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February 6, 2004

MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Joseph A. Spetrini
Deputy Assistant Secretary
for Import Administration, Group III

SUBJECT: Issues and Decision Memorandum for the Administrative Review of Structural Steel Beams from the Republic of Korea

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SUMMARY

We have analyzed the case briefs and rebuttal briefs of interested parties in this administrative review of the antidumping duty order covering structural steel beams from the Republic of Korea. As a result of our analysis, we have made changes from the preliminary results of review for Dongkuk Steel Mill Company, Ltd., ("DSM"). The changes can be found in the Analysis for the Final Results of the Antidumping Duty Administrative Review of Structural Steel Beams from the Republic of Korea - Dongkuk Steel Mill Company, Ltd., dated February 6, 2004 ("DSM Final Analysis Memorandum").

We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comment and rebuttal briefs by interested parties.

BACKGROUND

On September 9, 2003, the Department published in the Federal Register the preliminary results of its administrative review of the antidumping duty order on structural steel beams from the Republic of Korea. See Preliminary Results of Antidumping Duty Administrative Review: Structural Steel Beams from the Republic of Korea, 68 FR 53129 (September 9, 2003) ("Preliminary Results"). The merchandise covered by this order is structural steel beams as described in the "Scope of the Review" section of the Federal Register notice. The period of review ("POR") is August 1, 2001 through July 31, 2002.

The respondents are DSM and INI Steel Company ("INI"). We conducted verification of INI's sales information from June 23 through June 27, 2003. Additionally, we conducted verification of DSM's sales information from July 18, 2003 through July 31, 2003. We invited parties to comment on our preliminary results of review. We received written comments on October 24, 2003, from petitioners, DSM and INI. On October 30, 2003, we received rebuttal comments from petitioners, DSM and INI. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

LIST OF ISSUES FOR DISCUSSION

A. Issues with respect to INI

1. Whether all or certain INI home market sales of non-Korean specification subject merchandise are outside the ordinary course of trade.

B. Issues with respect to DSM

2. Whether all of DSM's home market sales of an ASTM-specification subject merchandise are outside the ordinary course of trade.

3. Whether DSM and the trading company in Korea are affiliated.

4. Whether the Department should recalculate DSM's indirect selling expenses.

CHANGES TO THE COMPUTER PROGRAM

Based on our analysis of comments received, we made changes in the margin calculation for DSM. The changes are listed below:

- We changed the calculation of DSM's home market affiliate, Dongkuk Industries Company ("DKI"), indirect selling expenses by applying DKI's gross unit price to DKI's indirect selling expense ratio.

DISCUSSION OF THE ISSUES

ISSUES WITH RESPECT TO INI

1. Whether all or certain INI home market sales of non-Korean specification subject merchandise are outside the ordinary course of trade.

Petitioners allege that INI made home market sales of subject merchandise that were outside the ordinary course of trade during the POR. Petitioners argue that all non-Korean specification ("non-KS") sales should be excluded from the home market database on the basis that they are outside the ordinary course of trade. Petitioners also argue in the alternative that if the Department does not find all non-KS sales to be outside the ordinary course of trade, then a few selected home market sales should be considered outside the ordinary course of trade.

Petitioners contend that all non-KS home market sales are outside of the ordinary course of trade because the Korean market only uses Korean specification ("KS") beams for construction projects in Korea. Petitioners also allege that KS beams are not interchangeable and cannot be used with non-KS beams. Petitioners argue that the home market sales quantity of non-KS beams is small compared to the home market sales quantity of KS beams. Thus, Petitioners contend that the Department should find that all non-KS sales are outside the ordinary course of trade.

Petitioners argue that if the Department is unwilling to exclude all non-KS home market sales, then we should find that a certain grade or specific home markets sales are outside the ordinary course of trade. Petitioners contend that the Department overlooked certain sales in its preliminary results as outside the ordinary course of trade. Petitioners allege that these sales should be excluded because they are overruns, and have the same exact characteristics as the other grades that the Department determined to be outside the ordinary course of trade in its preliminary results.

Specifically, Petitioners allege that a certain set of non-KS grade beams are overruns, since the beams sat in inventory for extended amount of time. Petitioners also allege that the tonnage maintained in inventory of this grade is similar to the sales tonnages that the Department found to be outside the ordinary course of trade. Petitioners contend these beams are also similar to beams that the Department found to be outside the ordinary course of trade because these beams were primarily produced in inch sizes, which do not conform to the home market KS grades produced in metric sizes.

Petitioners state that it is clear that INI manufactures a specific grade beams produced in inch sizes for the purposes of selling to Korean companies that have overseas building projects. Petitioners also note, as the verification report indicates and INI claims, that INI sales from the home market are made from inventory and any excess remains in INI's inventory. Petitioners

contend that this excess that remains in inventory is then sold in small quantities and at fire-sale prices.

Petitioners allege that although certain sales to Korean companies of a specific grade produced in inch sizes was clearly produced and sold to Korean companies that had overseas building projects and appear to be aberrational home market sales, which should be found outside the ordinary course of trade. Petitioners allege that these home market sales of a specific grade have the same characteristics of home market sales of other grades that the Department found to be outside the ordinary course of trade.

Petitioners argue that if we removed those sales of a specific grade in inches sizes that were produced and sold to Korean companies that had overseas building projects, then the Department would also find a subset of sales that have similar characteristics to those grades that the Department already determined to be outside of the ordinary course of trade. Petitioners argue that the home sales of the specific grade that do not have the appearance of being produced for overseas building projects are outside the ordinary course of trade and should be removed from the home market database. Lastly, Petitioners argue that just because some sales of a specific grade merchandise may be within the ordinary course of trade, it does not follow that all sales of that specific grade are within the ordinary course of trade.

INI contends that Petitioners' argument that certain sales of a specific grade is merely a second attempt by Petitioners to selectively choose certain home market sales, and that the Petitioners' analysis is based on assumption, analogy, speculation and misrepresentation of the record. INI asserts that the Department should reject Petitioners arguments since the Department has already concluded that it is not the Department's practice to exclude sales simply because they appear to be low priced. See INI's rebuttal comments, Re: Structural Steel Beams from the Republic of Korea: Second Administrative Review of the Antidumping Duty Order, Korea dated October 30, 2003, at 17 ("INI's Rebuttal Comments") (citing Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews, 64 FR 12927, 12939 (March 16, 1999) ("CR and CR Carbon Flat Products from Korea")). INI argues, by using the similar analysis the Department used to determine whether certain grades were outside the ordinary course of trade rebuts Petitioners' claims, that the specific grade is not outside the ordinary of course of trade. INI argues the specific grade has more similar sales characteristics to the KS grade home market sales that the Department considers to be in ordinary course of trade, then the grade has with other non-KS home sales that Department determined were outside the ordinary course of trade.

INI notes that at verification the Department found that non-KS merchandise was sold in higher quantities in 1999, 2000, and 2001, compared to 2002, because of Korea's 1998 financial crisis. See Memorandum from Stephen Bailey, Michael Holton, and Robert Bolling to the File, INI Steel Company Home Market Sales and United States Sales Verification Report; Antidumping Duty Administrative Review on Structural Steel Beams from Korea, dated August 20, 2003, at 11 ("INI Verification Report"). INI also notes that the Department verified that although

"exceptional" merchandise was produced for a specific customer at their request, INI had no legal recourse to require that the customer purchase the merchandise from inventory. Thus, INI argues that some of the non-KS merchandise in INI's domestic inventory represents quantities resulting from cancelled requests.

Additionally, INI notes that at verification the Department examined non-KS merchandise to test if there was a viable Korean market for non-KS merchandise. INI states that there is a market in Korea for the purchase of a specific grade of non-KS merchandise used by Korean companies in the construction of overseas projects, as the Petitioners admit and the Department found at verification. INI argues Petitioners allegations that sales from inventory must be overruns is misplaced. Because a specific ASTM grade was found to be outside the ordinary course of trade, it does not follow that sales of a different ASTM grade are also sales outside the ordinary course of trade. INI argues that Petitioners' inventory carrying period analysis of a specific grade sitting in inventory for extended amount of time is based on an unsupportable calculation and does not take into consideration new production.

Further, INI argues that Petitioners have provided no basis or record evidence for distinguishing between the sales that are purported by Petitioners to be in the ordinary course of trade (those sold for use in overseas projects), and those sales that are not. INI notes that many of the sales that the Petitioners contend should also be outside the ordinary course of trade have similar gross profits to those of KS grade merchandise. INI also notes that the sales Petitioners contend should be outside the ordinary course of trade do not share similar characteristics with respect to the sales quantity and price of sales that Department found to be outside of the ordinary course of trade in its preliminary results.

Specifically, INI argues that there is not a similar relation with respect to price, profit and quantity among the sales that Petitioners argue are outside the ordinary course of trade. INI also argues that an examination similar to the Petitioners' case brief of all KS sales would reveal similar variations in shipment size, unit price and gross of profit. INI further argues that there is no justification for engaging in Petitioners deconstruction of a grade when such an exercise was not applied to any other grade in the home market.

Finally, INI argues that many of Petitioners' proposed sales outside of the ordinary course of trade are the same sales that the Department rejected in its original analysis. INI contends that Petitioners' proposed sales outside of the ordinary course of trade further exemplifies the fact the Petitioners are merely selectively choosing certain home market sales, since many of the sales are made in large quantities and at non-aberrational prices.

Department's Position: We agree with INI that non-KS sales as a group are not outside the ordinary course of trade. Additionally, the Department agrees with INI that neither the specific grade in question, nor a subset of its sales, is outside the ordinary course of trade. Section 771(a)(15) of the Act defines the term "ordinary course of trade" as "the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been

normal in the trade under consideration with respect to merchandise of the same class or kind." The Statement of Administrative Action (SAA) which accompanied the passage of the Uruguay Round Agreements Act of 1995 ("URAA") further clarifies this portion of the statute, when it states: "Commerce may consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions generally made in the same market." See SAA at page 164. In accordance with Section 771(a)(15) of the Act, we have determined that certain sales for the POR are made outside the ordinary course of trade (see below).

As noted by INI, the Department thoroughly examined the issue of sales outside the ordinary course of trade for our preliminary results. See Preliminary Results; see also Memorandum from Stephen Bailey, Michael Holton, and Robert Bolling to Edward Yang, Antidumping Duty Administrative Review on Structural Steel Beams from South Korea for the Review Period of August 1, 2001 through July 31, 2002; Analysis of Sales Outside the Ordinary Course of Trade for INI Steel Company, dated September 2, 2003 ("OCT Analysis Memo"). The Department noted in the OCT Analysis Memo that, according to its practice, there are four factors to evaluate whether sales are outside the ordinary course of trade. The four factors the Department considers are: 1) whether there are different standards and product uses; 2) the comparative volume of sales and number of buyers in the home market; 3) price and profit differentials in the home market; and 4) whether sales in the home market consisted of production overruns or seconds. See Certain Circular Welded Carbon Steel Pipes and Tubes From Thailand; Final Results of Antidumping Duty Administrative Review, 61 FR 1328, 1331 (January 19, 1996) ("Circular Pipes and Tubes from Thailand"); see also Certain Welded Carbon Steel Standard Pipes and Tubes from India; Final Results of Antidumping Duty Administrative Review, 56 FR 64753 (December 12, 1991) ("Pipes and Tubes From India"); Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review, 63 FR 12764 (March 16, 1998) ("Cement From Mexico Final I"); and OCT Analysis Memo.

With respect to all non-KS sales, the Department concluded that non-KS sales as a group were not outside the ordinary course of trade. See OCT Analysis Memo at 6-8. First, as the OCT Analysis Memo indicates, the difference between the average quantity of non-KS as group and KS sales is insubstantial. Second, the number of customers that purchased non-KS beams in the home market was significant. Additionally, the Department at verification found, and Petitioners recognize, that certain non-KS sales are sold to Korean companies for the purpose of overseas projects. Third, the difference between the weighted-average price of KS and non-KS subject merchandise is small. While Petitioners point to factors which could imply that the sales in question are overruns there is no record evidence that all non-KS sales are overruns. See OCT Analysis Memo at 7. Finally, the Petitioners have not provided any additional record evidence that would lead the Department to change its analysis and decision with respect to non-KS home market sales as a group.

With respect to a certain grade and a subset of sales, the Department determines that these sales are not outside the ordinary course of trade. Again, Petitioners recognize that INI manufactured

the specific grade of beams for the purpose of selling to the Korean market for overseas building projects. See Structural Steel Beams from the Republic of Korea: Petitioners' Case Brief, dated October 24, 2003, at 6 ("Petitioners Case Brief"). Additionally, the Department agrees with INI's analysis with respect to the four factors that the Department uses when determining whether sales are made outside the ordinary course of trade. See INI's Rebuttal Comments at 6-7. A review of INI's analysis and our thorough analysis indicates that there were numerous sales observations of the grade in question. The difference in average quantity per shipment of the grade was insubstantial compared with all KS merchandise. The difference in average gross unit price for the grade was comparable to the average gross unit price for all KS merchandise. Finally, the average profit above VCOM for the grade was similar to the average profit above VCOM for all KS merchandise.

Additionally, Petitioners have not provided the Department with any additional record evidence that would otherwise change our decision from the OCT Analysis Memo, where the Department found that specific grades of non-KS beams did not appear to have the characteristics of merchandise which are outside the ordinary course of trade. See OCT Analysis Memo at 9. This particular grade did not have a significantly lower price or sales in significantly different quantities that would indicate that it was outside the ordinary course of trade. Accordingly, home market sales of the particular non-KS grade, like sales of other non-KS grade beams, will continue to be included in the home market sales database. See OCT Analysis Memo at 9.

Further, there is no record evidence that supports Petitioners contention that the particular subset of sales have similar characteristics as the grades that the Department determined to be outside the ordinary course of trade. In fact, the only support that the Petitioners cite regarding a possible overrun sale, is a sale of a grade that the Department already determined to be outside the ordinary course of trade from the preliminary results. See Petitioners Case Brief at 4; see also OCT Analysis Memo at 10-13. The Department also agrees with INI that record evidence is not conclusive to whether the particular grade remained in inventory any longer than any other grade. At verification the Department verified INI's inventory carry period and found no discrepancies. See INI Verification Report at 38-9.

The Department agrees with Petitioners that merely because some home market sales of a specific grade of merchandise may be within the ordinary course of trade, it does not necessary follow that all sales of the specific grade are within the ordinary course of trade. In this case, there is no record evidence to support that the particular subset of home market sales of the particular grade, mentioned by Petitioners, are outside the ordinary course of trade. As the Department noted in the OCT Analysis Memo, it is not the Department's practice to exclude sales simply because they appear to be low priced. See CR and CR Carbon Flat Products from Korea at 12939. The Department examined the subset sales that Petitioners contend are outside the ordinary course of trade, and found that these sales do not represent a niche market or otherwise consist of overruns or non-prime merchandise. See OCT Analysis Memo at 9. In fact, unlike the other grades determined by the Department to be outside the ordinary course, and even by Petitioners' own admission, the grade in question is produced specifically for Korean

companies overseas building projects. See Petitioners Case Brief at 6. Second, the Department agrees with INI that many of the sales that Petitioners argue are outside of the ordinary course of trade have similar characteristics with respect to gross unit profits, quantities, and prices of KS grade merchandise. Additionally, the Department notes that a substantial number of the subset of sales are produced in metric sizes. Thus, examining these points in totality leads the Department to agree with INI that a deconstruction of the KS grades revealed similar characteristics of low price, low quantity and customers with limited purchases of KS beams that are not outside the ordinary course of trade. Thus, the Department determines that the home market sales Petitioners allege are outside the ordinary course of trade are actually sales that are in the ordinary course of trade.

Therefore, for the above reasons, the Department disagrees with Petitioners that all non-KS grade home market sales are outside the ordinary course of trade. Additionally, the Department disagrees with Petitioners that the specific grade in question, or a subset of its sales, is outside the ordinary course of trade. For the final the Department will continue to remove only those sales from the home market database that the Department determined to be outside the ordinary course of trade in our preliminary results. See Preliminary Results; see also OCT Analysis Memo.

ISSUES WITH RESPECT TO DSM

2. Whether all of DSM's home market sales of an ASTM-specification subject merchandise are outside the ordinary course of trade.

Petitioners claim that all of DSM's home market sales of the ASTM subject merchandise are outside the ordinary course of trade. Petitioners contend that certain DSM's sales of a certain Control Number ("CONNUM") in the U.S. market were unfairly compared to a certain ASTM-based CONNUM in the home market. Petitioners allege that DSM should have matched its ASTM CONNUMs in the U.S. market to a certain Korean Standard ("KS") CONNUM in the home market for a more fair and objective comparison. Petitioners contend that DSM distorted the model matching process by selling a certain amount of certain ASTM subject merchandise in the home market at a different price than Korean Standard ("KS") merchandise. Petitioners allege that, as a result, DSM successfully avoided dumping margins. Petitioners state that the Department should employ the same methodology it did with regards to INI when it determined that certain sales of subject merchandise were outside the ordinary course of trade. Petitioners argue that the Department should now remove the sales in question from DSM's home market database.

DSM argues that "the Department's longstanding practice has been to treat home-market sales of ASTM-grade merchandise as sales within the ordinary course of trade if there are multiple customers in the home market, minimal difference in prices between ASTM and non-ASTM merchandise, and no evidence that the ASTM-grade merchandise sold in the home market were production overruns or second-quality." See Rebuttal Brief of Dongkuk Steel Mill Co., Ltd,

dated October 30, 2003, at 2 ("DSM's Case Brief") (citing Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From South Korea , 65 FR 41437, (July 5,2000); Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From South Korea , 65 FR 6984, 6986, (February 11, 2000); and Circular Pipes and Tubes from Thailand at 1330-31). DSM contends that in light of the Department's practice, DSM's home-market sales of the ASTM subject merchandise are within the ordinary course of trade because the merchandise was produced upon request from home-market customers, was not a result of secondary merchandise or production overruns, and was priced similarly to the non-ASTM-grade subject merchandise in the home market.

DSM also contends that Petitioner's argument is baseless because they only focused on a smaller quantity of certain ASTM grade merchandise sold in June 2002 in the home market, and completely excluded another type of ASTM grade merchandise, which is sold in the home market. DSM alleges that by picking and choosing only a certain ASTM-grade merchandise sold in the home market for the model match purposes, Petitioners are manipulating the Department's calculations. Finally, DSM recommends that the Department reject Petitioners arguments that DSM's home-market sales of ASTM-grade merchandise are outside the ordinary course of trade because those arguments do not supports the facts and are contrary to the Department's longstanding practice.

Department's Position: The Department disagrees with the Petitioners that all of DSM's home market sales of a certain grade ASTM merchandise are outside the ordinary course of trade. As mentioned above, Section 771(a)(15) of the Act defines the term "ordinary course of trade" as "the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind." The Statement of Administrative Action (SAA) which accompanied the passage of the Uruguay Round Agreements Act of 1995 ("URAA") further clarifies this portion of the statute, when it states: "Commerce may consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions generally made in the same market." See SAA at page 164. As mentioned in the OCT Analysis Memo, according to Department's practice, there are four factors that determine whether sales are outside the ordinary course of trade. The four factors the Department considers are: 1) whether there are different standards and product uses; 2) the comparative volume of sales and number of buyers in the home market; 3) price and profit differentials in the home market; and 4) whether sales in the home market consisted of production overruns or seconds. See Circular Pipes and Tubes from Thailand at 1331. For the final results, we have determined that DSM's home market sales were not outside the ordinary course of trade.

With respect to price and profit differentials in the home market, the Department conducted a thorough analysis of DSM's home market data and found that the average quantity of ASTM grade merchandise was similar compared with all KS merchandise. Additionally, the Department's analysis revealed that the average gross unit price for the ASTM grade was similar to the average gross unit price for all KS merchandise. Further, our analysis revealed that the average profit above VCOM for the ASTM-grade merchandise was similar to the average profit above VCOM for all KS merchandise. See Memorandum from Aishe Allen and Robert Bolling to Edward Yang, Antidumping Duty Administrative Review on Structural Steel Beams from South Korea for the Review Period of August 1, 2001 through July 31, 2002; Analysis of Sales Outside the Ordinary Course of Trade for Dongkuk Steel Company, dated February 4, 2004 ("DSM OCT Analysis Memo").

Furthermore, with respect to whether sales in the home market consisted of production overruns or seconds, at verification, DSM presented several exhibits that showed that this particular ASTM-grade merchandise was produced for several unaffiliated Korean customers to fill specific orders. See Sales Verification of Dongkuk Steel Mill Company ("DSM") in the Antidumping Administrative Review of Structural Steel Beams ("SSB") from Korea, dated August 28, 2003, at 26 ("DSM Sales Verification Report"); and DSM Sales Verification Exhibits 18A, 18B, 18C and 18D. These exhibits demonstrate that there was a market for the ASTM grade subject merchandise in Korea and that the merchandise was not a result of overruns of merchandise sold to the United Stated or second-quality merchandise.

Moreover, with respect to different standards or product uses, there is no evidence that KS and ASTM-grade merchandise have standards or product uses that differ from each other. Finally, an examination of the various KS grades reveals similar number of customers, with respect to certain KS grades, as with the ASTM grade that Petitioners' claim to be outside the ordinary course of trade. See DSM OCT Analysis Memo.

For the above reasons, the Department disagrees with Petitioners that a certain ASTM-based CONNUM in the home market is outside the ordinary course of trade. Therefore, for the final results of the review, the Department will continue to consider sales of the ASTM grade merchandise in the home market within the ordinary course of trade.

3. Whether DSM and DKI are affiliated.

First, DSM questions whether there is a direct affiliation between DSM and its affiliate within the meaning of Section 771 (33) (A) through (F) of the Tariff Act of 1930 ("the Act"). DSM claims that the relationship between DSM and Dongkuk Industries DKI does not fall into any of the categories provided in Section 771(33) of the Act. DSM explains that DSM and DKI are not partners or members of a family; DSM is not an officer or director of DKI, and DKI is not an

officer or director of DSM; DSM is not the employer of DKI, and DKI is not the employer of DSM; DSM does not own five percent of the voting shares of DKI, and DKI does not own five percent of the voting shares of DSM. DSM also states that the two companies do not have any other arrangements like franchise or joint ventures, debt financing, close supplier relationship or interlocking management that would allow them to control each other. Thus, DSM argues that in lieu of direct relationship between DSM and DKI, they can only be considered indirectly affiliated, which excludes subsections (A) through (E) and (G) of Section 771 (33) of the Act. DSM contends that DSM and DKI can only be considered affiliates if they meet criteria of subsection (F), which states that two entities can be considered affiliated based on an indirect relationship.

Second, DSM argues that even if its two largest shareholders are considered affiliates of the largest shareholder of DKI, that relationship would not make the two companies affiliated. DSM points out that subsection 771(33) (F) considers entities affiliated only if: (1) they jointly control "any person"; (2) they are jointly controlled by "any person"; (3) they are under common control with "any person." DSM argues that in the preliminary analysis, the Department based its affiliation decision on the fact that both entities are controlled by one Korean family. DSM asserts that a family is not "any person" but a grouping of relatives which includes the two brothers, the largest shareholders of DSM, and an uncle, the largest shareholder of DKI. Therefore, DSM alleges that DSM and DKI are separately controlled by separate members of the family in question and cannot be affiliated according to Section 771(33) (F) of the Act.

Third, DSM asserts that the Department has no basis for "collapsing" the members of the extended Korean family into a single entity. DSM argues that according to Section 351.401(f) of the Department's regulations, affiliates may be "collapsed" when they meet a certain criteria. However, DSM points out that the parties are treated as separate entities when certain criteria are not met. DSM alleges that in this case the "collapsing" issue does not apply because the Korean family in question is not controlled by a single individual who maintains authority over distribution of ownership of shares in multiple companies among the members of that individual's family. Finally, DSM argues that the Department's regulations and statute do not allow it to automatically "collapse" members of a family or treat them as a single entity when the family grouping is not controlled by a single individual.

Petitioners agree with DSM that both DSM and DKI are not affiliated parties in the context of this review. Petitioners contend that if DSM and DKI are not affiliated, then DSM reported the wrong price in the U.S. sales database. Petitioners state that instead of reporting a constructed export price ("CEP"), DSM should have reported an export price ("EP") to DKI because it is a sale to the first unaffiliated party. Additionally, Petitioners assert that Section 772(a) of the Act states that export price is the first price at which the subject merchandise is first sold or agreed to be sold to the unaffiliated purchaser in the United States or to the unaffiliated purchased for

exportation to the United States by the producer or exporter of the subject merchandise outside the United States.

Additionally, Petitioners cite the Department's "knowledge test", which states that "the reseller or manufacture from whom the merchandise was purchased knew or should have known at the time of the sale that the merchandise was being exported to the United States." See Yue Pak, Ltd. v. United States, 20 CIT 495 (Ct. Int'l Trade 1996), aff'd, Yue Pak, Ltd. v. International Trade Administration, 111 F.3d 142 (Fed. Cir. March 21, 1997). Petitioners allege that there is no doubt that DSM had a prior knowledge that the subject merchandise it sold to DKI was destined for the United States. Petitioners claim that under the Departments longstanding practice, if DSM and DKI are considered unaffiliated, the sale to DKI should have been treated as the U.S. sale. Petitioners conclude that the record evidence indicated that DSM first sold the subject merchandise to DKI for exportation to the United States. Petitioners add that DSM misreported the gross unit price and these sales as the CEP transactions in the database. Finally, Petitioners content that if the Department accepts that DSM and DKI are unaffiliated, it should adjust the field ENTVALUE in the U.S. sales database to reflect the starting price for EP.

Department's Position: Consistent with the Preliminary Results, we continue to determine that DSM and DKI are affiliated parties for the entire period of review. In the Preliminary Results, the Department determined that DSM and DKI were affiliated based on Sections 771(33)(A) and (F) of the Act. See Antidumping Duty Administrative Review on Structural Steel Beams from South Korea for the Review Period of August 1, 2001 through July 31, 2002; Analysis of the Affiliation for Dongkuk Steel Mill Company, Ltd. ("Affiliation Memo"). Section 771(33)(A) of the Act states that "members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants" shall be considered affiliated. The Department interprets the definition of "family" under Section 771(33)(A) of the Act to include uncle-nephew relationships. See, e.g., Final Results of Antidumping Duty Administrative Review; Certain Welded Carbon Steel Pipes and Tubes from Thailand, 62 FR 53808 (October 16, 1997). The Court of International Trade ("CIT") upheld the Department's interpretation that the definition of family includes uncle-nephew relationships under section 771(33)(A) of the Act. See Ferro Union, Inv. V. United States, 44 F. Supp. 2d 1310 (CIT 1999)("Ferro Union"). The Court agreed that the meaning of "family" includes uncles and nephews, citing the Black's Law Dictionary 604 (6th ed., 1990) according to which the "family" may mean "all decendants of a common progenitor... those who are of the same lineage." Id. at 1325. In the preliminary results, we determined that the two brothers who control DSM are the lineal descendants of the former chairman of DSM and the former chairman's brother is the director and major shareholder of DKI. Thus, because of the uncle-nephew relationship, the Department continues to consider members of this Korean family to be affiliated according to Section 771(33)(A) for these Final Results. See Affiliation Memo.

The Department also considers members of this Korean family to be affiliated according to section 771(33)(F) of the Act. Section 771(33)(F) of the Act considers "two or more persons

directly or indirectly controlling, controlled by, or under common control with, any person" to be affiliated. The statute further states that a person may be considered to control another person if the person is legally or operationally in a position to exercise restraint or control over the person. See Section 771(33) of the Act. The Department has interpreted the statutory definition of control to encompass both legal or operational control, and multiple persons or groups may be in control, individually and jointly, of a single entity, each having the ability to direct or restrain the company's activities. See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 63 FR 55578 (October 16, 1998) ("Pipes and Tubes from Thailand"). Furthermore, for the purpose of examining the existence of common control, we examine indicia of control, such as the ownership interests, board of directors seats and management positions held by members of the family. See Pipes and Tubes from Thailand, 63 FR at 55582. Accordingly, the Department focuses on the potential of a group to act, through the companies it controls. Here, the Department finds affiliation in accordance with Section 771(33)(F) of the Act because of this family's leadership positions within DSM and DKI, as well as the fact that they control the largest blocks of outstanding shares in DSM and DKI, placing this family in a position to legally and/or operationally control DSM and DKI. See DSM's Affiliation Memo. Therefore, we continue to determine that the Department has satisfied the requirements of affiliation under section 771(33)(F) of the Act. Furthermore, the Department disagrees with DSM that DSM and DKI are separately controlled by separate family members because both DSM and DKI are controlled by the same Korean family. Thus, we have determined that the Korean family is the unifying force behind the individual family members that permits DSM and DKI to act as one group.

As discussed above, because DSM and DKI are both controlled or potentially controlled by one family, the Department continues to determine that DSM and DKI affiliated within the meaning of section 771(33) of the Act. Therefore, the Department disagrees with the Petitioners that the sale between DSM and DKI should be classified as an EP sale, and continues to find that the sale between these two companies was a sale between affiliates and the proper U.S. sale to be examined is the sale to the first unaffiliated party in the United States. Consequently, we will continue to treat all U.S. sales as CEP sales (sales from DKA to the first unaffiliated party).

Finally, DSM made an argument that the Department should not "collapse" DSM and DKI. However, the Department never attempted to "collapse" the family members of DSM and DKI. Under section 351.401(f) of the Department's Regulations, the Department may "collapse" affiliated producers into a single entity. Section 351.401(f) states that "the Department will treat two or more affiliated producers as a single entity where: (1) those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (2) where there is a significant potential for the manipulation of price or production. Members of the certain Korean family, however, are not producers of the subject merchandise. Therefore, DSM's "collapsing" argument is not applicable under Section 351.401(f) of the Department's Regulations because a single family does not fit in the category of a producer of subject merchandise where a family member could retool itself or possibly manipulate price or production. Accordingly, we have rejected Respondent's "collapsing" argument.

4. Whether the Department should correct DSM's indirect selling expenses

Petitioners argue that for the final results, the Department should revise the way it treats DKI's operating expenses. Petitioners contend that the Department calculated DKI's indirect selling expense ratio as a percentage of DKI's gross sales, and applied this ratio to DKA's gross unit price. See Analysis for the Preliminary Results in the Antidumping Duty Administrative Review of Structural Steel Beams from South Korea - Dongkuk Steel Mill Company ("DSM"), (September 2, 2003) at 3 and Attachment III ("DSM's Preliminary Analysis Memo"). Petitioners allege that this methodology leads to overstatement of indirect selling expenses in the country of manufacture ("DINDIRSU") which, in turn, reduced CEP profit in the margin program and benefits DSM.

Petitioners also contend that the Department should apply the indirect selling expense ratio to the sales price from DSM's affiliated trading company in Korea (i.e., DKI) to DSM's affiliate in the United States, "DKA". Petitioners assert that the affiliated trading company in Korea functions as a customs broker and performs no selling functions; therefore, the Department cannot treat its expenses as indirect selling expenses. See DSM's January 13, 2003 supplemental response at 13. Petitioners allege that for the final results, the Department should revise DINDIRSU by subtracting brokerage and handling expenses from the U.S. price and add the brokerage and handling expenses to the home market price.

DSM agrees with Petitioners that the Department did not properly apply DKI's indirect selling expense ratio to the correct gross unit price. DSM states that since the Department calculated the ratio by dividing DKI's selling expenses by its total sales value, the resulting ratio should have been applied to an amount corresponding to DKI's sales value. DSM explains that sales value amount can be calculated by adding entered value and international freight for each transaction.

However, DSM disagrees with Petitioners that the affiliated trading company in Korea only performs customs clearance. DSM contends that the Department verified that the affiliated trading company in Korea provided other services for DSM, including preparing invoices and other commercial documents for exports. Furthermore, DSM points out in accordance with the Department's longstanding practice, it properly classified the affiliated trading company's selling expenses as indirect selling expenses because they included salaries, rent and other overhead expenses for all of the company's personnel. DSM concludes that the Department should reject Petitioner's argument that selling expenses were not properly classifies by DSM.

Department's Position: We agree with the Petitioners and the Respondents that the Department applied DKI's selling expense ratio to the incorrect gross unit price. We have determined that DKI's selling expense ratio should be applied to DKI's selling price in order to achieve an apples-to-apples match. Therefore, for the Final Results, we will apply DKI's indirect selling expense ratio to DKI's gross unit price instead of DKA's gross unit price. For a detailed description of our recalculation, see DSM Final Analysis Memorandum.

However, we disagree with Petitioners that the Department erred in treating DKI's operating expenses as indirect selling expenses. At verification, we determined that DKI performs broader functions than just a customs clearance. The Department established that DKI "provides financing services for export sales and acts as a trading company for DKI and other unaffiliated companies." See DSM Sales Verification Report at 5. Thus, the Department will not treat DKI's operating expenses only as brokerage and handling expenses. Further, expenses that the Department used in its calculations for the Preliminary Results included all of DKI's general sales department expenses such as salaries, rent and other overhead expenses for DKI's sales personnel. These expenses cannot be tied to an individual sale; therefore, the expenses cannot be considered as direct selling expenses. Therefore, for the Final Results, the Department will continue to treat DKI's operating expenses as indirect selling expenses.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation programs accordingly. If accepted, we will publish the final results of the review and the final weighted-average dumping margin in the Federal Register.

AGREE_____ DISAGREE_____

_____

James J. Jochum
Assistant Secretary
for Import Administration

_____
Date