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A-580-836
Administrative Review
POR: 2/1/04-1/31/05
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TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decisions Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea for the Period February 1, 2004, through January 31, 2005

Summary:

The Department of Commerce (the "Department") has analyzed the case brief submitted by the respondent. As a result of this analysis, the Department has made changes to the margin calculation. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum.

List of Issues Discussed:

Background:

On November 7, 2005, the Department published the preliminary results of the administrative review of the antidumping duty order on certain cut-to-length carbon-quality steel plate products (steel plate) from the Republic of Korea. 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, 70 FR 67428 (November 7, 2005) ("Preliminary Results"). This review covers one producer/exporter of steel plate, Dongkuk Steel Mill Co., Ltd. ("DSM"), and the merchandise described in the "Scope of the Order" section of the accompanying Federal Register notice. The period of review ("POR") is February 1, 2004, through January 31, 2005. In the Preliminary Results, the Department invited interested parties to comment but received only a case brief from DSM on December 7, 2005.

Discussion of the Issues:

Comment 1: Treatment of Sales with Negative Dumping Margins

DSM argues that the Department should not treat the negative margins calculated for its U.S. sales as zero margins. First, DSM argues that this so-called "zeroing" practice has been found to violate U.S. obligations under the World Trade Organization ("WTO") Antidumping Agreement. DSM further asserts that the WTO has determined that the zeroing practice is inconsistent with the "fair comparison" requirement of that agreement, citing United States - Final Dumping Determination on Softwood Lumber from Canada, Report of the Appellate Body, WT/DS264/AB/R, 11 August 2004 ("Softwood Lumber"); United States - Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan, Report of the Appellate Body, WT/DS244/AB/R, 15 December 2003; and, European Comminutes - Antidumping Duties on Imports of Cotton-Type Bed Linen from India, Report of the Appellate Body, WT/DS141/AB/R, 1 March 2001. Finally, DSM requests that the Department revise its methodology, and calculate an average margin without treating negative margin sales as zero margin sales, to avoid the unnecessary burdens associated with another WTO challenge which, according to DSM, will again result in the zeroing practice being overturned. As previously stated, the Department did not receive rebuttal comments from the petitioners or other interested parties.

Department's Position:

We disagree with DSM and have not altered the final margin program to reflect the negative dumping margins calculated for some of DSM's U.S. sales. The Department's practice in calculating weighted-average dumping margins is to deny offsets to dumping where export price, or constructed export price, exceeds normal value ("NV"). As discussed below, we include U.S. sales that were not priced below NV in the calculation of the weighted-average dumping margin as sales with no dumping margin. The value of such sales is included in the denominator of the ratio used to calculate the weighted-average margin along with the value of dumped sales. We do not, however, allow U.S. sales that were not priced below NV to offset dumping margins found on other sales. This practice has repeatedly been upheld by the United States Court of Appeals for the Federal Circuit, and is consistent with international obligations of the United States.[1] With regard to DSM's argument concerning Softwood Lumber, at the instruction of U.S. Trade Representative, the Department implemented the WTO report on May 2, 2005, pursuant to section 129 of the Uruguay Round Agreements Act. See Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Softwood Lumber Products From Canada, 70 FR 22636 (May 2, 2005). Under section 129, the implementation of the WTO report affects only the specific administrative determination that was the subject of the dispute before the WTO: the antidumping duty investigation of softwood lumber from Canada. See 19 U.S.C. §3538 and Corus Staal BV v. United States, 387 F. Supp 2d

[1] See Timken Co. v. United States, 354 F.3d 1334, 1342-45 (Fed. Cir. 2004), and Corus Staal BV v. United States, 395 F.3d 1343, 1347 (Fed. Cir. 2005).

1291, 1299 (CIT July 19, 2005). The implementation of Softwood Lumber has no bearing on this or any other antidumping duty proceeding. See Corus Staal BV v. United States, 387 F. Supp. 2d at 1299. Accordingly, the Department will continue to deny offsets to dumping based on constructed export prices that exceed NV.

Comment 2: Error Related to the Calculation of Net U.S. Price

DSM argues that the Department made an error in calculating net U.S. price for those sales for which it reported billing adjustments. As explained by DSM, for certain U.S. sales, there were minor differences between the quantity of merchandise DSM shipped and the quantity of merchandise the customer actually received. Where documented, DSM claims, Dongkuk International, Inc. ("DKA") issued a credit notice to the customer to compensate for the difference in quantities, and sought reimbursement thereof from the shipping company. In its comments, DSM asserts that the Department should have subtracted the amount of the reimbursements DKA received from those shipping companies (BILLADJ2U) from the amount of billing adjustments DKA made on sales to its U.S. customers (BILLADJU) to arrive at the net billing adjustment amounts for purposes of determining net U.S. price. However, according to DSM, the Department erroneously deducted both the per-unit credit and the per-unit reimbursement from the gross unit price to determine the net U.S. price. As previously stated, the Department did not receive rebuttal comments from the petitioners or other interested parties.

Department's Position:

We agree with DSM that we erroneously deducted the reimbursement from the U.S. price. Furthermore, we have re-examined the amount of the net adjustment and determined to recalculate that adjustment. As 19 CFR §351.401(c) provides, in pertinent part:

> In calculating. . .constructed export price. . . the Secretary will use a price that is net of any price adjustment, as defined in §351.102(b), that is reasonably attributable to the subject merchandise. . .

19 CFR §351.102(b) provides, in pertinent part:

> 'Price adjustment' means any change in the price charged for subject merchandise . . . such as discounts, rebates and post-sale price adjustments. . . .

The credit notes issued for merchandise lost in transit, as well as the reimbursements DKA may have received from shipping companies, do not result in changes to the unit price charged for the subject merchandise. When DKA issues a credit note to a U.S. customer in compensation for merchandise lost in transit, it has not adjusted the per-unit price of that merchandise, but has only ensured that the customer's total payment comports with the quantity of merchandise the customer reported receiving and the per-unit price reflected in the invoice. Accordingly, such amounts are not properly considered price adjustments. Rather, the cost of the lost merchandise, less the reimbursements received from shipping companies, represents an expense. In this case, we have treated the net expenses as direct selling expenses, not price adjustments.

Given that the cost of the lost merchandise is not on the record, as facts available, we have based this amount on the same ratios used to calculate the amount of the credit reported in the BILLADJU field. See Calculation Memorandum for the Final Results of the 2004-2005 Administrative Review of the Antidumping Duty Order on Certain Cut-to-Length Carbon-Quality Steel Plate Products from Korea - Dongkuk Steel Mill Co. Ltd. Where applicable, we reduced the reported gross unit price by the difference between the per-unit cost of the merchandise lost and the per-unit reimbursement received from shipping companies.

Recommendation:

Based on 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 company in the Federal Register.

_____ _____
Agree Disagree

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
Date