

69 FR 26361, May 12, 2004

A-580-836
POR: 02/01/2002-01/31/2003
Public Document
AD/CVD GII04: JDP/DEJ

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

FROM: Holly A. Kuga
Acting Deputy Assistant Secretary
for Import Administration, Group II

SUBJECT: Issues and Decision Memorandum for the 2002-2003 Administrative
Review of the Antidumping Duty Order on Certain Cut-to-Length Carbon-
Quality Steel Plate Products from the Republic of Korea: Final Results

Summary

We have analyzed the comments that interested parties submitted in the 2002-2003 administrative review of the antidumping duty order on certain cut-to-length carbon-quality steel plate products (steel plate) from the Republic of Korea. After analyzing these comments, we have made no changes to the preliminary results. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum for these final results.

Below is the complete list of issues raised by interested parties in their comments:

- Comment 1: Whether Dongkuk Steel Mill Co., Ltd. and Dongkuk Industries Co., Ltd. are affiliated
- Comment 2: Whether the Department of Commerce should grant Dongkuk Steel Mill Co., Ltd. a constructed export price (CEP) offset

Background

This review covers steel plate exported to the United States by Dongkuk Steel Mill Co., Ltd. and sold by Dongkuk Steel Mill Co., Ltd.'s affiliate in the United States, Dongkuk International, Inc. (DKA). During the period of review (POR), Dongkuk Steel Mill Co., Ltd. sold steel plate to DKA, both directly and through a Korean trading company Dongkuk Industries Co., Ltd. The period of review is February 1, 2002 through January 31, 2003. The Department of Commerce (Department) issued its preliminary results on October 31, 2003. See Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review, 68 FR 62770 (November 6, 2003). In response to the Department's invitation

to comment on the preliminary results of this review, Dongkuk Steel Mill Co., Ltd. filed a case brief on December 8, 2003. No other interested parties filed case or rebuttal briefs.

Discussion of the Issues

Comment 1: Whether Dongkuk Steel Mill Co., Ltd. and Dongkuk Industries Co., Ltd. are affiliated

Dongkuk Steel Mill Co., Ltd. (DSM) argues that the Department should not continue to find it to be affiliated with Dongkuk Industries Co., Ltd. (DKI), pursuant to section 771 (33)(F) of the Tariff Act of 1930, as amended (the Act) (which provides that two or more persons controlled by *any person* are affiliated) because the family grouping (an uncle and his two nephews) that the Department found to control the companies does not constitute a person.¹ According to DSM, the statutory phrase “any person” refers to a single person. However, here, the Department preliminarily determined that DSM and DKI are affiliated, not because it found that a single person controls both companies, but because it found that the brothers Sae Joo Chang and Sae Wook Chang control DSM and their uncle, Sang Kuhn Chang, controls DKI. Although DSM acknowledges that, at times, it may be appropriate to treat more than one individual as a single person for affiliation purposes, it contends that this approach should not be taken without considering whether the family grouping actually is a vehicle for control by a single person.² DSM claims that, in the preliminary results, the Department glossed over this issue by assuming that affiliated members of a family constitute a single person for purposes of section 771(33)(F) of the Act. However, DSM argues that such an assumption is not consistent with section 771 (33) of the Act which refers to affiliated members of a family as “affiliated persons,” which indicates that they are not viewed as a single person simply because they are affiliated.

Moreover, according to DSM, the evidence before the Department confirms that Sae Joo Chang and Sae Wook Chang do not act in concert with their uncle, Sang Kuhn Chang. While DSM acknowledges that it has been a part of a corporate grouping or “chaebol” with DKI, it claims that since the two nephews received ownership interest in DSM from their now deceased father, differences between them and their uncle, who controls DKI, have led to the disentanglement of the two companies. Further, DSM states that it no longer has a direct or indirect interest in DKI that approaches the five percent threshold nor does DKI have such an interest in DSM. Thus, DSM

¹ Also, DSM argues that 1) the relationships indicating affiliation, which are described in sections 771(33)(A) through (E) and (G) of the Act, do not apply in this case, and 2) there are no arrangements between DSM and DKI, such as franchise or joint venture agreements, debt financing, a close supplier relationship, or interlocking management that would allow either company to control the other.

² DSM notes, for example, that the Department does not automatically treat affiliated producers as a single entity. Rather, it only collapses such affiliates if the criteria identified in 19 C.F.R. §351.401(f) are met.

concludes that no single person controls it and DKI and therefore, they are not affiliated under section 771 (33)(F) of the Act.

Department's Position:

We disagree with DSM. Section 771(33)(F) of the Act states that “{t}wo or more persons directly or indirectly controlling, controlled by, or under common control with, any person” shall be considered to be affiliated persons.³ Although this section of the statute uses the singular phrase “any person,” the United States Court of International Trade (CIT) has recognized that “words importing the singular may {not} extend and be applied to several persons or things ... *except where it is necessary to carry out the evident intent of the statute* (emphasis added).” See Ferro Union v. United States, 44 F. Supp. 2d 1310, 1325 (CIT, March 23, 1999) (Ferro Union) citing First Nat’l Bank in St. Louis v. Missouri, 263 U.S. 640, 657 44 S.Ct. 213, 68 L.Ed. 486 (1924). As the CIT noted in Ferro Union, “the intent of section 771(33) of the Act was to identify control exercised through ‘corporate or family groupings.’ SAA {Statement of Administrative Action} at 838. By interpreting ‘family’ as a control person, Commerce was giving effect to this intent.” See Ferro Union at 1325; see also, 19 C.F.R. §351.102(b) (“{i}n determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Secretary will consider the following factors, among others: corporate or family groupings ...). Additionally, in past cases involving control through corporate or family groupings, the Department has noted that the control factors of individual members of the group (e.g., stock ownership, management positions, board membership) are considered in the aggregate. See Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Notice of Final Determination of Sales at Less Than Fair Value, 65 FR 5554, 5566 (February 4, 2000).

In the instant review, the Chang family’s leadership positions, namely Sae Joo Chang’s position as the Chairman and Chief Economic Officer of DSM, Sae Wook Chang’s position as a Director of DSM, Sang Kuhn Chang’s position as the Chairman of DKI and his daughter’s position as Director of DKI, as well as the fact that the Chang family owns the largest blocks of outstanding shares in DSM and DKI, places the Chang family in a position to legally and/or operationally control DSM and DKI. Although DSM argued that Sae Joo Chang and Sae Wook Chang do not act in concert with their uncle, Sang Kuhn Chang, in defining family groupings, the Department is not required to find that a group acted in concert. Rather, the Department is concerned with the potential of a group to act in concert or out of common interests. See Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from Taiwan, 67 FR 35474 (May 20, 2002) and accompanying Issues and Decision Memorandum at Comment 4. Thus, while no single individual may be directing the activities of both DSM and DKI, the Department considers the Chang family to be “a person” for purposes of section 771(33)(F) of the Act. Because this family grouping

³ Section 771(33) does not define “person.” However, 19 C.F.R. §351.102(b) notes that “‘person’ includes any interested party, as well as any other individual, enterprise, or entity, as appropriate.”

has the potential to control both DSM and DKI concerning pricing of the subject merchandise, we have determined that DSM and DKI are affiliated under the Act.

Comment 2: Whether the Department of Commerce should grant Dongkuk Steel Mill Co., Ltd. a constructed export price (CEP) offset

In the preliminary results of review, the Department denied DSM's request for a CEP offset (a LOT adjustment was not possible), because it concluded that there was insufficient evidence that DSM sold steel plate in the home market at a more advanced level of trade (LOT) than in the United States. DSM claims that record evidence overwhelmingly demonstrates that it sold steel plate in the home market at a more advanced LOT than the LOT of its CEP sales. According to DSM, the Department misinterpreted the evidence on the record because it concluded that the additional information concerning U.S. selling activities⁴, provided in DSM's June 12, 2003 supplemental response, indicates that DSM did not engage in such selling activities in the home market. DSM claims that this inference is not correct.⁵ To support its claim, DSM cites business proprietary information regarding its home market and U.S. selling activities. The Department has summarized these arguments in a proprietary memorandum from Holly A. Kuga, Acting Deputy Assistant Secretary, Group II, to James J. Jochum, Assistant Secretary for Import Administration (Proprietary Memorandum), dated concurrently with this memorandum.

Department's Position:

We cannot address DSM's arguments without referencing business proprietary information. Therefore, we have addressed these arguments in the Proprietary Memorandum. As explained fully in the Proprietary Memorandum, the Department did not grant DSM a CEP offset because the Department concluded that the home market sales were not made at a more advanced level of trade than the CEP sales.

⁴All discussion of U.S. sales activities is limited to those sales activities specific to transactions between DSM/DKI and the CEP entity, DSM.

⁵ DSM points out that the Department's supplemental questionnaire only requested information regarding U.S. selling activities, and thus it did not state in its supplemental response whether it also engaged in such activities in the home market.

Recommendation

Based upon our analysis of the comments received, we recommend adopting the above positions. We will publish the final results of review and the final weighted-average dumping margin for the reviewed firm in the Federal Register.

Agree _____ Disagree _____

James J. Jochum
Assistant Secretary
for Import Administration

Date