(5)(B) of the Act.

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

The Demand Management Business Operators act as intermediaries between the KPX and the electricity users that have agreed to participate in the DRR program.[43] The Demand Management Business Operators trade DRR curtailment commitments on the market established by the KPX on behalf of the users with whom they have contracted; they convey KPX's curtailment instructions to those users; they receive Performance Payments and Basic Payments from the KPX for participation in the program; and they pay the electricity users with whom they have contracts in accordance with the terms of those contracts.[44]

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

Additionally, the GOK's questionnaire response states:

Under Article 12.2.2. of the KPX's Rules on Operation of Electric Utility Market (ROEUM) a Demand Management Business Operator who intends to participate in the power market must register as a trader.[45] In addition, the Demand Management Business Operator must represent a Demand Response Resource - *i.e.* a group consisting of 10 or more electricity users that have agreed to participate in the DRR program.[46] In addition, the Demand Response Resource must represent an aggregate commitment to curtail demand (which is referred to as an "Obligation Reduction Capacity") of between 10 megawatts and 500 megawatts for each Demand Response Resource.[47] The fact that Management Business Operators, as a qualifying condition to

[41] *Id.* at p. 321 of Appendix 26.
[42] *Id*. at p. 322 of Appendix 26.
[43] *Id.* at p. 323 of Appendix 26.
[44] *Id.* at p. 324 of Appendix 26.
[45] *Id.* at p. 329 of Appendix 26.
[46] *Id.*
[47] *Id*.

participate in the program, "must represent . . . 10 or more electricity users that have agreed to participate in the DRR program" belies DSM's claim in its case brief that Management Business Operators are entities that are independent of the participating firms.[48]

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

Furthermore, we disagree that benefits under the DRR program constitute a government purchase of a service. As an initial matter, DSM's argument that the Management Business Operators are acting as the "government" purchasing a service is in contradiction to the GOK's position, discussed above, that the Management Business Operators are private entities wholly divorced from the actions of the GOK/KEPCO/KPX. Furthermore, DSM fails to adequately explain its theory that the end users under the program – those receiving benefits in the form of "payments" – can constitute "service providers" to the government. Finally, we find that DSM does not provide any evidentiary support for its claim that the payments under the DRR program can be considered remuneration for a service, *e.g.*, the nature of the service performed and the basis for determining payment for any such service. On this basis, we continue to find that benefits received from KPX under the DRR program constitute grants under section 771(5)(E) of the Act and 19 CFR 351.504(a) as countervailable benefits.

Finally, although DSM asserts that the DRR program is open to all electricity users during the POR, only a limited number of users were approved for the program.[49] Therefore, we continue to find that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the actual recipients are limited in number. Therefore, we continue to find the DDR program countervailable for the final results of review.

For the reasons discussed above, our countervailability determination for this program is consistent with U.S. law and our practices in past cases,[50] which in turn are consistent with U.S. obligations under the SCM Agreement.

---

[48] *Id.*

[49] *See 2018 CTL Preliminary Results* PDM at 12; *see also* GOK's IQR at 332.

[50] *See Certain Corrosion-Resistant Steel Products From the Republic of Korea*, 85 FR 15,112 (Mar. 17, 2020), and accompanying IDM at 24-25; *see also Certain Corrosion-Resistant Steel Products From the Republic of Korea*, 84 FR 11,749 (Mar. 28, 2019), and accompanying IDM at 8, 26-28; and *Certain Corrosion-Resistant steel Products From the Republic of Korea*, 84 FR 48,107 (Sept. 12, 2019), and accompanying PDM at 19-20, unchanged in *Certain Cold-Rolled Steel Flat Products From the Republic of Korea*, 84 FR 24,087 (May 24, 2019).

Comment 2: Whether the ESS is Not a Subsidy Relating to Subject Merchandise

DSM's Case Brief [51]

- Commerce incorrectly found that the payments received by DSM under the ESS program constituted countervailable subsidies because evidence on the record demonstrates that the ESS discount received by DSM did not relate to the electricity used in the production of subject merchandise.
- Specifically, DSM installed the energy-savings systems that qualified for the ESS discount at its Busan and Pohang factories where DSM produced only non-subject merchandise during the POR.
- Thus, the electricity for which DSM received discounts under the ESS program was used in the production of non-subject merchandise in DSM's Busan and Pohang factories.
- For the final results, Commerce should find that the ESS program provided no benefit because the program was not used in the Dangjin factory where the subject merchandise was produced during the POR.

GOK's Case Brief [52]

- Commerce erred in preliminarily finding that the ESS Program is countervailable, as applied to the respondents, because the program is open to any company regardless of industry and both the number of participants and the amount of discounts have continued to increase over the years.[53]
- Thus, Commerce's conclusion that the ESS Program was *de facto* specific to a limited number of beneficiaries is contrary to the facts on the record.
- Commerce did not take into consideration that KEPCO automatically provides discounts to any company which meets the energy efficiency qualification criteria, and both the number and amounts of discounts provided to recipients under this program have significantly increased over the years.
- Commerce misunderstands the purpose of the ESS Program in finding that the GOK conferred a financial benefit to DSM in the form of forgone revenue.
- "In light of high costs of the electrical storage equipment installation for the participants and comparing the costs of the electrical storage equipment installation with the electricity rate discount for the participants there is no financial benefit to the participants conferred by {the} GOK." [54]
- Commerce should reexamine this program in light of presented facts and find that DSM received no countervailable subsidy from this program in the final results.

Petitioner's Rebuttal Brief[55]

- Commerce should continue to countervail the ESS Program in the final results.

[51] *See* DSM's Case Brief at 8-11.
[52] *See* GOK's Case Brief at 7.
[53] *See* GOK's SQR at 19-20.
[54] *See* GOK's Case Brief at 9.
[55] *See* Petitioner's Rebuttal Brief at 5.

- Contrary to DSM's and the GOK's claims, the evidence on the record demonstrates that the ESS Program is specific because a limited in number of firms used this program during the POR.
- Thus, for the final results, Commerce should reject DSM's and the GOK's arguments and continue to countervail the ESS Program in the final results.

Commerce's Position: Our decision to find the ESS Program countervailable remains unchanged from the CTL Post-Preliminary Memorandum.[56] The parties dispute our preliminary finding that the discounts provided under the ESS Program are limited in number, and thus, *de facto* specific under section 771(5A)(D)(iii) of the Act. As noted in the CTL Post-Preliminary Memorandum, a relatively small number of firms received benefits under the program during the POR.[57] While Commerce determines *de facto* specificity on a case-by-case basis, we note that our specificity finding in this review is consistent with *de facto* specificity analyses Commerce has conducted in prior Korean CVD proceedings.[58] The fact that approval of the benefits under this program is automatic and that the number of and amount of benefits has been increasing over the years is not relevant as to whether the actual users are limited in number. Where, as here, Commerce determines that the subsidy is in fact used by a limited number of enterprises, the program is properly determined to be *de facto* specific. Therefore, we continue to find that benefits under the ESS program are limited in number and thus *de facto* specific under section 771(5A)(D)(iii) of the Act.

DSM argues that Commerce should not find the program countervailable because it was tied to non-subject merchandise. Specifically, DSM argues that the benefits under the program are tied to its Busan and Pohang factories where DSM only produced non-subject merchandise during the POR. Thus, DSM appears to argue that Commerce should find that the discounts are tied to non-subject merchandise based on how it purportedly used the program's benefits. We disagree with DSM's arguments.

In accordance with Commerce practice, and consistent with the statute and our regulations, Commerce does not track the effect of subsidies on respondents' production when determining whether a subsidy confers a benefit or is tied.[59] Rather, under 19 CFR 351.525(b)(3), Commerce

[56] *See* CTL Post-Preliminary Memorandum at 4-5.
[57] *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) (*CTL Plate from Korea AR 2017 Prelim*), and accompanying PDM at 5, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; Calendar Year 2017*, 84 FR 42893 (August 19, 2019) (*CTL Plate from Korea 2017 Final Results*).
[58] *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), and accompanying PDM at 7 ("The GOK submits that 3,580 companies were approved for the assistance under this program in 2017, while nine participants were rejected. Therefore, we preliminarily determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act, as the actual recipients are limited in number. Our findings in this regard are consistent with Commerce's approach in prior CVD proceedings involving Korea."), unchanged in *CTL Plate from Korea 2017 Final Results*, 84 FR at 42893.
[59] *See, e.g.*, *Certain Steel Nails from the Sultanate of Oman: Final Negative Countervailing Duty Determination*, 80 FR 28958 (May 20, 2015) and accompanying IDM at 15 (declining to "consider whether Oman Fasteners used or

will normally attribute a domestic subsidy to all products sold by a firm. However, 19 CFR 351.525(b)(4) and (5) state that if a subsidy is tied to particular market or product, Commerce will attribute the subsidy only to sales of that particular product or sales to that particular market. To determine whether a subsidy is tied, Commerce's practice is to examine the conditions in place at the time of the government's bestowal of the subsidy, which normally involves the examination of eligibility criteria, the government's purpose for granting the subsidy, and application and approval documentation.[60] In arguing that the ESS Program is tied exclusively to non-subject merchandise produced at its Busan and Pohang facilities, DSM fails to cite to any of this evidence to support its claim that the receipt of the subsidy was, at the point of bestowal, conditioned upon the production of any specific products.[61] Therefore, consistent with Commerce's practice, we find that DSM has failed to establish that the program is tied to non-subject merchandise, and therefore, we have continued to attribute the benefits DSM received under the program during the POR to its total sales for the POR.

Finally, we disagree with DSM and the GOK's contention that the high costs of participating in the program offset any benefits received under the program. As noted in the *CVD Preamble*, Commerce does not consider the overall "effect" a government program has on a firm's behavior in determining whether a benefit exists.[62]

Accordingly, we continue to find the ESS Program to be countervailable in the final results.

Comment 3: Commerce Incorrectly Calculated the Benefit from the KEXIM Import Financing Used by DSM

DSM's Case Brief [63]

- Commerce incorrectly treated the Korean Export Import Bank (KEXIM) Import Financing Program as an export subsidy and, as a result, used DSM's total export sales as the denominator in calculating the net subsidy rate.
- For the final results, Commerce should calculate the net subsidy rate from the KEXIM financing used by DSM by dividing the relevant benefit amount by DSM's total sales.

The petitioner did not comment on this issue.

---

did not use the imported equipment for the production of subject merchandise. To do so would require the Department to trace the use of Oman Fasteners' tariff exemptions to determine whether the company used the subsidies as intended; this would violate the statute, Department's regulations, and the well-established practice of not considering the use and effect of subsidies").

[60] *See Certain Quartz Surface Products from India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, In Part, and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 54838 (October 11, 2019), and accompanying PDM at 27, unchanged in *Certain Quartz Surface Products from India: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, In Part*, 85 FR 25398 (May 1, 2020).

[61] *See* DSM's Case Brief at 9.

[62] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65361 (November 25, 1998) (*CVD Preamble*).

[63] *See* DSM's Case Brief at 11-12.

Commerce's Position: We agree with DSM. DSM reported that it received import financing, not export financing, from KEXIM during the POR.[64] Commerce's tying practice involves examining the application and approval documents at the time the benefit is bestowed. If the documents indicate that the receipt of the benefit is contingent upon the sales to a particular market or the production/sale of a specific product, we tie the benefit to those markets or products.[65]

For the *2018 CTL Preliminary Results*, we determined that the KEXIM financing program used by DSM was tied to export performance, and therefore, we calculated the net subsidy rate by dividing the benefit by DSM's total exports. However, in the final results, we find that evidence on the record demonstrates that DSM's receipt of the KEXIM financing in question was not contingent on export activity.[66] Specifically, the eligibility for the program is based on a company's import performance, is not "not contingent upon …whether the company exports or has increased its exports,"[67] and record evidence indicates that DSM received the KEXIM loans that were outstanding during the POR to finance imported items.

Accordingly, for these final results, we attributed benefits DSM received on the KEXIM financing at issue to its total sales. Under this approach, we find that the benefits DSM received under this program are less than 0.005 percent *ad valorem*, when attributed to DSM's total sales, and, thus, we determine that benefits under this program are not measurable. Because the import financing does not yield a measurable net subsidy rate when attributed to total sales, we have not included this program in DSM's total net subsidy rate, and thus, the issue of whether the program is specific under section 771(5A)(D) of the Act is moot.

Comment 4: Commerce Incorrectly Calculated the Benefit for an R&D project for the Development of Earthquake-Proof Reinforced Steel Bars (ITIPA R&D)

DSM's Case Brief [68]

- Commerce noted the incorrect amount of funds the GOK provided to DSM under the ITIPA R&D Program for Earthquake Proof Rebar.[69]
- As a result, Commerce overstated the grants DSM received under this program by a factor of 1,000.
- Commerce should correct this error in the final results.

The petitioner did not comment on this issue.

---

[64] *See* DSM's Letter, "Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 01/01/2018-12/31/2018 Administrative Review, Case No. C-580-837: Initial Questionnaire Response," dated July 18, 2019 (DSM IQR) at Appendix and D-12-B.
[65] *See Certain Lined Paper Products from India: Final Results of Countervailing Duty Administrative Review; 2014*, 82 FR 18112 (April 17, 2017), and accompanying IDM at 13.
[66] *See* DSM's IQR at Appendix and D-12-B.
[67] *Id.* at 9 and Appendix D-12-D for its application documents and Appendix D-12-B for DSM's answers on the Standard Questions Appendix.
[68] *See* DSM's Case Brief at 12.
[69] *See* DSM's IQR at 21.

Commerce's Position: We agree with DSM that we inadvertently noted the incorrect amount of grants the GOK provided to DSM under the ITIPA R&D Program for Earthquake Proof Rebar.[70] However, as explained in the *CTL 2018 Preliminary Results* Commerce determined the program was tied to non-subject merchandise:

In the *CTL Plate from Korea 2017 Preliminary Results*, Commerce found that ITIPA grants that DSM received for its Earthquake Rebar Project were contingent upon the development of concrete reinforcing bar and, thus, were tied to non-subject merchandise. *See CTL Plate from Korea 2017 Preliminary Results* PDM at 16, unchanged in *CTL Plate from Korea 2017 Final Results* IDM at 6. DSM reported receiving grants under the same ITIPA R&D project in 2018. *See* DSM Initial QNR Response at 21. Consistent with our finding in the prior review, we preliminarily determine that ITIPA grants under this project are tied to the development of concrete reinforcing bar, which is non-subject merchandise, and, thus, we have not included this grant in our preliminary subsidy calculations.[71]

Interested Parties did not comment on our preliminary finding as it regards the attribution of this program, and we find there is no basis to revise our approach. Therefore, while our final calculations now reference the correct amount of grants the GOK provided to DSM under the program, because the grants are tied to non-subject merchandise, the grant is not included in DSM's net subsidy rate calculations. Thus, the amount of grants DSM received under the program is moot.

Comment 5: Commerce Incorrectly Described Unaffiliated Trading Companies as Affiliates of DSM in the PDM

DSM's Case Brief [72]

- Commerce incorrectly described unaffiliated trading companies as affiliates of DSM in the PDM.
- Specifically, the PDM contains an error which states: "DSM also submitted a questionnaire response on behalf of its affiliated trading companies."[73]
- As Commerce correctly stated on page 2 of the PDM, the trading companies are not affiliated with DSM.
- For the final results, Commerce should correct its description of these trading companies.

The petitioner did not comment on this issue.

Commerce's' Position: Commerce erred when it stated on page 6 of the PDM that DSM "also submitted a questionnaire response on behalf of its affiliated trading companies." As we correctly stated on page 2 of the PDM, the trading companies are not affiliated with DSM.

[70] *See* DSM's IQR at 21; *see also* Dongkuk Preliminary Calculations.
[71] *See 2018 CTL Preliminary Results* PDM at 14.
[72] *See* DSM's Case Brief at 12.
[73] *See 2018 CTL Preliminary Results* PDM at 6.

Comment 6: Commerce Erred in its Preliminary Finding that the Reduction for Sewerage Fees Program is Countervailable

GOK's Case Brief [74]

- Commerce erred in its preliminary finding that the program is countervailable, as applied to Hyundai Steel, by a misunderstanding of the purpose of the program, which is to more accurately charge for the usage of the sewerage system, rather than provide a discount on sewerage usage.
- Hyundai Steel used this program in order to ensure that the GOK charged it with sewerage fees based on the amount of wastewater that Hyundai Steel actually discharged through the sewerage system rather than the total amount of clean water that it consumed through the system. Hyundai Steel calculated the amount of wastewater it discharged through the sewerage system by using an independent study.
- The amount of sewerage fees that Hyundai Steel paid was proportional to the amount by which Hyundai Steel reduced its wastewater, thereby reducing its use of the local government's water purification system.
- There is no revenue forgone resulting from any discounts on the water bill, and no financial contribution by the GOK to the participants in this program. The local government received its revenue from Hyundai Steel for the actual amount of wastewater drained through the public sewerage system. Additionally, there is no benefit, as Hyundai Steel paid its water bill in full, with no fees, waived as a result of its participation in this Reduction for Sewerage Usage Fees program.

Hyundai Steel's Case Brief [75]

- Commerce erred in preliminarily finding that the Reduction for Sewerage Fees program is countervailable, and this determination appears to be based on a misunderstanding of how this program operated with respect to Hyundai Steel.
- Specifically, Commerce appears to understand the program as providing Hyundai Steel with a reduction in its water bill that is tied to the installation of a gray water system pursuant to the Act on Promotion and Support of Water Reuse. Hyundai Steel neither installed a gray water system nor received a reduction in its water bill related to the installation of such a system.
- Hyundai Steel was charged sewerage fees based on the amount of wastewater that it actually discharged, and these amounts were calculated based on an independent study.
- The amount of sewerage fees that Hyundai Steel paid was directly proportional to the amount by which Hyundai Steel reduced its wastewater, as determined in the study. There is no revenue forgone and no financial contribution, as the local government received revenue from Hyundai Steel for the actual, proven amount of wastewater drained through the public system. There is no benefit, as Hyundai Steel paid its water bill in full, and there were no fees reduced or waived.
- Commerce should reexamine this program in light of these facts and find in the final results that Hyundai Steel received no countervailable subsidy from this program.

[74] *See* GOK's Case Brief at 3-7.
[75] *See* Hyundai Steel's Case Brief at 2-11.

Petitioner's Case Brief[76]

- Commerce should continue to countervail the Reduction for Sewerage Fees program in the agency's final results. As explained by the GOK, the normal fees for sewerage are required to be equal to the company's purchased water volume.
- The reduction of Hyundai Steel's sewerage fees was not mandated by the installation of a gray water system. Additionally, Hyundai Steel received a discount on sewerage fees based on an independent report which estimated its water usage, which indicates that Hyundai Steel's actual sewerage usage varies.
- Further, the program is specific because Hyundai Steel received a significant percentage of the total funds made available during the POR, which makes it a predominant user of the program.
- Finally, the amount that Hyundai Steel received exceeds the "adjustment rate" identified in the local ordinance which is limited to 20 percent in the Sewerage Usage Fee Adjustment Criteria unless a company is declared to be in a disaster or special disaster area. Hyundai Steel did not report that it was located in a disaster or special disaster area.

Commerce's Position: For the reasons described below, we continue to find this program countervailable. In the CTL Post-Preliminary Memorandum, we determined that the reduction in sewerage fees from the standard rate under this program resulted in a financial contribution from the GOK to Hyundai Steel in the form of revenue forgone, as described in section 771(5)(D)(ii) of the Act.[77]

The record shows that households and businesses may under certain conditions receive a reduction in their overall water bill as prescribed in Article 21 (1) 7 of Regulation on Sewerage Usage Incheon Metropolitan City and Article 9 of Enforcement Regulation on Sewerage Usage Incheon Metropolitan City.[78] Specifically, the GOK states that users are eligible for a reduced water bill under these provisions if they could demonstrate that the amount of sewage water that is discharged into the public sewerage system is less than the amount of clean water consumed from the public water supply system, or if the user installs a "gray water system."[79] A "gray water system" refers to an individual or regional level system which processes unclean water for recycling purpose without discharging unclean water into the public sewerage system.[80] The GOK further explained that the execution of this program is delegated to regional level governments. In this case, the Incheon Metropolitan City was the regional level government charged with administering the public sewerage system utilized by Hyundai Steel during the POR.[81]

In its initial questionnaire response, Hyundai Steel stated that it "has received reductions from

[76] *See* Petitioner's Case Brief at 7.
[77] *See* CTL Post-Preliminary Memorandum at 2-3.
[78] *See* GOK's SQR at 2 and 6-7; *see also* Hyundai Steel's Letter, "Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, 01/01/2018-12/31/2018 Administrative Review, Case No. C-580-837: Initial Questionnaire Response," dated July 29, 2019 (Hyundai Steel's IQR) at 44 and Exhibit H-11.
[79] *See* GOK's SQR at 2-3.
[80] *See* Hyundai Steel's IQR at 44 and Exhibit H-11; *see also* GOK's SQR at 2 and 8.
[81] *See* GOK's SQR at 3.

the monthly fee incurred for usage of {the} sewerage system for purification of sewage from Incheon City."[82] However, Hyundai Steel clarified that it "did not receive any sewerage usage fee reductions by virtue of installing a gray water system."[83] Rather, Hyundai Steel explained that it received a reduction in its overall water bill because it was able to demonstrate the estimated amount of sewage water it discharged and that needed to be recycled (*i.e.*, treated) by the Incheon City government during the POR, which was significantly less than the amount of clean water it consumed.[84] According to Hyundai Steel, it did this on the basis of a report it commissioned from an independent third party.[85] The GOK states that it accepted Hyundai Steel's methodology to determine the amount of sewage water the company is deemed to have drained into the public water system on the basis of Articles 14 and 21 of the Incheon Metropolitan City Ordinance on Sewerage System Use and Article 9 of the Enforcement Regulation of the same Ordinance.[86]

Contrary to the claims by the GOK, Article 65(1) of the Sewerage Act, Article 36(2) of the Enforcement Decree of the same Act, Article 14(1) and Article 21(1)(7) of the Incheon Metropolitan City Ordinance on Sewerage System Usages, and Article 9 of the Enforcement Decree of the same Ordinance do not prescribe for the situation under which Hyundai Steel qualified for its sewerage fee reduction, or the amount of the reduction received by Hyundai Steel.[87] The relevant legal provision describing the basis for any such fee reductions, Article 21 ("Reduction and Exemption, etc.") of the Incheon Metropolitan City Ordinance on Sewerage System Usages, provides for fee reductions on the basis of other criteria and conditions.[88] Article 21, or any other legal provisions cited by the GOK, do not explicitly provide that entities may claim a reduction in their overall water bill with regard to the amount of sewage water discharged.[89] Hyundai Steel did not qualify for a reduction in its sewerage fee on the basis of any of the criteria listed in the Incheon Metropolitan City Ordinance. Additionally, the amount of the fee reduction that Hyundai Steel received on its overall water bill significantly exceeds the rate adjustments that are specified in the ordinance, with the exception of certain special conditions, such as being located in a disaster area.[90] For these reasons, we determine that the basis under which Hyundai Steel received a sewerage fee reduction during the POR is an arrangement unique to the respondent and not otherwise contemplated under the provisions of Korean law on our record. We thus continue to find that the reduction in Hyundai Steel's sewerage fee under the program constitutes revenue forgone and that a benefit was conferred in accordance with sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. Because record evidence indicates that the basis for which Hyundai Steel qualified for a reduction in sewerage fees was not granted to any other companies, we determine that this program is *de facto* specific

[82] *See* Hyundai Steel's IQR at 44 and Exhibit H-11.
[83] *See* Hyundai Steel's Case Brief at 2.
[84] *See* Hyundai Steel's IQR at 44 and 45 and Exhibit H-12 for the reduction notice received from Dong-gu Office of Incheon Metropolitan City.
[85] *See* GOK SQR at 9 and Exhibit Sewar-4.
[86] *Id*. at 9 and 16-17.
[87] *Id*. at 5 and Exhibit SEWER-1; *see also* Hyundai IQR at 44 and Exhibits H-11 for the applicable regulations and Exhibit H-12 for the reduction notice received by Hyundai.
[88] *Id*. at Exhibit SEWER-1.
[89] *Id*. at 9 and Exhibit SEWER-1.
[90] *Id*. at Exhibit SEWER-1 ("Sewerage Usage Fee Adjustment Criteria) at Article 14.

within the meaning of section 771(5A)(D)(iii)(I) of the Act.

Comment 7: Commerce should Continue to Determine that the Upstream Electricity Subsidy Program is not Countervailable

Petitioner's Case Brief [91]

- Commerce should find that the GOK provides an upstream subsidy to CTL plate producers, including Hyundai Steel.
- Commerce relied on its *CORE from Korea 2017*[92] determination in its post-preliminary results to find that no upstream electricity subsidy exists. This record differs factually from *CORE from Korea 2017*, which requires Commerce to make several new legal and factual determinations regarding the Korean electricity market, which has rendered its post-preliminary results flawed.
- As an initial matter, in *CORE from Korea 2017*, Commerce erred by improperly applying an adequacy of remuneration standard under a tier-three benchmark that is not tied to the fair value of the good. The agency also failed to identify or quantify what value constitutes a rate of return sufficient to ensure future operations, which improperly elevates the price-setting methodology over its fair value/costs analysis.
- The record demonstrates that during the POR, not a single one of its six subsidiary electricity generators (GENCO) received a return on assets greater than 0.95 percent. In fact, five of the six GENCOs' return on assets did not even eclipse 0.30 percent. Further, because half of the GENCOs suffered net profit losses ranging from 28 billion won to 102 billion won and at least two GENCOs did not recover their costs of generating electricity with electricity sales to KEPCO during the POR, record evidence confirms that the prices at which KEPCO purchases electricity from the KPX are at LTAR.
- Finally, all of the following regulatory factors for an upstream analysis are met: (1) a countervailable subsidy is provided with respect to electricity consumed by the respondents; (2) electricity pricing is set to ensure that the subsidy passes through to the respondents; and (3) the *ad valorem* subsidy rate is greater than one.

DSM's Rebuttal Brief [93]

- Nucor asserts that KEPCO, which distributes electricity in Korea, receives a subsidy from the prices it pays its six wholly-owned subsidiaries that actually generate the electricity (the "GENCOs").
- However, under Commerce's regulations, KEPCO and its subsidiaries would all be considered "cross-owned," which means that any analysis of subsidies to KEPCO or its subsidiaries would effectively look at the companies on a consolidated basis. As a result, the intra-company transfer prices between KEPCO and the GENCOs cannot constitute a subsidy to KEPCO.

[91] *See* Petitioner's Case Brief at 2-22.
[92] *See Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2017*, 85 FR 15112, (March 17, 2020) (*CORE from Korea 2017*), and accompanying IDM at Comment 1; *see also* "Post-Preliminary Analysis Memorandum – Upstream Subsidy on Electricity, Countervailing Duty Administrative Review of Certain Corrosion-Resistant Steel Products from the Republic of Korea C-580-879," dated February 5, 2020 (CORE Post-Prelim Memorandum) (placed on the record of this review on August 7, 2020).
[93] *See* DSM's Rebuttal Brief at 3-16.

- Furthermore, even if it were theoretically possible for the pricing between KEPCO and the GENCOs to constitute a subsidy, Commerce recently found after a lengthy investigation that the pricing mechanism used by the KPX to set prices paid to the GENCOs is based on market principles and does not result in upstream subsidies.
- Nucor has also failed to demonstrate that any benefits that KEPCO allegedly received from the GENCO prices were passed on the KEPCO's customers, such as manufacturers of CTL plate.
- Nucor's estimate of the magnitude of any potential benefit associated with the sale of allegedly subsidized electricity is seriously flawed. The evidence on the record demonstrates that electricity represents a tiny portion of DSM's total manufacturing costs for CTL plate, and that the competitive benefit to DSM of the alleged subsidies would therefore be insignificant.

GOK's Rebuttal Brief [94]

- The record demonstrates that all GENCOs were profitable and recovered costs for generating electricity during the POR because the GENCOs' percent of sales revenue that exceeded cost ranged from 0.08 percent to 14.73 percent.
- However, the petitioner argues that all GENCOs were not profitable because half of the GENCOs reported losses during the POR. Although three GENCOs reported net losses during the POR, these losses are not related to the costs associated with generating electricity and the revenue earned from sales to KEPCO. The losses are primarily related to financial costs and foreign currency.
- Rather, it should be noted that all GENCOs made operating profits during the POR, which fully supports the fact that all GENCOs were profitable during the POR. Thus, Commerce's conclusion is that the price KEPCO pays for electricity is a continued rate of return for the KEPCO generators.
- Even though the GOK is involved in the electricity market, under Article 5.3.1.1 of the Rules on the Operation of the Electricity Market (ROEM), the electricity market in Korea operates based on market principles through the Cost Evaluation Committee, which adjusts the GENCOs' capacity prices to account for its preferences.
- The GOK's subsidy to KEPCO is not able to be passed through to Korean steel producers because, as Commerce has already determined, the IPP prices are not an appropriate benchmark for determining the GENCOs' prices, and KPX's pricing is consistent with market principles. Thus, the price for the GENCOs' sale of electricity is not lower than the price that the producer of the subject merchandise otherwise would pay another seller in an arm's-length transaction for electricity. Also, KPX did not set the price of the electricity to guarantee that the benefit provided with respect to the electricity is passed through to producers of the subject merchandise, because no benefit was conferred from KPX to KEPCO.

Hyundai Steel's Rebuttal Brief [95]

- Commerce should continue to find in the final results that there is no upstream subsidy provided by the GOK to KEPCO via electricity sold at LTAR.

[94] *See* GOK's Rebuttal Brief at 1-8.
[95] *See* Hyundai Steel's Rebuttal Brief at 2-16.

- In the *Post-Preliminary Results*, Commerce properly conducted a tier-three "market principles" analysis, and its determination is factually/legally supported and consistent with the Commerce's previous decisions.

Commerce's Position: We continue to find this program not countervailable for the reasons that we explained in the CTL Post-Preliminary Memorandum.[96] Commerce examined the same issue in *CORE from Korea 2017*, *Cold-Rolled from Korea 2017*, and other Korean countervailing duty cases, which is the same allegation that is before Commerce in this review - whether the electricity pricing system set up within Korea was determined to be based on market principles.[97] The record of this case does not differ from previous findings, and the petitioner does not explain how the facts in this review significantly differ from the previous reviews other than the POR covers a different year.[98]

Commerce's practice in an upstream LTAR allegation, as stated in the CTL Post-Preliminary Memorandum, is to examine if a benefit was conferred within the meaning of section 771(5)(E)(iv) of the Act. This section of the Act states that the adequacy of remuneration shall be "determined in relation to the prevailing market conditions … purchased in the country which is subject to the investigation or review," and "{p}revailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase of sale."[99] Under a tier-three benchmark analysis under 19 CFR 351.211(a)(2)(iii) at issue in this review, Commerce will measure the adequacy of remuneration by assessing whether the government price is consistent with market principles. Under this analysis, Commerce will assess whether the purchase prices set by KPX are set in accordance with market principles through an analysis of such factors as price-setting methodology, costs (including rates of return sufficient to ensure future operations), or possible price discrimination. We have not put these factors in any hierarchy, and we may rely on one or more of these factors in any particular case.[100]

As we found in *CORE from Korea 2017*:

We {} find that KPX does have a price-setting methodology in place to account for different fuel type costs and ensure a fair return on investment that assigns a higher rate of return on the GENCOs based on submitted financial information. Finally, KPX has also amended its law to compensate GENCOs for their costs, even if KEPCO is in a loss position. Thus, KPX has instituted mechanisms within its regulations that standardize the calculation of the adjustment coefficient rates, take costs and return on investment factors into consideration, and will, if

[96] *See* CTL Post-Preliminary Memorandum at 8-12.
[97] *See CORE from Korea 2017* IDM at Comment 1; *see also* CORE Post-Prelim Memorandum; and *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2017*, 85 FR 38361 (June 26, 2020) (*Cold-Rolled from Korea 2017*), and accompanying IDM at Comment 1.
[98] *See* Petitioner's Case Brief at 10.
[99] *See* CTL Post-Preliminary Memorandum at 11.
[100] *See CVD Preamble*, 63 FR at 65377-78. The Court of Appeals for the Federal Circuit, in *Nucor Corp.*, held that "if the foreign government authority engaged in a uniform, non-discriminatory, tariffed practice of charging a price so low that the authority consistently lost large sums of money in a way no private seller could sustain, sales pursuant to that practice would not be properly viewed as for 'less than adequate remuneration.'" *See Nucor Corp. v. United States*, 927 F. 3d 1243, 1249-54 (Fed. Cir. 2019).

necessary, have KEPCO reimburse the GENCOs for costs, even if the company is in a loss position.[101]

In the CTL Post-Preliminary Memorandum, when reviewing the data for all six GENCOs at issue, Commerce stated:

The data does not contradict statements from prior cases that the KPX basis for determining the selling price for electricity for the GENCOs takes multiple factors into consideration (*e.g.*, cost, fuel type and the rate return between the GENCOS and KEPCO). Moreover, as noted in the prior cases, KEPCO would be required to cover the costs of the GENCOs, even in a loss position. Based upon our examination of the facts on the record and in comparison to the facts in other Korean cases, particularly *CORE from Korea*, where we verified the information on the record, the process results in a continued rate of return for the KEPCO generators and does not deviate from prior findings.[102]

We disagree with the petitioner's arguments. The Federal Circuit has recognized that, in examining KEPCO's pricing in the *CORE from Korea Final Determination*, "Commerce has considerable *prima facie* leeway to make a reasonable choice within the permissible range, and properly justify its choice, based on the language and policies of the countervailing-duty statute as well as practicality and other relevant considerations."[103]

The petitioner argues that Commerce failed to identify or quantify what value constitutes a rate of return sufficient to ensure future operations, which improperly elevates the price-setting methodology over its fair value/costs analysis. We disagree that Commerce must identify or quantify an exact value. Commerce's regulations do not call for a tier-three analysis to be a strict comparison of rates of returns or to require that an entity absolutely maximize its returns; rather the regulations state that such rate of return ought to be "sufficient to ensure future operations."[104] Under a tier-three market principles analysis, Commerce examined KPX prices and the relevant price setting mechanism. The specific rate of return for the KEPCO generators is only one of many factors considered in our analysis.

Lastly, we disagree with petitioner that Commerce should find the upstream subsidy program countervailable based on its claim that several GENCOs experienced net losses during the POR. As the GOK notes, three GENCOs reported net losses during the POR. However, the GENCOs' losses were not associated with electricity generating costs and revenue earned from sales of electricity to KEPCO. Rather, these losses related to financial costs and foreign currency fluctuations. Moreover, the record indicates that these GENCOs generated operational profits during the POR, which included the GENCOs' electricity operations and sales.[105]

---

[101] *See* CORE Post-Prelim Memorandum.
[102] *See* CTL Post-Preliminary Memorandum at 11.
[103] *See Nucor Corp.*, 927 F. 3d at 1255.
[104] *See CVD Preamble*, 63 FR at 65378; *see also CORE from Korea 2017* IDM at Comment 1.
[105] *See* GOK's Letter, "Certain Cut-To-Length Carbon-Quality Steel Plate from the Republic of Korea, 01/01/2018-12/31/2018 Administrative Review, Case No. C-580-837: Translations of Exhibits of Upstream Subsidy Questionnaire Response," dated January 31, 2020 at Exhibits USQ-19-1 at PDF page 155, Exhibit USQ-19-2 at PDFD page 444, Exhibit USQ-19-3 at PDF page 644, Exhibit USQ-19-4 at PDF 791, Exhibit USQ 19-5 at PDF

Thus, we continue to find that there was not an upstream subsidy benefit provided to the respondents during the POR.

Comment 8: Whether the GOK Provided Carbon Emission Credits for LTAR to Hyundai Steel

Petitioner's Case Brief [106]

- Commerce should reconsider initiating Nucor's new subsidy allegation (NSA) regarding emissions credits for LTAR.
- In its NSA Memorandum, Commerce did not initiate this NSA because it claims that the alleged carbon emissions credits for LTAR were received through Hyundai Steel's cross-ownership with Hyundai Green Power (HGP). However, the record demonstrates that the GOK provides emissions credits directly to Hyundai Steel and DSM "free of charge." Because the agency's determination failed to consider this information, the agency should reverse its preliminary determination and initiate this NSA.

DSM's Rebuttal Brief [107]

- Nucor asserted that the Korean government subsidized CTL plate producers by giving them carbon-emission credits at no cost. However, as a matter of law, such credits do not constitute subsidies.
- The credits - which allow the recipient to emit carbon dioxide - do not involve direct transfers of funds from the government to the alleged recipients; they do not constitute forgone tax revenue; they are not goods or services provided by the government; and they are not goods purchased by the government.
- As a result, the provision of the credits by the government does not constitute a "financial contribution" under the countervailing duty statute. In any event, there is no basis for finding that the government-provided emission credits are specific to DSM or, the steel industry. According to Nucor's allegation, the Korean government provides the credits free of charge to a significant number of separate companies.[108]

Hyundai Steel's Rebuttal Brief [109]

- Commerce should decline to revisit its decision not to initiate on Nucor's NSA regarding the provision of carbon emissions credits for LTAR.
- Commerce did not fail to consider substantial evidence, as Nucor alleges. Nucor
- is unable to demonstrate how the provision of carbon emissions credits, either through HGP or through the GOK, constitutes a financial contribution or confers a countervailable benefit.
- Commerce should thus continue to decline to initiate on this program.

The GOK did not comment on this issue.

---

page 948, and Exhibit USQ 19-6 at PDF page 1178.
[106] *See* Petitioner's Case Brief at 27-29.
[107] *See* DSM's Rebuttal Brief at 18-21.
[108] *Id.* at 3 and 20.
[109] *See* Hyundai's Rebuttal Brief at 17-20.

Commerce's Position: In Commerce's New Subsidy Allegation Memorandum,[110] we declined to initiate on the petitioner's new subsidy allegation regarding carbon emission credits for LTAR because it was predicated on the fact that Hyundai Steel was affiliated with HGP.[111] Similar to previous reviews in this case, Commerce did not find Hyundai Steel affiliated with HGP.[112] In a supplemental questionnaire, Commerce requested additional information from the petitioner to support its claim that the GOK provided emission credits directly to Hyundai Steel.[113] The petitioner responded that the GOK's emissions system is opaque, and not readily available in English and requested Commerce to initiate on the program to find the requested information.[114]

Commerce examined the petitioner's allegations in both its NSA and supplemental questionnaire responses, and we continued to find that the petitioner had not shown that HGP and Hyundai Steel were cross-owned during the POR. Additionally, the petitioner failed to provide any new information or argument which warrants reconsidering Commerce's prior determinations that HGP is not cross-owned with Hyundai Steel.[115] Therefore, consistent with our findings in prior reviews,[116] we find there is no basis to find that any subsidy allegedly received by HGP would be attributable to Hyundai Steel.[117]

[110] *See* Memorandum, "Certain Cut-To-Length Carbon-Quality Steel Plate from the Republic of Korea: New Subsidy Allegations," dated January 3, 2020 (NSA Memorandum) at 8-11.
[111] *See* Petitioner's Letter, "Certain Cut-To-Length Carbon-Quality Steel Plate from the Republic of Korea: New Subsidy Allegations," dated August 19, 2019 at 23-27 (NSA Allegations).
[112] *See CTL Plate from Korea 2017 Final Results*, 84 FR at 42893, and accompanying IDM at Comment 2.
[113] *See* Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Supplemental Questionnaire for New Subsidy Allegations," dated October 30, 2019 at 3.
[114] *See* Petitioner's Letter, "Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: New Subsidy Allegation Supplemental Questionnaire Response," dated November 4, 2019 at 2.
[115] *See* NSA Allegations at 11.
[116] *See CTL Plate from Korea 2017 Final Results*, 84 FR at 42893, and accompanying IDM at Comment 2.
[117] *See* NSA Allegations at 11.

VIII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this administrative review and the final weighted-average dumping margins in the *Federal Register*.

☒	☐
Agree	Disagree

12/18/2020

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance