



C-580-818
POR: 1/1/2009-12/31/2009
Public Document
Office 3: GL

February 27, 2012

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: Gary Taverman *ST*
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Corrosion-Resistant Carbon Steel Flat Products from Korea

SUBJECT: Decision Memorandum: Final Results of Countervailing Duty
Administrative Review

I. Summary

On August 31, 2011, the Department of Commerce ("Department") published its preliminary results in this countervailing duty administrative review. See Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, 76 FR 54208 (August 31, 2011) ("Preliminary Results"). Subsequent to the Preliminary Results, we issued a Post Preliminary Analysis Memorandum and Post Preliminary Results in which we found that Hyundai HYSCO Limited ("HYSCO") received additional countervailable subsidies under the Restriction of Special Taxation Act ("RSTA") Article 26 program. See 2009 Review of the Countervailing Duty Order on Corrosion-Resistant Carbon Steel Flats Products from Korea: Post Preliminary Analysis Memorandum for Hyundai HYSCO Ltd. ("HYSCO") and Post Preliminary Results of CVD Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea (C-580-818) dated September 27, 2011.

On October 11, 2011, the respondent, HYSCO submitted comments on our Preliminary Results. In response, the petitioner, U.S. Steel Corporation ("U.S. Steel") submitted rebuttal comments on October 18, 2011. Subsequent to Preliminary Results, the Department issued supplemental questionnaires to HYSCO. To allow sufficient time to collect and analyze this additional information, and the briefing process, the Department extended the time limit for these final results. See Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Extension of Time Limit for Final Results of Countervailing Duty Administrative Review, 76 FR 77775 (December 14, 2011). HYSCO submitted comments on the additional information provided after the Preliminary Results on December 12, 2011, and January 11, 2012. U.S. Steel submitted rebuttal comments on December 19, 2011, and January 17, 2012. HYSCO also submitted rebuttal comments on January 20, 2012. We have analyzed the comments of the



interested parties on the Preliminary Results and the additional information and comments provided subsequent to the Preliminary Results. As a result of our analysis of the comments received from the interested parties, we have made modifications to the Preliminary Results with respect to the short-term benchmark used to measure the benefit in the Export-Import Bank of Korea (KEXIM) short-term export financing program. See below for a description of the program, and analysis of the comments received and of the Department's position. All other determinations made in the Preliminary Results and the Post Preliminary Results remain unchanged in these final results.

II. Program Requiring Revision to the Benefit Calculation

Short-Term Export Financing Program

In the Preliminary Results, the Department determined that the short-term export financing program provided by the Export-Import Bank of Korea (KEXIM) was countervailable. See Preliminary Results, 76 FR at 54211. The Department determined that KEXIM supplies two types of short-term loans for exporting companies: short-term trade financing and comprehensive export financing. *Id.* KEXIM provides short-term loans to Korean exporters that manufacture goods under export contracts. *Id.* The loans are provided up to the amount of the bill of exchange or contracted amount, less any amount already received. *Id.* For comprehensive export financing loans, KEXIM supplies short-term loans to any small or medium-sized company, or any large company that is not included in the five largest conglomerates based on their comprehensive export performance. *Id.* To obtain the loans, companies must report their export performance periodically to KEXIM for review. *Id.* Comprehensive export financing loans cover from 50 to 90 percent of the company's export performance. *Id.*

In Steel Products from Korea, the Department determined that the GOK's short-term export financing program was countervailable. See Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products From Korea, 58 FR 37338, 37350 (July 9, 1993) (Steel Products from Korea); see also Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea, 67 FR 62102, (October 3, 2002) (Cold-Rolled Investigation), and accompanying Issues and Decision Memorandum (Cold-Rolled Decision Memorandum) at "Short-Term Export Financing" section. No new information or evidence of changed circumstances was presented in this review to warrant any reconsideration of the countervailability of this program. Therefore, in the Preliminary Results, we continued to find this program countervailable. See Preliminary Results, 76 FR at 54211. Specifically, in the Preliminary Results, we determined that the export financing constitutes a financial contribution in the form of a loan within the meaning of section 771(5)(D)(i) of the Act and confers a benefit within the meaning of section 771(5)(E)(ii) of the Act to the extent that the amount of interest the respondents paid for export financing under this program was less than the amount of interest that would have been paid on a comparable short-term commercial loan. In addition, in the Preliminary Results, we determined that the program is specific, pursuant to section 771(5A)(A) and (B) of the Act, because receipt of the financing is contingent upon exporting. HYSCO reported using short-term export financing during the POR.

No information on the record or comments from interested parties has led us to alter our decision from the Preliminary Results that this program constitutes a financial contribution,

confers a benefit, and is specific under the Act. However, based on comments from interested parties, we have altered the manner in which we calculated the benefit conferred under this program. See Comment 1 below for a description of the benefit calculation.

To derive the next subsidy rate under this program, we divided the benefit by the free on board (f.o.b.) value of the respective company's total exports. Id. On this basis, in the Preliminary Results, we determine the net subsidy rate to be 0.03 percent ad valorem for HYSCO.

III. Analysis of Comments

Comment 1: The Short-Term Benchmark to be Used to Measure the Benefit Under the KEXIM Loan Program

HYSCO explains that in the Preliminary Results the Department used a company-specific 2008 short-term benchmark to measure the benefit of KEXIM loans that were taken out in 2008 but had interest payments outstanding in 2009, the POR. HYSCO argues that the Department should have instead utilized a company-specific 2009 short-term benchmark. HYSCO acknowledges that under 19 CFR 351.505(a)(2)(iv) the Department normally will use a short-term benchmark that corresponds to the year in which the government loan was taken out. HYSCO notes that 19 CFR 351.505(a)(2)(iv) goes on to state that:

However, if the Secretary finds that interest rates fluctuated significantly during the period of investigation or review, the Secretary will use the most appropriate interest rate based on the circumstances presented.

HYSCO argues that the facts of the instant review support an exception to the general preference for the use of a benchmark from the year in which the government loan was taken out. HYSCO explains that the KEXIM loans in question are variable rate, short-term loans and, as such, the variable rates outstanding during the POR changed on a monthly basis. HYSCO argues that because the terms of the loan contract established that the actual interest rates for interest payments it made during the POR would be set in the POR, it is more accurate and non-distortive to use a 2009 benchmark interest rate. HYSCO contends that the 2009 benchmark rate is more contemporaneous with the interest rates HYSCO actually paid during the POR. HYSCO argues that the appropriate, company-specific benchmark for 2009 is available on the record. See HYSCO's August 11, 2011, submission at Exhibit K-7.

HYSCO argues that as a result of being variable-rate loans the interest rates on the KEXIM loans varied significantly between 2008 and 2009. HYSCO argues that a comparison of the annual average of the 2008 and 2009 benchmark interest rates demonstrates the significant variation. See HYSCO's March 17, 2011, submission at Exhibit K-5 (for the 2008 benchmark) and HYSCO's August 11, 2011, submission at Exhibit K-7 (for the 2009 benchmark).

HYSCO argues that in prior proceedings the Department has adopted the approach HYSCO advocates in the instant review. HYSCO argues that in the Wheat from Canada Preliminary Determination the Department deviated from its general preference for using an annual average benchmark from the year in which the loans were taken out in favor of a monthly benchmark:

19 CFR 351.505(a)(2)(iv) states that the Department “normally will use an annual average of the interest rates on comparable commercial loans.” However, if the Department “finds that interest rates fluctuated significantly during the period of investigation or review, the {Department} will use the most appropriate interest rate based on the circumstances presented.” A review of the interest rates on the underlying loans and the benchmarks selected indicate that there was a substantial and sustained decrease in interest rates over the POI. For example, the prime rate went from 5.95 percent in August 2001, to a low of 3.75 percent in February and March, and then to 4.4 percent in July 2002. A similar pattern exists on the CWB’s actual loans. Accordingly, we have used monthly average benchmark interest rates in our benefit calculations.

See Preliminary Affirmative Countervailing Duty Determinations and Alignment of Final Countervailing Duty Determinations With Final Antidumping Duty Determinations: Certain Durum Wheat and Hard Red Spring Wheat From Canada, 68 FR 11374, 11377 (March 10, 2003) (Wheat from Canada Preliminary Determination). HYSCO states that the Department’s practice was upheld in Canadian Wheat Final Determination. See Notice of Final Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada, 68 FR 52741 (September 5, 2003) (Canadian Wheat Final Determination) and accompanying Issues and Decision Memorandum (Canadian Wheat Decision Memorandum). HYSCO argues that Swine from Canada constitutes another example of when the Department has deviated from its general preference for the use of an annual benchmark from the year in which the loan was taken out in favor of a monthly average benchmark for the POR. See Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada, 70 FR 12186 (March 2011, 2005) (Swine from Canada) and accompanying Issues and Decision Memorandum (Swine Decision Memorandum) at “Benchmarks for Loans”:

Under 19 CFR 351.505(a)(2)(iv), we will normally use an annual average of short-term rates as our benchmark. However, because these loans are advances on individual lines of credit throughout the POI, we have determined that use of monthly benchmarks will yield a more accurate calculation of the benefits.

HYSCO further argues that the Department’s approach with regard to long-term variable rate loans should inform the Department the approach to the short-term benchmark at issue in the instant review. According to HYSCO, when faced with a variable-rate, long-term loan, the Department first seeks to obtain a benchmark interest rate on a comparable variable-rate, long-term loan that was taken out in the same year as the government loan. HYSCO argues that in the absence of such a benchmark, the Department may use other reasonable benchmarks, such as comparable benchmark interest rates in effect during the POR or POI. See, 19 CFR 351.505(a)(5)(ii); see also; e.g., Certain Pasta from Italy: Final Results of the Seventh Countervailing Duty Administrative Review, 69 FR 70657 (December 7, 2004) (Pasta from Italy) and accompanying Issues and Decision Memorandum (Pasta Decision Memorandum) at Comment 2. HYSCO contends that the regulations and the Department’s approach concerning long-term variable rate loans recognizes that flexibility must be employed in order to avoid mismatches between government loans and benchmark loans that would, in turn, yield inaccurately measured benefits. HYSCO argues the Department should apply the same principal when deriving a benchmark to be compared to the short-term variable-rate loans HYSCO had

outstanding under the KEXIM program during the POR. On this basis, HYSCO argues that, in the absence of a variable rate benchmark from 2008, the Department should use an annual average of the commercial short-term loans it had outstanding during the POR when calculating the benefit under the KEXIM program.

Petitioners argue that the Department's approach in the Preliminary Results was fully consistent with the statute and its regulations and was not distortive. Petitioners argue that in accordance with 19 CFR 351.505(a)(2)(iv) the Department has consistently calculated the benchmark for short-term KEXIM loans using the weighted average interest rate for comparable short-term commercial loans that were taken out by the respondent in question in the same year that the KEXIM loans were provided, regardless of when the KEXIM loans were ultimately repaid. See Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, 73 FR 52315, 52316-52317 (September 9, 2008) (CORE Preliminary Results), unchanged in Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at "Benchmarks for Short-Term Financing."

Petitioners argue that HYSCO took out its KEXIM loans in 2008. See HYSCO's March 17, 2011, questionnaire response at 14. Thus, in accordance with its regulations and practice the Department properly used a 2008 short-term benchmark.

Petitioners contest HYSCO's argument that the Department should use a 2009 benchmark to account for the fact that the KEXIM loans it took out in 2008 and outstanding in 2009 carried variable interest rates. Petitioners argue that the Department's normal short-term loan benchmark methodology is not based on the presumption that the interest rates for government-provided short-term loans are fixed or variable. Citing to the Preamble, petitioners contend that the basis for the Department's use of a benchmark that was taken out in the same year as the government loan is the principle that the benefit from the government loan must be measured in comparison to the alternative financing that the respondent in question could have obtained on the market at the same time that it obtained the government loan. See Preamble, 63 FR at 65363-65364. Petitioners argue that in the instant review the alternative source of financing is represented by the weighted-average interest rate for the short-term loans that HYSCO obtained from commercial lender in 2008.

Petitioners dispute the notion that facts of the instant review should lead the Department to depart from its normal short-term benchmark methodology "where interest rates fluctuated significantly from the period of investigation or review." According to petitioners, the Preamble makes clear that the exception is limited to instances where interest rates fluctuate significantly, such as economies experience hyperinflation. See 63 FR at 65364. Petitioners argue that HYSCO has not argued or established that hyperinflation existed in 2008 or 2009.

According to petitioners, HYSCO argues that the KEXIM loans are analogous to long-term variable rate loans and, thus, should calculate the benchmark using the methodology for long-term variable rate loans. See 19 CFR 351.505(a)(5). Petitioners urge the Department to reject this approach. They argue that the fact that the provision concerning long-term variable rate loans was not included in the regulations governing short-term loans is significant. Petitioners contend that if the Department had intended for aspects of the long-term variable rate methodology to apply to short-term loans then it would have provided for them in the regulations or, at the very least, discussed it in the Preamble. The absence of such provisions in the context

of short-term loans, argue petitioners, demonstrates that the Department did not intend to apply the provisions to short-term loans.

Petitioners further argue that the Department's use of a weighted-average benchmark appropriately accounts for variations between and among short-term loans available to the respondent from commercial lenders during the same period that the KEXIM loans were taken out. Thus, argue petitioners, there is no need or justification for resorting to alternative methods except in cases of high or hyperinflation.

In contrast, HYSCO further asserts that the new record information submitted on December 2, 2011, confirms that interest rates changed significantly between 2008 and 2009, rendering the use of a 2008 benchmark inappropriate and distortive. See HYSCO's December 12, 2011 brief (HSYCO's December brief) at 2. HYSCO argues that the Preamble to the Department's countervailing duty regulations provides support for the use of HYSCO's 2009 benchmark. See Countervailing Duties, 63 FR 65348; (November 25, 1998). HYSCO points to the Preamble to the countervailing duty regulations that states:

We also wish to clarify that we intend to follow our practice of calculating short-term benchmarks on a calendar year basis. In most instances, the period of investigation or review is a calendar year, so the short-term benchmark will be calculated using commercial loans that were obtained (or could have been obtained) during the period of investigation or review. In situations where the loans under investigation span two calendar years, we will calculate two annual benchmarks corresponding to the two years.

HYSCO argues that because the POR is 2009, the Preamble indicates that the Department should be using commercial loans that were obtained during 2009 as the benchmark. See HYSCO's December brief at 4.

In rebuttal to petitioners' argument that alternative methods for determining benchmark interest rates outlined in the countervailing duty regulations is limited to hyperinflation, HYSCO argues that Petitioners' assertion is not true. See HYSCO's December brief at 6. HYSCO points to Swine from Canada and accompanying Swine Decision Memorandum. In rebuttal to petitioners' claim that HYSCO has not argued or shown that hyper-inflation existed in Korea from 2008-2009, HYSCO cites to the Preamble and asserts that it lists hyperinflation as one example of when the exception might apply. See Preamble, 63 FR 65364 (e.g., economies with a high inflation rate.") Id. According to HYSCO, a severe recession like that experienced in the 2008-2009 time period is exactly the sort of economic event that would cause interest rates to "fluctuate significantly." Id.

Furthermore, HYSCO argues that the Department has considered fluctuations of this magnitude to constitute sufficient grounds to deviate from an established methodology. See HYSCO's December brief at 6. HYSCO points to the Department's normal practice of using a company's annual costs in antidumping duty cases. See e.g., Antidumping Methodologies for Proceedings that Involve Significant cost changes Throughout the Period of Investigation (POI)/Period of Review (POR) that May Require Using Shorter Cost-Averaging Periods; Request for Comment, 73 FR 26364, 23,365 (May 9, 2008) (Quarterly Cost Request for Comment.) According to HYSCO, in cases where costs fluctuate significantly, the Department has established a framework for deviating from the practice of using the company's annual costs when this would lead to distortions. See HYSCO's December brief at 7. Furthermore, HYSCO argues that the Department considers a change in costs of 25 percent or greater to be significant

enough to deviate from its practice of using annual costs. See e.g., Circular-Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review. Likewise, HYSCO argues, the Department considers a 25 percent threshold to trigger its hyper-inflationary methodology. See HYSCO's December brief at 7.

According to HYSCO, in this case the interest rate fluctuations are greater than the 25 percent thresholds established in the analogous quarterly cost context. See HYSCO's December brief at 7. HYSCO argues that the exception of the general rule should be applied here, as in the quarterly cost context, to avoid "possible distortions." See Quarterly Cost Request for Comment, 73 FR at 26366. HYSCO asserts that distortions arise from using a short-term loan benchmark from 2008 as the basis of measuring countervailable benefits from loans whose interest rates were set in 2009 in a market where the interest rates fluctuated significantly due to a financial crisis. See HYSCO's December brief at 7. HYSCO argues that using a 2009 benchmark would not only limit these distortions, but would also be consistent with the Department's practice with respect to long-term variable rate loans. Id.

In rebuttal, petitioners argue that the administrative record clearly shows that HYSCO's KEXIM loans were "taken out" and the company benefitted from and had access to the loans in 2008. See U.S. Steel's December 19, 2011 rebuttal brief (December rebuttal brief) at 4. Petitioners oppose the benchmark proposed by HYSCO because it is comprised of loans that were taken out in a different time period, i.e., 2009. Id. Petitioners contend that these loans do not meet the statutory and regulatory requirement that the benchmark be based on comparable commercial loans that were taken out at the same time as the government loans. Id.

Petitioners argue that the Department has appropriate benchmark interest rates on the record in the form of the weighted-average interest rate for commercial loans taken out by HYSCO in 2008 or the interest rates of the loans reported by HYSCO in its December 2, 2011, supplemental questionnaire (December QR). See December rebuttal brief at 5. Petitioners assert that the variable rate loans reported by HYSCO in its December QR meet all the requirements set forth in the statute and the regulations. Id. Petitioners contend that these loans represent a more appropriate and accurate benchmarks for the KEXIM loans in this case than the annual average 2009 loan rate proposed by HYSCO. Id. at 6.

With respect to HYSCO's argument that the Preamble supports use of the 2009 annual average benchmark, petitioners argue that HYSCO's claim is based on a fundamental misinterpretation of the Preamble. See December rebuttal brief at 6. Petitioners argue that the Preamble states that the Department's normal practice is to calculate "short-term benchmarks on a calendar year basis." See Preamble, 63 FR at 65364. According to petitioners, it further states that, in most cases, because the POR is a calendar year, the annual average interest rate for the loans taken out during the POR in question will be for the same calendar year. Id. Petitioners state that it also states that where the investigation or review involves short-term government loans that were taken out in each of two consecutive calendar years, the Department will calculate two calendar-year benchmarks. Id. Petitioners assert that this portion of the Preamble further clarifies that under the statute and the Department's regulations, it is the year that the short-term loans were taken out that determines the selection of the benchmark for these loans. Id. Petitioners contend that the Preamble provides no support for HYSCO's proposal to use an interest-rate based on loans taken out in a different year, i.e., 2009. See December rebuttal brief at 7.

With respect to HYSCO's claim that the change in interest rates was due to the "extraordinary nature of the financial crisis" that began in late 2008 and continued into 2009,

petitioners argue that the Preamble limits this exception to apply only where interest rates fluctuate significantly over time, as in economies experiencing high or hyperinflation. See Preamble, 63 FR at 65364. Petitioners assert that HYSCO has failed to establish that Korea experienced hyperinflation or other significant changes in short-term interest rates that would warrant rejecting the interest rates of comparable commercial loans taken out by HYSCO in 2008 as benchmarks. See December rebuttal brief at 8. Petitioners point to the annual and monthly interest rates maintained by the Bank of Korea and argue that these data show that average short-term interest rates in Korea remained constant over 2008 and 2009. See GOK's December 15, 2010 QR at Exhibit J-1 and Exhibit J-4. Petitioners assert that this data reveal no evidence of a significant variation in interest rates resulting from the 2008 financial crisis or any other cause. See December rebuttal brief at 9. Moreover, according to petitioners, during this proceeding neither the GOK Nor HYSCO contend that Korea was experiencing hyperinflation or other allegedly "significant" changes in short term interest rates. Id. Therefore, petitioners argue that any changes in interest rates that may have occurred in 2008 and 2009 are not "significant" enough to warrant adoption of HYSCO's proposed benchmark. Id.

In HYSCO's January 11, 2012, supplemental questionnaire response (January 11 QR), HYSCO again asserts that the information provided in its submission shows significant changes between 2008 and 2009 as a result of changes in market interest rates following the 2008 financial crisis. See HYSCO's January 11 QR at 1. HYSCO argues that this supports the Department's use of a 2009 short-term benchmark in this case. Id.

In rebuttal, petitioners reiterate that the Department has information on comparable commercial loans that HYSCO "could actually obtain on the market" in the form of (i) the annual average of the actual interest payments that HYSCO made on the commercial loans that it took out at the same time as the KEXIM loans, i.e., during the 2008 or (ii) the actual interest payments on short-term variable rate loans that, like the KEXIM loans at issue, HYSCO took out in 2008. See U.S. Steel's January 17, 2012 rebuttal brief (U.S. Steel's January rebuttal brief) at 5. Petitioners assert that either of these benchmarks complies with the requirements of the statute and the Department's regulations and should be used for the calculation of the benefit to HYSCO from KEXIM loans in the final results. Id.

Moreover, petitioners oppose the use of a constructed interest rate benchmark (e.g. an interest rate that the base and spread are determined by the Department instead of the commercial banks) because it would not accurately represent HYSCO's actual short-term borrowing. See U.S. Steel's January rebuttal brief at 7. According to petitioners, there is no basis to believe that a constructed interest rate would accurately account for the factors that determined short-term, commercial interest rates in Korea much less constitute an accurate representation of the actual cost of borrowing for HYSCO or any other borrower during the relevant time period. Id. Petitioners argue that the use of constructed interest rate benchmarks, especially when interest rates for actual loans received by HYSCO are available, would not comply with the requirements of the statute and the Department's regulations. Id. at 9.

On January 20, 2012, HYSCO submitted rebuttal comments to petitioners January 17, 2012 rebuttal comments. HYSCO argues in its January 20, 2012 submission that there are unusual facts in this case which involve a catastrophic financial crisis that caused interest rates to plummet between late 2008 and 2009. See HYSCO's January 20, 2012 submission (HYSCO's January rebuttal brief) at 1. HYSCO acknowledges the Department's regulatory preference to use a benchmark interest rate from the year in which the short-term loan was taken out, however HYSCO argues that this is not a normal case. Id. at 2. HYSCO reiterates that in this case,

interest rates declined significantly between 2008 and 2009 as a result of a severe financial crisis. Id.

In response to the 2008 short-term benchmark rates that petitioners support, HYSCO argues that petitioners' argument overstates the extent to which the statute and regulations mandate the use of a benchmark interest rate from a particular year. See HYSCO's January rebuttal brief at 3. According to HYSCO, section 771(5)(E)(ii) of the Tariff Act of 1930, as amended, states that a benefit is conferred from a government loan if the interest rate paid is less than what the "recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Id. HYSCO maintains that the statute only mandates use of a benchmark for a comparable commercial loan that the recipient could obtain on the market. Id. HYSCO argues that the statute does not mandate the year in which the benchmark loan was received or limit the use of a benchmark interest rate from the year in which the interest rates were actually established. Id. HYSCO asserts that the Department instead measures the receipt of any interest benefit from a government loan when the interest is paid on the loan. Id. In this case, HYSCO maintains that the monthly interest rates for the variable-rate KEXIM loans were determined in the month in which the interest payment was due in 2009. Id. Therefore, HYSCO argues the 2009 benchmark interest rate provided in Exhibit K-7 of HYSCO's August 11, 2011 submission, which is based on comparable commercial loans that HYSCO actually obtained in the market, is the appropriate basis for comparison to the interest rates paid on the KEXIM loans during the 2009 POR. Id.

With respect to petitioners argument that the variable-rate loans reported in HYSCO's December 2, 2011, supplemental response represent the most appropriate and accurate benchmark because they were taken out in the same period when HYSCO's KEMIM loans were taken out, are variable rate loans, and have similar terms, HYSCO contends that these facts are inaccurate. See HYSCO's January rebuttal brief at 5. HYSCO asserts that the main problem with this argument is that it ignores the fact that the interest rates actually paid on the KEXIM loans were not established until 2009. Id. According to HYSCO, the KEXIM loans were two draw-downs from a line of credit accessed in 2008. See HYSCO's March 17, 2011 supplemental QR at 14 and Exhibit K-5. HYSCO asserts that the revolving line of credit provided for a variable interest rate that was reset monthly. See HYSCO's December 15, 2010 QR at Exhibit K-2 at 2. Therefore, HYSCO argues that the actual interest rates for HYSCO's interest payments made during the terms of the line of credit did not establish the actual interest rates for HYSCO's interest payments made during the POR, but instead set out a methodology for determining the interest rate when it came due. See HYSCO's January rebuttal brief at 6. Therefore, HYSCO argues, any benefit from the loans can only be determined with reference to the actual interest rate on the draw downs which were determined in 2009 when the interest was paid. Id. at 6.

With respect to petitioners argument that the Department should use a 2008 benchmark and not a constructed benchmark, HYSCO argues that petitioners are failing to mention the fact that the most significant component of the actual interest rate charged on the loans in question is the base rate. See HYSCO's January rebuttal brief at 7. HYSCO asserts that these base rates declined significantly between late 2008 and 2009. Id. Therefore, HYSCO requests that the Department recalculate HYSCO's benefit received from the receipt of short-term export financing from KEXIM using HYSCO's 2009 benchmark interest rate. Id.

Department's Position: HYSCO is arguing that the appropriate benchmark for the KEXIM short-term loans should be determined using a benchmark based entirely on loans issued in 2009

because: (1) while the short-term KEXIM loans were taken out in 2008, the interest payments on the loans were made in 2009; (2) these were variable rate loans and the interest rate varied significantly between 2008 and 2009; and (3) using a 2009 benchmark would be consistent with the Department long-term variable rate methodology under 19 CFR 351.505(c)(4). We disagree with these arguments. With respect to the first argument, the CVD regulations are explicit. Under 19 CFR 351.505(a)(2)(iv), for short-term loans, the Department will use an interest rate on comparable commercial loans based on “the year in which the government-provided loan was taken.” As HYSCO has acknowledged, the KEXIM loans were taken out in 2008; therefore, as required under 19 CFR 351.505(a)(2)(iv), the short-term loan benchmark is to be based on information from comparable commercial loans taken out in 2008.

We disagree that the Canadian Wheat Final Determination and Swine from Canada coupled with the purported fluctuations in the benchmark and KEXIM interest rates from 2008 to 2009 should compel the Department to calculate a benchmark comprised solely of interest rates issued in 2009. Korean respondents have made similar arguments with respect to a KEXIM short-term loan program in a prior countervailing duty investigation, which were explicitly rejected by the Department. See, Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination, 72 FR 60639 (October 25, 2007) (CFS from Korea) and accompanying Issues and Decision Memorandum at Comment 19:

... if the Department finds that interest fluctuated significantly during the POI, the Department will use the most appropriate interest rate based on the circumstances presented. However, we note that on this point, the Preamble to the Department’s regulations clarifies that the deviation from an annual average is intended for use in instances in which interest rates fluctuate significantly over time, such as in economies with high inflation rates. See 63 FR at 65364. No interested party has argued that Korea experienced high or hyperinflation in 2004 or 2005 nor is there any information indicating that Korea experienced significant inflation during those periods. Further, respondents have not claimed that significant price swings in Korea necessitate deviations from the Department’s normal subsidy calculation procedures regarding other programs at issue in the investigation.

We note that the Department issued CORE from Korea after the two cases cited by HYSCO and, thus, best reflects the Department’s current practice. Further, in the instant review, HYSCO and the GOK have failed to demonstrate or even claim that hyperinflation is otherwise impacting any other countervailable subsidy program or benefit calculation at issue in this review. Rather, it appears that HYSCO became acutely aware of the purported “fluctuations” in Korea’s interest rate markets after the issuance of the post-preliminary calculations and, even then, confined its comments on this issue to short-term loans issued between 2008 and 2009. Furthermore, as discussed below, in these final results, we are deriving benchmark rates and conducting our benefit calculations based on the commercial interest rate spreads existed in 2008, which is the year in which HYSCO received the KEXIM in question.

We find that HYSCO’s arguments concerning the Department’s approach with regard to long-term variable rate loans are off point. HYSCO argues that in the absence of a variable rate benchmark the terms of which were established in the same year as the terms of the countervailable loan, the Department’s practice is to use the commercial loans outstanding during the POI or POR as the basis for the variable rate, long-term benchmark. HYSCO asserts that the Department should apply the same approach with regard to the short-term loans in

question. HYSCO's arguments are off point because the record, in fact, contains short-term variable interest rates for comparable commercial loans the terms of which were established during the same year as the KEXIM loans in question.

Petitioners indicate that that benchmark used in the preliminary results is appropriate because it consists of the alternative short-term borrowing rates available from commercial sources at the time the KEXIM loans were taken out. Petitioners also oppose the use of a constructed interest rate benchmark (*e.g.*, an interest rate that the base and spread are determined by the Department instead of the commercial banks) because it would not accurately represent HYSCO's actual short-term borrowing. While we agree that the benchmark rate should be based on HYSCO's actual short-term borrowing during 2008, the year in which the KEXIM loans were taken out, the 2008 benchmark that was used in the Preliminary Results included both short-term fixed rate loans and short-term variable rate loans. Under 19 CFR 351.505(a)(1), the benchmark rate should be based on "comparable" commercial loans, and under 351.505(a)(2)(i), "comparable commercial loan" is defined to include similarities in the structure of the loan (whether fixed interest rate or variable interest rate.) The benchmark used in our Preliminary Results included all short-term loans taken out in 2008, both fixed-interest loans and variable rate loans. Therefore, consistent with 19 CFR 351.505(a)(2)(i), we have recalculated the benchmark to only include commercial variable-rate short terms loans taken out by HYSCO in 2008.

With respect to petitioners' statement that the Department should not construct an interest rate benchmark that is determined by a base and spread determined by the Department, we note that that the benchmark is calculated using the interest rate spread determined by the commercial banks as reported on HYSCO's actual variable rate short-term loans taken out in 2008.

As discussed above, HYSCO took out comparable, variable rate, short-term financing in 2008, which is the year in which the KEXIM short-term financing was taken out. Therefore, we used the variable rate loans provided by commercial banks during 2008 to determine our weighted-average commercial benchmark and compared that benchmark rate to the interest rate charged on the KEXIM loans. To determine the benefit from the KEXIM loan, we then compared the amount of actual interest paid on the KEXIM loan to the amount HYSCO should have paid at the commercial benchmark.

Recommendation

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

✓
Agree

Disagree

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

February 27, 2012
Date