



C-580-837
Administrative Review
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April 8, 2019

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the
Countervailing Duty Administrative Review, 2017: Certain Cut-
to-Length Carbon-Quality Steel Plate from the Republic of Korea

I. Summary

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on certain cut-to-length carbon-quality steel plate (CTL plate) from the Republic of Korea (Korea) for the period of review (POR) January 1, 2017, through December 31, 2017. This review covers two producers/exporters of subject merchandise, Hyundai Steel Company (Hyundai Steel) and Dongkuk Steel Mill Co., Ltd. (DSM), both of which Commerce individually examined as mandatory respondents. We preliminarily determine that both Hyundai Steel and DSM received countervailable subsidies that are *de minimis*.

II. Background

On February 10, 2000, Commerce published the *CTL Plate Order* in the *Federal Register*.¹ On February 1, 2018, Commerce published a notice of opportunity to request an administrative review of the *CTL Plate Order*.² On February 28, 2018, we received timely requests for

¹ See *Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate from India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-to-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea*, 65 FR 6587 (February 10, 2000) (*CTL Plate Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 4639 (February 1, 2018).

administrative review from DSM and Hyundai.³ On February 28, 2018, we also received a timely request from Nucor Corporation (hereinafter referred to as the petitioner) for review of the *CTL Plate Order* for DSM and Hyundai Steel.⁴ On April 16, 2018, Commerce initiated a CVD review with regard to the two producers for which interested parties requested individual review.⁵

On May 1, 2018, Commerce issued the Initial Questionnaire to the Government of Korea (GOK), DSM, and Hyundai Steel.⁶ Hyundai Steel and DSM submitted their respective affiliation responses to the Initial Questionnaire on May 16, 2018, and May 21, 2018.⁷ On July 5, 2018, the GOK submitted its response to the Initial Questionnaire.⁸ On July 6, 2018, and July 9, 2018, Hyundai Steel and DSM submitted their respective responses to section III of the Initial Questionnaire.⁹

On August 7, 2018, Commerce issued a supplemental questionnaire to DSM,¹⁰ to which DSM responded on August 14, 2018.¹¹ On August 8, 2018, Commerce issued supplemental questionnaires to Hyundai Steel and the GOK,¹² to which Hyundai Steel and the GOK responded on August 16, 2018, and August 17, 2018, respectively.¹³

³ See Letter from DSM, “Countervailing Duty Order on Certain Cut-To-Length Carbon-Quality Steel Plate from Korea - Request for Administrative Review,” dated February 28, 2018; *see also* Letter from Hyundai, “Certain Cut-To-Length Carbon-Quality Steel Plate from the Republic of Korea, Case No. C-580-837: Request for Countervailing Duty Administrative Review,” dated February 28, 2018.

⁴ See Letter from Nucor, “Certain Cut-To-Length Carbon-Quality Steel Plate from the Republic of Korea: Request for Administrative Review,” dated February 28, 2018.

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 16298 (April 16, 2018) (*Initiation*).

⁶ See Letter from Commerce, “Issuance of Initial Questionnaire,” dated May 1, 2018 (Initial Questionnaire).

⁷ See Letter from Hyundai Steel, “Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea, Case No. C-580-837: Response to Affiliated Companies Section of Initial Questionnaire,” dated May 16, 2018 (Hyundai Steel Affiliation QR); *see also* Letter from DSM, “Administrative Review of the Countervailing Duty Order on Cut-to-Length Plate from Korea for the 2017 Review Period — Identification of Affiliated Companies Required to Respond to Questionnaire,” dated May 21, 2018 (DSM Affiliation QR).

⁸ See Letter from GOK, “Administrative Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon-Quality Steel Plate from Korea for the 2017 Review Period – Response to Section II of Initial Questionnaire,” dated July 5, 2018 (GOK Initial QR).

⁹ See Letter from Hyundai Steel, “Certain Cut-to-Length Carbon-Quality Steel Plate from Korea, Case No. C-580-837: Response to Section III of Initial Questionnaire,” dated July 6, 2018 (Hyundai Steel Initial QR); *see also* Letter from DSM, “Administrative Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon-Quality Steel Plate from Korea for the 2017 Review Period – Response to Section III of Questionnaire,” dated July 9, 2018 (DSM Initial QR).

¹⁰ See Letter from Commerce, “Supplemental Questionnaire for Dongkuk Steel Mill Co., Ltd. (DSM),” dated August 7, 2018.

¹¹ See Letter from DSM, “Administrative Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon-Quality Steel Plate from Korea for the 2017 Review Period – Response to August 7 Supplemental Questionnaire,” dated August 14, 2018 (DSM Supplemental QR).

¹² See Letter from Commerce, “Supplemental Questionnaire Issued to Hyundai Steel Company (Hyundai Steel),” dated August 8, 2018; *see also* Letter from Commerce, “Supplemental Questionnaire Issued to Government of the Republic of Korea (GOK),” dated August 8, 2018.

¹³ See Letter from Hyundai Steel, “Certain Cut-to-Length Carbon-Quality Steel Plate from Korea, Case No. C-580-837: Response to 1st Supplemental Questionnaire,” dated August 16, 2018 (Hyundai Steel Supplemental QR); *see also* Letter from GOK, “Administrative Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon-

On September 10, 2018, the petitioner filed new subsidy allegations.¹⁴ On September 26, 2018, Commerce extended the due date of the preliminary results of this administrative review until February 28, 2019.¹⁵ On October 25, 2018, Commerce issued a memorandum in which it declined to initiate on the petitioner's NSAs.¹⁶

On January 28, 2019, Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.¹⁷ As a result, the revised deadline for the preliminary results in this review is now April 9, 2019.

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

III. Period of Review

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

IV. 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 is high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS)

Quality Steel Plate from Korea for the 2017 Review Period – Response to Supplemental Questionnaire," dated August 17, 2018 (GOK Supplemental QR).

¹⁴ See Letter from the Petitioner, "*Certain Cut- To-Length Carbon-Quality Steel Plate from South Korea: Resubmission of New Subsidy Allegations*," dated September 10, 2018 (NSA Submission). On August 6, 2018, the petitioner filed the NSA Submission on the record of the prior review. On September 10, 2018, the petitioner refiled the submission on the record of the instant review.

¹⁵ See Memorandum, "Cut-to-Length Carbon Quality Steel Plate from the Republic of Korea: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review," dated September 26, 2018.

¹⁶ See Memorandum, "New Subsidy Allegations Memorandum for Dongkuk Steel Mill Co., Ltd. and Hyundai Steel Co., Ltd.," dated October 25, 2018 (NSA Memorandum).

¹⁷ See Memorandum, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

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.

V. Subsidies Valuation Information

A. Allocation Period

For non-recurring subsidies, we applied the “0.5 percent test,” as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the average useful life (AUL). In the instant review, we are relying on a 15-year AUL. However, for purposes of the preliminary results, none of the programs we examined required the allocation of benefits over the AUL.

B. Attribution of Subsidies

Commerce’s regulations at 19 CFR 351.525(b)(6)(i) state that Commerce will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides that Commerce will attribute subsidies received by certain other companies to the combined sales of those companies when: (1) two or more corporations

with cross-ownership produce the subject merchandise; (2) a firm that received a subsidy is a holding or parent company of the subject company; (3) there is cross-ownership between an input supplier and a downstream producer and production of the input is primarily dedicated to the production of the downstream product; or (4) a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a corporation with cross-ownership with the subject company.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The Court of International Trade (CIT) upheld Commerce's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.¹⁸

Information from DSM indicates that, during the POR, none of its affiliates produced subject merchandise, DSM is not a subsidiary of any company, and, thus, DSM has no parent company or holding company.¹⁹ Accordingly, DSM responded to the Initial Questionnaire only with regard to DSM. Therefore, pursuant to 19 CFR 351.525(b)(6)(i), we attributed subsidies received by DSM to the sales of DSM.

Information from Hyundai Steel indicates that, during the POR, none of its affiliates produced subject merchandise, Hyundai Steel is not a subsidiary of any company, and, thus, Hyundai Steel has no parent company or holding company.²⁰ Accordingly, Hyundai Steel responded to the Initial Questionnaire only with regard to Hyundai Steel. Therefore, pursuant to 19 CFR 351.525(b)(6)(i), we attributed subsidies received by Hyundai Steel to the sales of Hyundai Steel.²¹

C. Benchmarks for Long-Term Loans and Discount Rates

During the POR, Hyundai Steel had outstanding countervailable long-term denominated loans from a government-owned bank.²² As benchmarks for countervailable, won-denominated long-term loans and as discount rates, we used, where available, the company-specific interest rates on

¹⁸ See *Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001) (*Fabrique*).

¹⁹ See DSM Affiliation QR at 6.

²⁰ See Hyundai Steel Affiliation QR at 14.

²¹ In the NSA Submission, the petitioner alleged that Hyundai Steel was cross-owned with Hyundai Green Power, an affiliated electricity provider, during the POR within the meaning of 19 CFR 351.525(b)(6)(iv) and, thus, that any subsidies allegedly received by Hyundai Green Power were attributable to Hyundai Steel. However, for the reasons discussed in the NSA Memorandum and consistent with Commerce's finding in the previous review, we have determined not to reconsider Commerce's prior finding that Hyundai Steel is not cross-owned with Hyundai Green Power. See NSA Memorandum at 3-5; see also *See Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review and Rescission of Countervailing Duty Administrative Review, in Part*, 83 FR 32840 (July 16, 2018) (*CTL Plate from Korea 2016 Final Results*) and accompanying Decision Memorandum (CTL Plate from Korea 2016 Final IDM) at Comment 1.

²² See Hyundai Steel Initial QR at 12 and Exhibit KEXIM-1.

the company's comparable commercial, won-denominated loans. If such loans were not available, we use, where available, the company-specific corporate bond rate on the company's public and private bonds, as we have determined that the GOK did not control the Korean domestic bond market after 1991.²³ This is the approach Commerce has taken in several prior Korean CVD proceedings.²⁴ Specifically, in those cases, we determined that, absent company-specific, commercial long-term loan interest rates, the won-denominated corporate bond rate is the best indicator of the commercial long-term borrowing rates for won-denominated loans in Korea, because it is widely accepted as the market rate in Korea.²⁵ Where company-specific rates were not available, we used the national average of the yields on three-year, won-denominated corporate bonds, as reported by the Bank of Korea (BOK). This approach is consistent with 19 CFR 351.505(a)(3)(ii) and our practice.²⁶ In accordance with 19 CFR 351.505(a)(2)(i), our benchmarks take into consideration the structure of the government-provided loans. For countervailable fixed-rate loans, pursuant to 19 CFR 351.505(a)(2)(iii), we used benchmark rates issued in the same year that the government loans were issued.

D. Denominators

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondent's receipt of benefits under each program. As discussed in further detail below, where the program has been found to be countervailable as a domestic subsidy, we have used total sales as the denominator for our rate calculations for DSM and Hyundai Steel. In the sections below, we describe the denominators we used to calculate the countervailable subsidy rates for the various subsidy programs.

VI. Analysis of Programs

A. Programs Preliminarily Determined to be Countervailable

1. Trading of Demand Response Resources (DRR) Program

The DRR Program was developed in November 2014 to allow the Korea Power Exchange (KPX) to respond in a timely manner to any imbalance between supply and demand of electricity in the market, curb peak demand, optimize the construction of additional generators, and save the supply cost of electricity.²⁷ The program contains two sub-programs, the DRR Program for Peak Curtailment and the DRR Program for Electricity Price Curtailment.²⁸ The former program is

²³ See, e.g., *See Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; and Rescission of Review, in Part; Calendar Year 2016*, 83 FR 10661 (March 12, 2018) (*CTL Plate from Korea 2016 Preliminary Results*) and accompanying Decision Memorandum (*CTL Plate from Korea 2016 Preliminary IDM*) at 6-7; unchanged in *CTL Plate from Korea 2016 Final IDM* at 3.

²⁴ See *CTL Plate from Korea 2016 Preliminary IDM* at 6-7; unchanged in *CTL Plate from Korea 2016 Final IDM* at 3.

²⁵ *Id.*

²⁶ *Id.*

²⁷ See GOK Initial QR at 37-38 and 301.

²⁸ *Id.* at 301-302 .

designed to curtail load during peak electricity demand periods, and the latter is intended to minimize power generation costs through price competition.²⁹ The KPX, which manages the DRR Program, pays multiple private Demand Management Business Operators, also called “aggregators,” which have direct, contractual relationships with end users of the program.³⁰ End users receive cash payments from those aggregators.³¹ Prior to that exchange between the KPX and the aggregators, the Korea Electric Power Corporation (KEPCO) pays the KPX for the latter’s role in demand curtailment under the program.³² KPX is majority-owned by KEPCO, which is, in turn, majority-owned by the GOK.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

DSM and Hyundai Steel each reported being end users under the DRR Program during the POR.³⁵ Consistent with our prior findings, we preliminarily find KEPCO and KPX to each be an “authority” within the meaning of section 771(5)(B) of the Act.³⁶ Also consistent with our prior findings, we preliminarily determine that the payments under this program constitute a financial contribution in the form of a direct transfer of funds from KPX to companies participating in this program under section 771(5)(D)(i) of the Act, and a benefit exists in the amount of the grant provided to Hyundai Steel and DSM in accordance with 19 CFR 351.504(a) and section 771(5)(E) of the Act. Our findings in this regard are consistent with Commerce’s practice.³⁷

The implementing law and rules for this program do not expressly limit eligibility to a specific enterprise or industry or group thereof, in accordance with section 771(5A)(D)(i) of the Act. However, the GOK submits that 3,580 companies were approved for the assistance under this program in 2017, while nine participants were rejected.³⁸ 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.³⁹

Because we found no evidence on the record indicating that subsidies under the DRR Program were tied to export sales, we used the total sales of DSM and Hyundai Steel, respectively, as a denominator to determine the countervailable subsidy rate under this program during the POR.

²⁹ *Id.*

³⁰ *Id.* at 303.

³¹ *Id.*

³² *Id.* at 305.

³³ *Id.* at 17.

³⁴ *Id.* at 301.

³⁵ See DSM Initial QR at 24; see also Hyundai Steel Initial QR at 30.

³⁶ See, e.g., *Large Diameter Welded Pipe from the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 30693 (June 29, 2018) (*LDWP from Korea Preliminary Determination*) and accompanying Decision Memorandum (*LDWP from Korea Preliminary IDM*) at 15; unchanged in *Large Diameter Welded Pipe From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 84 FR 6369 (February 27, 2019) (*LDWP from Korea*) and accompanying Decision Memorandum (*LDWP from Korea Final IDM*) at 13.

³⁷ *Id.*

³⁸ See GOK Initial QR at 313.

³⁹ See *LDWP from Korea Preliminary IDM* at 15; unchanged in *LDWP from Korea Final IDM* at 13.

On this basis, we preliminarily determine the net subsidy rate that DSM and Hyundai Steel received under this program to be 0.16 percent and 0.06 percent *ad valorem*, respectively.

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

Hyundai Steel and DSM reported receiving exemptions from local acquisition taxes and local property taxes under paragraph (4) of RSLTA Article 78.⁴⁰ Article 78 provides that any entity acquiring real estate in a designated industrial complex for the purpose of constructing new buildings or renovating existing ones shall be exempted from the acquisition tax.⁴¹ In addition, the entity located in these designated industrial complexes shall have the property tax reduced by 50 percent on the real estate for five years from the date the tax liability becomes effective. The tax exemption is increased to 100 percent if the relevant land, buildings, or facilities are located in an industrial complex outside of the Seoul metropolitan area.⁴² However, properties located in industrial complexes outside Seoul that were purchased during or after 2015 only qualify for a 75 percent tax exemption of property taxes and a 50 percent exemption of acquisition taxes.⁴³ The program is administered by the local governments in Korea.⁴⁴ The purpose of the program is to promote the development of the underdeveloped areas in Korea and to appropriately allocate the industries nationwide.⁴⁵ The GOK also stated that under the Local Tax Act Article 151, a 20 percent local education tax is levied on the amount of the property tax due. If a company is exempt from paying property taxes, it is also exempt from paying the associated education taxes.⁴⁶ Therefore, any exemption from property tax automatically results in a reduction in the education tax due.

We preliminarily determine that the tax reductions under RSLTA Article 78 constitute a financial contribution in the form of revenue forgone, as described under section 771(5)(D)(ii) of the Act, and a benefit under section 771(5)(E) of the Act and 19 CFR 351.509(a). We further preliminarily determine that the tax exemptions provided under this program are specific under section 771(5A)(D)(iv) of the Act because benefits are limited to enterprises located within designated geographical regions within their respective jurisdictions.

Hyundai Steel reported its tax benefits including the required Special Rural Development Tax that must be paid in order to receive the acquisition tax benefit, claiming the payment of Special Rural Development Tax as an offset in its benefit calculations.⁴⁷ However, we previously found that the “Special Rural Development Tax” does not meet the statutory requirement to be recognized as an offset.⁴⁸ Specifically, we stated that:

⁴⁰ See Hyundai Steel Initial QR at 20; *see also* DSM Initial QR’s at 14 and Appendix D-13-D-1.

⁴¹ See GOK Initial QR at 97 and Exhibit TAX-3 and DSM’s IQR at Appendix D-13-D-3.

⁴² *Id.* GOK’s Initial QR at Exhibit TAX-3 and DSM’s IQR at Appendix D-13-D-3.

⁴³ *Id.* DSM’s Initial QR at Appendix D-13-D-3 and Hyundai’s IQR at LTAX-2 and LTAX-3 .

⁴⁴ See GOK’s Initial QR at 97.

⁴⁵ *Id.*

⁴⁶ See Hyundai’s IQR at LTAX-7.

⁴⁷ *Id.* at 17.

⁴⁸ See *Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) (*Large Residential Washers from Korea Final Determination*)

The application of the Special Rural Development Tax is a consequence of the exemption of acquisition or registration taxes; the Special Rural Development Tax obligation arises only when the exemption is granted. It is not a prerequisite to the exemption the way an application fee might be. Furthermore, as provided in 19 CFR 351.503(e), when calculating the amount of the benefit conferred from a countervailable subsidy program, the Department does not consider the tax consequences of the benefit.⁴⁹

Accordingly, we calculated the tax benefits to Hyundai Steel and DSM without including an offset for the “Special Rural Development Tax.” To calculate the net subsidy rate for Hyundai Steel and DSM, we divided the total amount of the property, acquisition, and education tax savings by the respective total sales of Hyundai Steel and DSM during the POR. On this basis, we preliminarily determine that, under this program, Hyundai Steel received a countervailable subsidy rate of 0.02 percent *ad valorem* and that DSM received a net subsidy rate that is less than 0.005 percent *ad valorem* and would, therefore, not result in any measurable benefit during the POR.

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

Hyundai Steel reported receiving tax deductions under RSTA Article 25(2).⁵⁰ The purpose of this program is to facilitate the enhancement of energy efficiency in business sectors through a deduction of eligible expenses from corporate or income taxes payable.⁵¹ The statutory basis for this program is Article 25(2) of the RSTA, Article 22(2) of the Enforcement Decree of the RSTA, and Article 13(2) of the Ministerial Decree of RSTA.⁵² The eligible types of facilities investment are identified in Article 22(2) of the RSTA, while Appendix 8-3 of Ministerial Decree of the RSTA lists energy-related facilities which are eligible for this program, and Appendix 8-4 lists the facilities that are treated as manufacturing facilities for renewable energy production.⁵³

The GOK agency that administers this program is the National Tax Service (NTS), under the direction of the Ministry of Strategy and Finance (MOSF).⁵⁴ In order to obtain the tax deduction, the GOK notes that an applicant is required to submit: (i) an application for the tax deduction; and (ii) the report of the taxation scale to the NTS, which then reviews the materials submitted to determine the eligibility pursuant to the relevant laws and regulations.⁵⁵ Article 25(2) of the RSTA stipulates that ten percent of the eligible investment can be deductible from the taxes

and accompanying Decision Memorandum (Large Residential Washers from Korea Preliminary IDM) at 16 and Comment 10.

⁴⁹ *Id.*

⁵⁰ *See* Hyundai Steel Initial QR at 17.

⁵¹ *See* GOK Initial QR at 250.

⁵² *Id.* at 251.

⁵³ *Id.* at 252.

⁵⁴ *Id.* at 250 and 253.

⁵⁵ *Id.* at 255.

payable by a corporation or an individual taxpayer.⁵⁶ DSM reported that it did not use this program during the POR.

The GOK indicated that information on program usage as it regards tax returns filed during calendar year 2017 are not yet available.⁵⁷ Therefore, for purposes of our specificity analysis, we have relied, in part, on usage data from the GOK's *Statistical Yearbook 2017* that corresponds to tax returns filed during calendar 2016, the most recent year for which usage information is available.⁵⁸ The *Statistical Yearbook 2017* indicates that there were 645,061 corporate tax returns filed in 2016,⁵⁹ of which 589 claimed the Article 25(2) tax deduction.⁶⁰ Accordingly, we preliminarily determine that this program is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because the actual number of recipients, 589, is limited. This finding is consistent with *LDWP from Korea*, whose period of investigation also covered calendar year 2017.⁶¹ We also preliminarily determine that this program results in a financial contribution from the GOK to recipients in the form of revenue forgone, as described in section 771(5)(D)(ii) of the Act. The benefit conferred on the recipient is the difference between the amount of taxes it paid and the amount of taxes that it would have paid in the absence of this program, in accordance with section 771(5)(E) of the Act and described in 19 CFR 351.509(a), effectively, the amount of the tax credit claimed.

To calculate the net subsidy rate, we divided the amount of the tax savings received by Hyundai Steel by its total sales during the POR. On this basis, we preliminarily determine that Hyundai Steel received a countervailable subsidy rate of 0.02 percent *ad valorem* under this program.

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

Introduced in 2007, RSTA Article 25(3) aims to motivate investments in facilities that are constructed for the purpose of preserving the environment.⁶² The GOK submits that any entity making an investment in facilities under this program may apply for a ten percent income or corporate tax deduction.⁶³ Administered by the NTS, under the direction of the MOSF, Article 25(3) of the RSTA is the law authorizing the deduction, which is implemented through Article 22(3) of the Enforcement Decree of the RSTA.⁶⁴ Hyundai Steel made investments in its facilities for environmental conservation and claimed the tax deduction for tax year 2016 that was reflected on the income tax return it filed during the POR.⁶⁵ DSM reported that it did not use this program.

⁵⁶ *Id.* at 250.

⁵⁷ *See* GOK Initial QR at 271.

⁵⁸ *Id.*

⁵⁹ *See* Memorandum, "Placement of Public Version of Questionnaire Response from the Government of Korea on Record of Review," (GOK QNR Response Memorandum) dated April 3, 2019.

⁶⁰ *See* GOK Initial QR at 259.

⁶¹ *See* LDWP from Korea Preliminary IDM at 19; unchanged in LDWP from Korea Final IDM at 14.

⁶² *See* GOK's IQR at 264.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *See* Hyundai Steel Initial QR at 18 and Exhibit 38 for their 2016 tax return.

As noted above for purposes of our specificity analysis we have relied, in part, on usage data from the GOK's *Statistical Yearbook 2017* that corresponds to tax returns filed during calendar 2016, the most recent year for which usage information is available. The *Statistical Yearbook 2017* indicates that there were 645,061 corporate tax returns filed in 2016,⁶⁶ of which 311 claimed the Article 25(3) tax deduction.⁶⁷ Because only 311 companies benefitted from this program during the period corresponding to tax year 2016, we preliminarily determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act because the actual number of recipients is limited.⁶⁸ This finding is consistent with *LDWP from Korea*, whose period of investigation also covered calendar year 2017.⁶⁹ We also preliminarily determine that this program results in a financial contribution from the GOK to recipients in the form of revenue foregone, as described in section 771(5)(D)(ii) of the Act. The benefit conferred on the recipient is the difference between the amount of taxes it paid and the amount of taxes that it would have paid in the absence of this program, as provided under section 771(5)(E) of the Act and described in 19 CFR 351.509(a), effectively, the amount of the tax credit claimed.

To calculate the net subsidy, we divided the amount of the tax savings received by Hyundai Steel by its total sales during the POR. On this basis, we preliminarily determine that Hyundai Steel received a countervailable subsidy rate of 0.05 percent *ad valorem* under this program.

5. Tax Deduction Under Restriction of Special Taxation Act (RSTA) Article 26

Hyundai Steel and DSM reported receiving benefits under this program.⁷⁰ Article 26 was first introduced through the RSTA in 1982 to encourage companies to make investments out of the overcrowding control region of the Seoul Metropolitan Area in their respective fields of business by providing them with tax incentives.⁷¹ Eligible companies are able to claim a tax credit of up to ten percent in eligible investments in facilities.⁷² The GOK states that Article 26 was revised on December 27, 2010, adding job creation as a requirement for companies to qualify for tax deductions for facilities investments, and that the article has been renamed “tax credit for employment-creating investments.”⁷³

The relevant law authorizing the credit, RSTA Article 26, limits this program to enterprises or industries within a designated geographical region within the jurisdiction of the authority providing the subsidy, areas outside the Seoul Metropolitan Area. Accordingly, we preliminarily determine that this program is regionally specific in accordance with section 771(5A)(D)(iv) of the Act. This finding is consistent with our determination in *LDWP from Korea*.⁷⁴ We also preliminarily determine that the tax credits under this program are a financial contribution in the form of revenue forgone by the government under section 771(5)(D)(ii) of the Act and provide a benefit to the recipient in the amount of the difference between the taxes it paid and the amount

⁶⁶ See GOK QNR Response Memorandum dated April 3, 2019.

⁶⁷ See GOK Initial QR at 271.

⁶⁸ See *LDWP from Korea* Preliminary IDM at 20; unchanged in *LDWP from Korea* Final IDM at 14.

⁶⁹ See *LDWP from Korea* Preliminary IDM at 20; unchanged in *LDWP from Korea* Final IDM at 14.

⁷⁰ See Hyundai Steel Initial QR at 17; see also DSM Initial QR at 31 and Appendix D-18-C-1.

⁷¹ See GOK Initial QR at 277.

⁷² *Id.*

⁷³ *Id.* at 277.

⁷⁴ See *LDWP from Korea* Preliminary IDM at 20-21; unchanged in *LDWP from Korea* Final IDM at 14.

of taxes that it would have paid in the absence of this program, as provided under section 771(5)(E) of the Act and described under to 19 CFR 351.509(a)(1).

To calculate the net subsidy rate for Hyundai Steel and DSM, we divided the amount of the tax savings received by the respective total sales of Hyundai Steel and DSM. On this basis, we preliminarily determine that under this program Hyundai Steel received a net subsidy rate of 0.28 percent *ad valorem* and DSM received a net subsidy rate of 0.08 percent *ad valorem*.

6. Modal Shift Program

The GOK established this grant program in 2010 to decrease greenhouse gas emissions in the transportation and logistics sector.⁷⁵ Specifically, through this program, the GOK aims to increase the transport volume by railroad and vessels to decrease the transport volume by heavy freight motorized vehicles.⁷⁶ Under this program, the GOK provides grants from the Ministry of Land, Infrastructure and Transport (MOLIT) to administering agencies for truck-to-rail “modal shift” entities and grants from the Ministry of Oceans and Fisheries (MOF) to administering agencies for truck-to-marine freight “modal shift” entities.⁷⁷ The legal framework for this program is Article 21 of the Sustainable Transportation Logistics Development Act, Article 24 of its Enforcement Decree, and Article 9 of the Regulations on Modal Shift Agreement (MSA).⁷⁸ Participating companies must submit a business plan for truck-to-rail or truck-to-marine freight “modal shift” to the evaluation committee of the relevant agency. When the relevant agency confirms that the obligations under the MSA are being executed by the applicant, support is provided. As the effective period of the MSA is generally one year, support under this program is provided one year after the conclusion of the MSA.⁷⁹

Hyundai Steel reported that it used this program and received a grant during the POR.⁸⁰ The criterion that Hyundai Steel had to meet to qualify for assistance was to shift some of its truck transportation to boat transportation to promote a low-carbon transportation logistics system by reducing greenhouse gas emissions. Because the proposals were consistent with the Sustainable Transportation Logistics Development Act, the proposals were approved by the Korean Shipping Association.⁸¹ DSM reported that it did not use this program during the POR.

We preliminarily determine that a financial contribution from the GOK exists in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act and that the program confers a benefit in the form of a grant in an amount equal to the assistance as provided under section 771(5)(E) of the Act and as described under 19 CFR 351.504(a). In the years 2014-2017, only five, five, six, and four companies, respectively, participated in this program.⁸² Therefore, we preliminarily determine that this program is *de facto* specific under section 771(5A)(D)(iii)(I) of

⁷⁵ See GOK Initial QR at 291.

⁷⁶ *Id.*

⁷⁷ *Id.* at 291.

⁷⁸ *Id.* at 293.

⁷⁹ *Id.* at 296.

⁸⁰ See Hyundai Steel Initial QR at 29.

⁸¹ *Id.* at Hyundai Steel’s Exhibit MODAL-1.

⁸² See GOK Initial QR at 299.

the Act because the number of companies that received assistance under this program was limited. Our findings are consistent with Commerce's practice.⁸³

To calculate the benefit during the POR, we divided the amount of assistance received by Hyundai Steel's total sales. Accordingly, we preliminarily determine the net subsidy rate that Hyundai Steel received under this program is 0.01 percent *ad valorem*.

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

Funding for research and development projects under the ITIPA program is designed to enhance the competitiveness of Korea's national economy through the development of industrial technologies.⁸⁴ The legal basis of this program is Article 11 of the ITIPA and relevant regulations. Under these provisions, the Ministry of Trade, Industry and Energy (MOTIE) is authorized to regulate and operate this program, and the Korea Evaluation Institute of Industrial Technology (KEIT), the Korea Institute of Energy Technology Evaluation and Planning (KETEP), and the Korea Industrial Complex Corporation (KICOX) are authorized to administer this program.⁸⁵ Under Article 5 of the ITIPA, KEIT, KETEP, and KICOX prepare a five-year innovation plan as well as an annual implementation plan for the development of industrial technology.⁸⁶ Under Articles 7 and 11 of the ITIPA, the MOTIE implements and funds the development projects included in the annual implementation plans prepared by the KEIT, KETEP, and KICOX.⁸⁷

The plan includes the technology research and development (R&D) that KEIT, KETEP, and KICOX intend to pursue, and describes the application process and supporting documentation required from potential participants. According to the GOK, any person seeking to participate in one of the projects described in KEIT's basic plan then prepares an industrial technology development business plan that conforms to the requirements set forth in the basic plan and submits that business plan to the Review Committee established by MOTIE. The Review Committee then evaluates the business plans submitted to verify their conformity with the terms and conditions set forth in the basic plan. If the business plans conform with the basic plan, MOTIE and the applicants for the program sign a contract.⁸⁸

We preliminarily determine there is no record evidence indicating that receipt of ITIPA grants are contingent upon export performance or the use of domestic over imported goods pursuant to 771(5A)(B) and (C) of the Act. We preliminarily determine, however, that the ITIPA program is *de jure* specific under section 771(5A)(D)(i) of the Act, because Article 11 of the ITIPA limits projects to an enterprise or industry engaged in projects stipulated in the annual implementation plan, as prepared by KEIT, that will support the development of the Korean national economy.

⁸³ See LDWP from Korea Preliminary IDM at 23; unchanged in LDWP from Korea Final IDM at 15.

⁸⁴ See GOK Initial QR at 8.

⁸⁵ *Id.*

⁸⁶ *Id.* at 171.

⁸⁷ *Id.* at ITIPA-1.

⁸⁸ See GOK Initial QR at 9 and ITIPA-1.

Under this program, companies and the GOK contribute funds to the research projects. According to the GOK, it may require participating firms to repay a portion of the government funding if the government deems the research project a success.⁸⁹ For the portion of the subsidy that does not have to be repaid, we preliminarily determine that a financial contribution is provided within the meaning of section 771(5)(D)(i) of the Act because the GOK's payments constitute a direct transfer of funds, and a benefit is conferred in the amount of the grant provided, pursuant to section 771(5)(E) of the Act and 19 CFR 351.504(a). Our findings in this regard are consistent with Commerce's prior Korean CVD proceedings.⁹⁰

DSM reported receiving an ITIPA grant during the POR related to development of a "Smart Operation System Based on Steel Manufacturing Big Data" (Big Data Grant) project.⁹¹ DSM did not report having to repay any of this grant. Based on the information in DSM's application documents, we preliminarily find that the Big Data Grant is related to steel production. DSM's financial statement indicates that its production is limited to steel production and the total sales information DSM provided to Commerce is limited to its operations and does not include income from service revenue.⁹² Therefore, we find that the issue of whether the Big Data Grant is tied to steel sales or total sales is moot. Accordingly, we divided the amount of the Big Data Project Grant DSM received during the POR by DSM's total sales for the POR. Accordingly, we preliminarily determine that the net subsidy rate DSM received under this program to be 0.01 percent *ad valorem*.

DSM also received other ITIPA grants during the POR.⁹³ Hyundai Steel also reported receiving ITIPA Grants.⁹⁴ DSM and Hyundai Steel did not report having to repay these grants. Consistent with Commerce's practice regarding the ITIPA grant program, we have analyzed these programs individually.⁹⁵

As indicated here and in the "Programs Preliminarily Determined Not to Confer a Measurable Benefit," section of this memorandum, the Big Data Grant was the only ITIPA grant DSM received that resulted in a measurable benefit and that was not otherwise tied to non-subject merchandise. Concerning the ITIPA grants received by Hyundai Steel, none of the grants resulted in measurable benefits during the POR.

B. Programs Preliminarily Determined Not to Confer a Measurable 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

⁸⁹ See GOK Initial QR at 171.

⁹⁰ See CTL Plate from Korea 2016 Preliminary IDM at 11; unchanged at CTL Plate from Korea 2016 Final IDM at 5.

⁹¹ See DSM Initial QR at 18 and Exhibits D-15 and D-15-L.

⁹² See DSM Initial QR at 18 and Exhibit D-15-L, which contains the business plan for the Big Data Grant Project; see also Exhibit D-10, which contains its total sales information; see also Exhibit D-7-D, which contains DSM's 2017 financial statement at 14 (English version), which species that DSM's product line is limited to steel products.

⁹³ See DSM Initial QR at 17-18.

⁹⁴ See Hyundai Steel Initial QR at 26.

⁹⁵ See LDWP from Korea Preliminary IDM at 25; unchanged in LDWP from Korea Final IDM at 17.

programs listed below resulted in measurable net subsidy rates (*e.g.*, net subsidy rates that were greater than or equal to 0.005 percent), we used the companies' respective total sales as the denominator. Based on this analysis, we preliminarily determine that benefits under the following programs did not confer a measurable benefit during the POR:

1. KEXIM Financing
2. GOK Directed Credit: 1992-2001 Directed Credit
3. Usance Loans from the Korea Development Bank (KDB)
4. Tax Deductions Under RSTA Articles 24 and 25
5. Tax Deductions Under RSTA Article 25
6. Tax Deductions Under RSTLA Articles 19, 31, 46, 84
7. Local Property Tax Exemptions Under Articles 109 and 112
8. Tax Exemptions Under Jeju Tax Ordinance Article 31-10
9. Natural Gas Promotion Grants
10. Electric Vehicle Purchase Grants
11. Incentives Under the Employment Insurance Act
12. Wharfage Exemptions at Asan Bay
13. Various Industrial Grants Pursuant to the Industrial Technology Innovation Promotion Act (ITIPA)
14. Grants Under Demand Adjustment Program of Emergent Reduction (ER) Program (formerly known as the Emergency Road Reduction Program)
15. Electricity Load Factor Program
16. Yeongil Harbor Grants
17. Gwangyang Port Grants
18. Workplace Nursery Grants
19. Suncheon Harbor Fee Exemptions
20. Art Festival Grants

C. Other Programs

1. VAT Exemptions on Imports of Anthracite Coal

Our Initial Questionnaire solicited information from respondents regarding this program. However, Commerce found this program to be not countervailable in *Hot-Rolled Steel from Korea*.⁹⁶ We find no information on our record or arguments from interested parties warrants reconsideration of Commerce's prior determination. Therefore, we find this program to be not countervailable.

⁹⁶ See *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Preliminary Negative Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 81 FR 2172 (January 15, 2015) (*Hot-Rolled Steel from Korea Preliminary Determination*) and accompanying Decision Memorandum (*Hot-Rolled Steel from Korea Preliminary IDM*) at 33-34; unchanged in *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products From the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016) (*Hot-Rolled Steel from Korea*) and accompanying Decision Memorandum (*Hot-Rolled Steel from Korea Final IDM*) at 25.

2. Earthquake Rebar Project Grants under the ITIPA Program

DSM reported receiving an ITIPA grant during the POR related to an Earthquake Rebar Project.⁹⁷ DSM reported that receipt of ITIPA grants requires the applicant to submit a business plan to the GOK that specifies the product to be developed using the funds granted under the program.⁹⁸ We reviewed the business plan DSM submitted for the Earthquake Rebar Project and find that it specifies the development of a product that is distinct and downstream from CTL plate.⁹⁹ Therefore, we preliminarily determine that the ITIPA grant DSM received in connection with its Earthquake Rebar Project is tied to non-subject merchandise. Our finding in this regard is consistent with Commerce's practice concerning research and development grants that are contingent upon the development of non-subject merchandise.¹⁰⁰

D. Programs Preliminarily Determined Not to be Used

DSM reported non-use of the following programs:

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

Hyundai Steel reported non-use of the following programs:

- GOK Pre-1992 Directed Credit Program

⁹⁷ See Received at DSM Initial QR at 20.

⁹⁸ *Id.* at Exhibit D-15 at 2-3.

⁹⁹ *Id.* at Exhibit D-15-H.

¹⁰⁰ See, e.g., *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2012*, 79 FR 16283 (March 25, 2014) (*CTL Plate from Korea 2012 Preliminary Results*) and accompanying Decision Memorandum (CTL Plate from Korea 2012 Preliminary IDM) at 8-9; unchanged in *Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 46770 (August 11, 2014) (*CTL Plate from Korea 2012 Final Results*) and accompanying Decision Memorandum (CTL Plate from Korea 2012 Final IDM) at 4.

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

VII. Recommendation

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

Agree

Disagree

4/8/2019

X

Gary Taverman

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance