

MEMORANDUM TO: Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

FROM: Barbara E. Tillman  
Acting Deputy Assistant Secretary  
For Import Administration, Operations

SUBJECT: Issues and Decision Memorandum for the Administrative Review of the  
Antidumping Duty Order for Structural Steel Beams from the Republic  
of Korea: Notice of Final Results of Antidumping Duty Administrative  
Review (A-580-841)

### **Summary**

We have analyzed the case briefs and rebuttals briefs of interested parties in the antidumping duty review of structural steel beams from the Republic of Korea. As a result of our analysis, we have not made changes in the margin calculation. 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 issues in this investigation for which we received comments and rebuttal comments by parties:

1. Revision of the Model Match Characteristics
2. Affiliation of Dongkuk Steel Mill Co., Ltd. and Dongkuk Industries Co., Ltd.
3. Level of Trade for Dongkuk Steel Mill Co., Ltd.

### **Background**

On September 3, 2004, the Department of Commerce (the Department) published its *Preliminary Results of Antidumping Duty Administrative Review: Structural Steel Beams from the Republic of Korea*, 69 FR 53887 (September 3, 2004) (*Preliminary Results*). The period of investigation (POI) is August 1, 2002, through July 31, 2003. There are two respondents in this investigation, INI Steel Company (INI) and Dongkuk Steel Mill Co., Ltd. (DSM). The Department assigned to INI a

weighted-average margin of 16.62 percent and to DSM a weighted-average margin of 4.39 percent. We invited parties to comment on our *Preliminary Results*. INI and DSM submitted case briefs on October 4, 2004. The Committee for Fair Beam Imports (Petitioners) filed rebuttal briefs on October 12, 2004. A hearing was held on October 26, 2004.

## **Discussion of the Issues**

### *Comment 1: Revision of the Model Match Characteristics*

Prior to issuance of the questionnaires in this review, which covers the third administrative review period, the Department revised the model match characteristics used in previous segments of the case. See Memorandum From Michael Holton, Case Analyst, to Edward Yang, Director, Office 9, Regarding Modification for Model Matching Characteristics for Structural Steel Beams, December 16, 2003 (Model Match Memo). Two pairs of strength classifications (A1 and B1; and D3 and part of C1) were collapsed into two strength classifications (A1 and B3, respectively.) The Department determined that collapsing the strength classifications in this manner was reasonable and would result in comparisons of products with only minor physical differences and commercially insignificant differences in use.

INI contends that the sole basis for the revision of the model match characteristics was an analysis of INI's data for the second administrative review period. INI maintains that this analysis was cursory and reflects no real evolution of the entire market but rather only the results for one company over a short period. INI says that the original model match criteria were set with data from the structural steel beam industries of eight countries in addition to Korea. INI holds that pricing trends observed in a single respondent's questionnaire response in one period of review do not amount to substantial evidence that the fundamental definition of the product has evolved. INI therefore argues that significant revision of the model match criteria is neither appropriate nor reasonable. Further, INI states that the Department has been reluctant to change model match criteria after the investigation segment of the proceedings. INI asserts that in order to do so parties must either overcome a high factual threshold with evidence applicable to the industry as a whole, or present a compelling argument on some other grounds; INI insists that neither condition was met by Petitioners. In support of this contention, INI cites *Pesquera Mares Australes Ltda. v. United States*, 266 F.3d 1372 (Fed. Cir. 2001) (*Pesquera*). INI also points out that in a recent case, the Department declined to change the model match criteria because of such a lack of evidence warranting change, citing Memorandum From Eric B. Greynolds, Program Manager, to Melissa Skinner, Director, Regarding Administrative Review of Antidumping Order: Corrosion-Resistant Carbon Steel Flat Products From Korea: Tenth Administrative Review Period, August 27, 2004 (Corrosion-Resistant Steel Memo).

Petitioners counter by stating that the revision gives a more accurate comparison of home market and U.S. sales, which Petitioners maintain is the fundamental purpose of model matching. Petitioners claim that any time such a change will result in more accurate comparisons, it is proper for the Department to make that change. Petitioners disagree with INI's position that a change to the model match criteria

can only be based upon a fundamental change in the industry or product. Petitioners argue that the improvement of the accuracy of product comparisons is itself a compelling reason justifying the revision of the model match hierarchy. Petitioners also contend that the standards originally established with use of data from the nine countries established artificial distinctions; this artificiality is demonstrated by INI's pricing data. Petitioners cite *Certain Steel Concrete Reinforcing Bars from Turkey, Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 66110 (and accompanying issues and decision memorandum at Comment 1) (October 30, 2002) for the proposition that the Department's statutory goal is to make the best matches possible and for the proposition that the Department has the authority to revise the hierarchy in order to implement fair comparisons. Petitioners seek to refute INI's citation of the *Pesquera* decision, positing that the case stands for the proposition that there is no statutory provision or regulation explicitly instructing the Department to develop the model match criteria in a particular manner. Petitioners cite a recent revision on model match which was justified by advances in computing tools rather than fundamental change in the industry or product in Memorandum from Jeffrey A. May to James J. Jochum, Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom – Model Match Methodology at 4 (December 3, 2003). Petitioners further cite Memorandum from Bernard T. Carreau to Faryar Shirzad, Issues and Decisions Memorandum for *Top-of-the-Stove Stainless Steel Cooking Ware From the Republic of Korea: Final Results and Rescission, in Part, of Antidumping Duty Administrative Review*, 66 FR 45664 (August 29, 2001) at Comment 1, where the Department revised the model match hierarchy to eliminate subcategorization by body material was found to be appropriate because it would yield more accurate results and minimize potential calculation distortions.

#### *Department's Position:*

The Department has extensive experience in the development of model match criteria used, both in investigations and in reviews, to compare products sold in the U.S. market to those used for normal value purposes. In the many model matches developed, there have been few instances in which the Department determined that modifications to the model match should be made. It is appropriate to consider changes when additional expertise and knowledge with regard to the market demands and market realities of the products subject to the scope indicate that such changes allow more accurate comparison of U.S. and normal value products. In this case, we continue to find that the model match strength characteristics, as modified early in this proceeding, more accurately reflect the market realities of the subject structural steel beams than did the preceding characteristics. *See* Model Match Memo at 7-8.

The Department does not frequently change or alter the model match methodology. In general, the model match is developed based upon careful analysis of comments received from interested parties early in the investigation stage of a proceeding. However, the Department is not precluded from reconsidering the applicability of the model match characteristics in subsequent segments of the proceeding when additional information is developed regarding the products and marketing

considerations pertinent to those products. This reconsideration is not limited solely to changes in the industry norms or the fundamental definition of the product, as alleged by INI. For example, with respect to the cut-to-length carbon steel flat products investigations initiated in 1992, the Department used a particular model match characteristic hierarchy in those investigations and then, prior to issuing questionnaires in the first administrative reviews but after the end of the review periods for those first administrative reviews, the Department proposed changes to the model match characteristics. Interested parties were asked to comment on the model match characteristic hierarchy the Department was proposing for the administrative reviews.<sup>1</sup> The resulting model match characteristic hierarchy used in those reviews were the result of additional expertise developed by the Department with regard to the subject product, derived in part by input provided by interested parties. *See, e.g., Certain Cut-To-Length Carbon Steel Plate From Finland: Final Results of Antidumping Duty Administrative Review*, 61 FR 2792, 2795 (January 29, 1996). Such adaptation did not require changes to industry norms or changes in the definition of the product, from the investigations to the first administrative reviews.

In the instant review, petitioners proposed broad and sweeping changes to the existing model match. The model match developed during the investigation consisted of a multitude of characteristics, including: whether the product was hot- or cold-finished; the type of beam (with subdivisions of web height and weight per foot); yield strength (with subdivisions of corrosion resistance and heat treatment); and whether the beam is coated. Petitioners proposed the consolidation of the sub-categories regarding the type of beam; they also proposed the consolidation of certain strength sub-categories to recognize whether or not the subject beams are of high strength. After analyzing the market patterns for structural steel beams, the proposed changes regarding the type of beam were not adopted by the Department. With regard to strength, petitioners' proposed modification did not question the relevance of strength as a characteristic or the need for a single category. Rather, it addressed the appropriateness of the multitude of different strength sub-categories, as the original subcategory division was not reflective of price differences of products actually sold in the marketplace. Petitioners thus concluded that the Department had been prevented from performing a proper price-comparison analysis. *See Model Match Memo at 2.*

Based on a careful analysis of the commercial realities of the structural beam market, the Department determined that the strength grouping of the pre-existing model match should be consolidated as described by petitioners' proposal because the pre-existing model match eliminated the matching of comparable products which should have been regarded as identical. This made possible more accurate matching. *See Model Match Memo at 6.* An analysis of INI's own pricing and sales information substantiated the product groupings reflected in the change made to the strength characteristic.

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<sup>1</sup>Of all the interested parties associated with the Korea and Japan orders who were contacted, only petitioners, INI, and DSM responded. DSM did not challenge the Department's decision to change the model match in its case brief.

While INI argues that the basis for the model match changes is attributed to information from a single Korean respondent and reflects market realities only as they apply to that Korean respondent, this finding (as it ultimately pertains to the nature of the structural beam market) is not restricted to any particular country; rather, it is relevant for all antidumping orders involving structural steel beams. The consolidation of the product groupings was based on a careful comparison and analysis of beam specifications in the U.S. and the order countries (Japan and Korea). Although arguments were raised prior to the Department's issuance of the Model Match Memo regarding the relevance of chemistry, the strength of the product largely dictates the potential use, as structural steel beams are primarily used in load bearing applications. In reviewing the subcategories of the pre-existing model match, two original strength subcategories (A1 and C1) were defined in such a way that they would not be relevant for U.S. specifications; in addition, the strength differences between the original A1 and B1 products, and between the original C1 and D3 products, are minor and commercially insignificant. *See* Model Match Memo at 7. Further, while the strength requirements of a specification are stated with reference to minimum strength, the actual strengths of merchandise produced will exceed the minimum, in many cases by significant amounts to ensure the product always meets the minimum strength requirements of a particular specification. For example, Korean and Japanese specifications with minimum yield strengths that fell in the original A1 and C1 subcategories would be produced to actual yield strengths which would exceed the minimum requirements. Given the minor differences in minimum yield strength between the A1 versus B1 products, and between the C1 and D3 products (*see* Model Match Memo at 7), the fact that the actual yield strengths for the products will exceed the minimums by varying, and sometimes considerable, amounts further undermines the relevance of any alleged distinctions between the A1 and B1 products, and between the C1 and D3 products, with respect to strength. In short, the Department's consolidation of strength subcategories was appropriate because doing so resulted in a more appropriate definition of distinct products for purposes of the Department's analysis.

Unlike the changes discussed and rejected in the Corrosion-Resistant Steel Memo, the change instituted in the Structural Steel Beams Model Match Memo was not limited to company-specific information in a particular review. In fact, the basis for changes to the model match in the Corrosion-Resistant Steel Memo was price lists of Korean producers, without any analysis of its effect on the Corrosion-Resistant Steel orders for other countries. In the present case, the changes are made based on the specifications of beams from the relevant countries and various commercial considerations.

INI has argued that the original model match criteria were utilized in investigations covering structural steel beams from many countries in addition to Japan and Korea. However, this does not preclude the Department from considering requests to modify the existing model match criteria when additional information is submitted which the Department finds compelling and justifying modification of the model match. In addition, as noted, only Korea and Japan are currently subject to antidumping duty orders on structural steel beams; those countries, therefore, would be the only ones subject to this model match revision.

Regarding the issue of predictability, the Department agrees that this is an important consideration and has made great efforts to keep changes to the myriad of model matches it has developed to a minimum.

In the present case, this is evidenced by the Department's decision to not make petitioners' proposed change to the beam type product characteristic. However, ensuring appropriate comparisons is critical to the statutory directive to calculate a dumping margin and the Department must maintain the flexibility to modify the model match as required. If the Department were to refuse to make changes solely because doing so would disrupt predictability, then changes would never be made no matter how compelling the underlying reason for a modification, which in turn could lead to absurd results. In the instant case, all parties were invited to comment early in the review process. In this case, the model match changes were under consideration during the second administrative review but were proposed too late in the process to be eligible for implementation had any been adopted, and the issue was not fully addressed until this, the third, administrative review. All parties were given notice that changes were being considered and, indeed, parties were encouraged by the Department to provide comments for the Department's consideration. All such comments were in fact considered after thorough analysis, as reflected in Model Match Memo.

Therefore we continue to conclude that the revision of the model match characteristics as explained and analyzed in the Model Match Memo, and utilized in the Department's *Preliminary Results*, was appropriate.

*Comment 2: Affiliation of Dongkuk Steel Mill Co., Ltd. and Dongkuk Industries Co., Ltd.*

DSM argues that the Department erred in the preliminary results, in all previous segments of the proceedings of this case, and in other cases in which the Department has considered the issue of affiliation between DSM and Dongkuk Industries Co., Ltd. ("DKI"). DSM states that the Department has consistently misinterpreted section 771(33)(F) of the Tariff Act of 1930, as amended ("the Act"), in finding that DSM and DKI are under the control of one person, that is to say the Chang family. DSM contends that the wording of that section of the Act permitting a finding of affiliation when two companies are controlled by any person means that only one single individual human being falls into the definition of "person." DSM maintains that whether or not the nephews and their uncle are affiliates, they are not any one person exercising control; because they are three separate persons, DSM and DKI are not controlled by any one person.

Petitioners respond by stating that the Department had addressed the DSM and DKI affiliation issue in decisions in the previous (2002/2003) administrative review of this order (*i.e.*, Memorandum from Joseph A. Spetrini to James J. Jochum, Issues and Decision Memorandum for *Structural Steel Beams From the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 7200 (February 13, 2004)) and in other cases (*e.g.*, Memorandum from Holly A. Kuga to James J. Jochum, Issues and Decision Memorandum for *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results and Rescission in Part of Antidumping Duty Administrative Review*, 69 FR 26361 (May 12, 2004)). Petitioners maintain that the Department is well within the statute as interpreted by the courts to find that members of the same family may constitute a "person" for the purposes of finding affiliation.

*Department's Position:*

In the investigation segment of the proceedings, and in the previous review segments, the Department found that DSM and DKI were affiliated. This finding was based upon the family relationships of major shareholders in each company. The largest shareholder of DKI is the uncle of the brothers who jointly are the largest shareholders of DSM. There was in earlier segments substantial cross-ownership of the companies, but the Department did not base its earlier findings upon cross-ownership of stock. Rather, previous affiliation findings between DSM and DKI have been based on the familial relationships between the two companies. See, e.g., Memorandum from Joseph A. Spetrini to James J. Jochum, Issues and Decision Memorandum for *Structural Steel Beams From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 69 FR 7200 (February 13, 2004). Additionally, the same finding was made in other cases pertaining to these companies with periods of review overlapping that of this review. (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, 62771 (November 6, 2003), unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results and Rescission in Part of Antidumping Duty Administrative Review*, 69 FR 26361 (May 12, 2004), with a POR of February 1, 2002 through January 31, 2003; and Comment 1 of Memorandum from Holly A. Kuga to Joseph A. Spetrini, Issues and Decision Memorandum for *Steel Concrete Reinforcing Bar From the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 19399 (April 13, 2004), with a POR of January 30, 2001 through August 31, 2002).

In the present administrative review period for structural steel beams, all of DSM's U.S. sales were made through DKI, which incurred various expenses associated with U.S. selling activity; in addition, services for DSM's beams production facility were performed by DKI. The family relationships which existed during previous segments of the proceeding continue to provide the basis for the Department's conclusion that DSM and DKI were affiliated during the current POR.<sup>2</sup>

In accordance with section 771(33) of the Act, the Department considers the following persons or parties to be affiliated:

- (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

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<sup>2</sup> In the current structural steel beams review, DSM stated in its January 7, 2004, Section A response at page 9 that DKI ceased to be affiliated with DSM as of January 2001 because of a change in DKI's ownership percentage of DSM. However, this change took place *prior* to the previous (August 1, 2001, through July 31, 2002) POR, and DKI's ownership percentage in DSM was not a factor in the Department's decision in that previous review. See *Structural Steel Beams From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 69 FR 7200 (February 13, 2004), and unpublished decision memorandum dated February 6, 2004.

- (B) Any officer or director of an organization and such organization;
- (C) Partners;
- (D) Employer and employee;
- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization;
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person;
- (G) Any person who controls any other person and such other person.

For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

In order to find affiliation between companies, the Department must find that at least one of the criteria listed above is applicable to the respondents. 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 two brothers who now control DSM are the lineal descendants of the former chairman of DSM and the brother of the director and major shareholder of DKI. Therefore the Department has considered members of the Chang family to be affiliated according to section 771(33)(A) of the Act. Further, the Court of International Trade has 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, 1325 (CIT 1999). Furthermore, the Department has determined that “members of a family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants” shall be considered affiliated. *See Final Results of Antidumping Duty Administrative Review; Certain Welded Carbon Steel Pipes and Tubes from Thailand*, 62 FR 53808, (October 16, 1997). Consequently, we find sufficient evidence to conclude that DSM and DKI continue to be affiliated based on the record of this review, given the lack of any new information which would lead us to conclude otherwise.

Given that DSM and DKI are affiliated under section 771(33)(A) of the Act, there is no need to address the issue of control.

*Comment 3: Level of Trade for Dongkuk Steel Mill Co., Ltd.*

The Department found in its preliminary results that there was no basis for determining that there was a distinct, less advanced level of trade (“LOT”) for U.S. sales than for home market sales and consequently that no LOT adjustment or constructed export price (“CEP”) offset was warranted.

DSM’s position is that the Department erred in this determination. DSM says that the Department claimed that DSM did not identify all of its selling activities, but that DSM in fact did identify all



activities. In the case brief DSM presents a summary chart purporting to show significant differences in DSM's activities in the home and U.S. markets.

Petitioner replies by stating that previous Department's decisions (in, *e.g.*, Memorandum from Holly A. Kuga to James J. Jochum, 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 (May 12, 2004) addressed this exact issue. Petitioners maintain that the Department is well within the statute as defined by the courts to find, on the facts before it, that there was no basis for determining that there was a distinct, less advanced LOT for U.S. sales than for home market sales.

*Department's Position:*

In analyzing differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27371 (May 19, 1997). In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine normal value ("NV") based on sales in the comparison market at the same LOT as the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value ("CV"), that of the sales from which we derive selling, general and administrative ("SG&A") expenses and profit. For exporter price ("EP"), the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, the LOT is the level of the constructed sale from the exporter to the importer. To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

As can be seen from analysis performed by the Department (*see* the February 1, 2005, memorandum from Robert James to Richard Weible entitled "Level of Trade for Dongkuk Steel Mill Co., Ltd. ("DSM"): Structural Steel Beams from the Republic of Korea (A-580-841)"), DSM identified minimal differences in selling functions between markets which were insufficient to demonstrate that DSM's home market sales were at a more advanced LOT. Furthermore, some of the descriptions of the functions claimed by DSM are either directly contradicted by the record evidence or actually weaken DSM's argument that the home market sales are at a more advanced level of trade than the U.S. sales. In addition, as also noted in that memorandum, DSM did not identify all of the relevant functions requested by the Department with respect to the U.S. market. As noted in that memorandum,

the Department has no reason to find that different levels of trade exist between markets, and as a result no LOT adjustment or CEP offset is required or appropriate.

## **RECOMMENDATION**

Based on our analysis of the comments received and of the information on the record, we recommend making no changes to the margin calculations of the preliminary results. If accepted, we will publish the final results of the review and the final weighted-average dumping margins in the Federal Register.

AGREE\_\_\_\_\_ DISAGREE\_\_\_\_\_

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Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

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Date