

April 9, 2007

MEMORANDUM TO: David Spooner
Assistant Secretary
for Import Administration

FROM: Stephen Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Administrative Review of Steel Concrete Reinforcing Bars from
The Republic of Korea

Summary

We have analyzed the case and rebuttal briefs of interested parties in the 2004-2005 review of the antidumping duty order on steel concrete reinforcing bars from the Republic of Korea. As a result of our analysis, we have made no changes in the margin calculation for the final results. We recommend that you approve the position described in the “Discussion of the Issues” section of this memorandum. There is only one issue in this review for which we received comments from the parties:

Comment: The Treatment of Products Reported With Yield Strength Code 3

Background

On October 10, 2006, the Department of Commerce (the Department) published the preliminary results in the 2004-2005 antidumping duty administrative review of steel concrete reinforcing bars from the Republic of Korea. See Steel Concrete Reinforcing Bars from The Republic of Korea : Notice of Preliminary Results and Preliminary Rescission, in Part, of Antidumping Duty Administrative Review, 71 FR 59440 (October 10, 2006) (Preliminary Results). The product covered by this review is steel concrete reinforcing bars. The period of review (POR) is September 1, 2004, through August 31, 2005.

We invited parties to comment on the Preliminary Results. We received comments from the petitioners (*i.e.*, Nucor Corporation, Commercial Metals Company, and Gerdau Ameristeel Inc., collectively, Rebar Trade Action Coalition) and the respondent (*i.e.*, Dongkuk Steel Mill Co., Ltd (DSM), Korea Iron & Steel Company, Ltd. (KISCO), and Hwanyoung Steel Ind. Co., Ltd.

(HSI)).¹ Based on our analysis of the comments received, we have not changed the weighted-average margins from the Preliminary Results.

Margin Calculations

We calculated constructed export price and normal value using the same methodology described in the Preliminary Results.

Discussion of the Issues

Comment: *The Treatment of Products Reported With Yield Strength Code 3*

In this proceeding, a significant model-matching product characteristic is yield strength. Specifically, the Department's questionnaire instructs the respondent to report the yield strength of the product in field 3.2 (YSTRH) using the following codes:

- 1 = minimum yield strength of less than 55,000 pounds per square inch (psi)
- 2 = minimum yield strength greater than or equal to 55,000 psi and less than 75,000 psi and carbon equivalent of greater than or equal to 0.55 % (non-weldable)
- 4 = minimum yield strength greater than or equal to 55,000 psi and less than 75,000 psi and carbon equivalent of less than 0.55 % (weldable)
- 7 = minimum yield strength of 75,000 psi or greater

The respondent reported certain U.S. and home market sales with a yield strength code 3, which is not a designated yield strength code in the Department's questionnaire. The respondent reported in this manner for products that, according to their respective specifications and grades, had a minimum yield strength between 55,000 and 75,000 psi, but no specified maximum or minimum carbon equivalency. However, our preliminary analysis of the production data (*i.e.*, mill test certificate data) provided by the respondent for numerous selected U.S. and home market sales at issue indicated that the merchandise had a carbon equivalency of less than 0.55 percent. Therefore, according to the above-referenced reporting codes, this merchandise should have been reported with a code 4. Therefore, for the Preliminary Results, we recoded all the U.S. and home market sales that were reported with a yield strength code of 3 to 4. See October 2, 2006, Calculation Memorandum for the Preliminary Results (calculation memorandum). The methodology we applied in order to determine the proper reporting code for the sales in question in the preliminary results is consistent with that employed in the previous administrative review. (See Steel Concrete Reinforcing Bars From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 69 FR 19399 (April 13, 2004), and the accompanying Issues and

¹The Department determined it appropriate to treat these companies as one entity for margin calculation purposes in the preliminary results. No parties objected to this preliminary decision. Accordingly, these companies are referred to as "the respondent" in this memorandum.

Decision Memorandum at Comment 3, page 14 (2001-2002 Administrative Review Final Results.)

The petitioners claim that the respondent withheld critical model-matching information and failed to follow the Department's reporting requirements regarding the yield strength model-matching characteristic. Furthermore, the petitioners argue that the Department's preliminary attempt to correct the respondent's reporting of yield strength failed because a significant portion of the home market sales at issue should have been recoded as a 7 instead of a 4. According to the petitioners, the Department's preliminary decision to recode all products reported with yield strength code 3 to 4 was based solely on an exhibit contained in KISCO's August 18, 2006, supplemental response, and did not take into account other information on the record. Specifically, the petitioners argue that data contained in DSM's August 23, 2006, response and HSI's September 7, 2006, supplemental response indicate that some of the products sold in the home market had an actual yield strength greater than 75,000 psi. Therefore, the petitioners argue it would be more appropriate to recode the yield strength for some of the home market sales from 3 to 7, instead of 4. Unlike the circumstances in the 2001 - 2002 administrative review of this order, where the vast majority of the information on the record supported the Department's universal recoding of 3s to 4s, the petitioners argue that the record of this review demonstrates that some home market sales should be assigned a code 7 while others should be assigned a code 4. However, the petitioners contend that there is no reasonable way to change the coding for individual sales for which there are no mill test certificates on the record without massive speculation. The petitioners assert that speculation is not an appropriate basis for a determination by the Department because it does not result in accurate dumping margins.

Consequently, the petitioners argue that the Department should apply total adverse facts available to all of the sales reported with a yield strength code of 3 for the final results because the respondent failed to act to the best of its ability by not following the Department's reporting requirements for yield strength despite having both the ability to do so and the knowledge from the previous review that this information would be required to calculate an accurate dumping margin. The petitioners assert that, in this and the prior review, the four "basket" categories of yield strengths reflected in the Department's questionnaire for defining control numbers (CONNUMS) used to perform model matching are reported based on actual yield strength and actual carbon equivalency, not minimum yield strength and carbon equivalency (or lack thereof) listed in the grade specification as sold. The petitioners state that the reporting of yield strength was designated in this manner so that the respondent could not easily manipulate the model matches by selling a higher grade product labeled as a lower grade, basing the CONNUM on the lower grade's specified characteristics. Consistent with the 2001-2002 administrative review, the petitioners point out that the Department's questionnaire instructions for yield strength require that the respondent report actual physical characteristics, not specification-based characteristics.²

²Specifically, the petitioners state that field 3.5 of the Department's questionnaire requires the respondent to characterize rebar within specified ranges, including a determination of carbon equivalency, while field 3.6 requires the respondent to report actual yield strength.

Despite these clear instructions, the petitioners assert further that, as in the previous review, the respondent failed to correctly report yield strength, claiming that it either could not report it or that it would be overly burdensome for it to provide the carbon equivalency and actual yield strength information. The petitioner points out, however, that when the Department requested this information for selected sales, the respondent was able to provide the information for many of the selected sales, which demonstrates that the information was available and could have been reported. In addition, the petitioners argue that the respondent should have been aware of, and bears the responsibility for knowing, the reporting requirements when it participates in an administrative review. The petitioners emphasize that this is not the first time the respondent has faced the yield strength issue; therefore, it had sufficient legal notice that it would be required to report yield strength and specify whether it was above or below a certain carbon equivalency. The petitioners point out that in the final results of the previous administrative review the Department explained that the CONNUMS used for model-matching purposes should be based on physical characteristics, rather than specification-based characteristics. Accordingly, the petitioners contend that because the respondent was on notice that the yield strength information would be required for model-matching purposes and it failed to provide it, the Department should apply adverse facts available in the final results. Additionally, the petitioners assert that the Department, as well as the courts, has established that it is the respondent's responsibility to maintain data and supporting documentation required for an administrative review, and that a respondent's failure to do so warrants the use of adverse facts available. In support of their argument, the petitioners cite to Ta Chen Stainless Steel Pipe, Ltd. V. United States, Court No. 97-08-01344 (October 28, 1999), among other cases. As adverse facts available, the petitioners assert that the Department should assign a margin of 102.28 percent to all U.S. sales reported with a yield strength code of 3.

The respondent maintains that it has cooperated fully with the Department and has acted to the best of its ability in responding to the Department's questionnaires. The respondent argues that it reported the yield strength for U.S. and home market sales based on the range within which the minimum yield strength fell, in accordance with the questionnaire reporting requirements. With respect to products with minimum yield strengths between 55,000 and 75,000 psi, the respondent asserts that it distinguished between the products for which it controlled the carbon equivalency, and the products for which it did not control the carbon equivalency. Therefore, according to the respondent, the reported yield-strength codes reflect the actual manner in which the products were sold to the customers.

In defending its distinction of products in this manner, the respondent explains that there has been a significant change in the commercial practices in Korea since the last review conducted by the Department. During the previous review period, the Korean specifications for rebar falling within the 55,000 to 75,000 psi category required manufacturers to control the carbon equivalency of the rebar to ensure that the product met the standards for weldable rebar. Products that did not meet the carbon equivalency requirements had to be separately classified under a different specification for non-weldable rebar. By contrast, the U.S. specifications for rebar falling within that category did not require manufacturers to control the carbon equivalency of the rebar. Customers requiring a weldable product could not rely on general specifications

but, rather, needed to specifically request that the manufacturer control the carbon equivalency. As a result, the products sold in the home market could be classified into weldable and non-weldable categories, while the products sold in the U.S. market could only be classified into weldable and “not controlled” categories. Accordingly, during the previous review period, all of the U.S. sales fell into the not controlled category and a relatively small quantity of home market sales were sold under the U.S. specifications without a controlled carbon equivalency. Therefore, if the Department had treated the weldable, non-weldable, and not-carbon-equivalency-controlled categories separately, all of the U.S. sales that fell within the 55,000 to 75,000 psi category would have been compared to the small quantity of home market sales that were sold under the U.S. specifications. To avoid that result, the Department recoded all of the sales that were made without controlled carbon equivalency as if they were weldable. However, near the end of the previous review the home market specifications were modified.

According to the respondent, in this review period, the Korean specifications for rebar falling within the 55,000 to 75,000 psi category generally do not require manufacturers to control the carbon equivalency of the rebar. Customers requiring a weldable product must use a separate specification. Therefore, there is no disconnect between the Korean and U.S. specifications, both of which now establish two basic categories: (1) weldable products for which carbon equivalency is controlled, and (2) products for which carbon equivalency was not controlled. Moreover, the respondent contends that in this review, unlike in the previous review, it is a simple matter for the Department to make an “apples-to-apples” comparison of the products sold in the home and U.S. markets. U.S. sales of products in the 55,000 to 75,000 psi yield strength category for which the carbon equivalency is not controlled should be compared to Korean sales of products in the same yield strength range for which carbon equivalency is not controlled. To the extent that there were U.S. sales of weldable products in that yield strength category for which carbon equivalency is controlled, those sales should be compared to Korean sales of weldable products in that yield strength category for which carbon equivalency is controlled. The respondent argues that by comparing sales in this manner, the Department can ensure that its comparisons reflect the actual manner in which the products are offered in the two markets. Unlike the situation in the previous review, there is no risk that the U.S. sales of rebar will be compared only to a relatively small quantity of home market sales of rebar made to U.S. specifications.

Furthermore, the respondent argues that carbon equivalency should not affect the Department’s comparisons for sales in which it is not specified, because the commercial reality is that the manufacturer does not need to supply products meeting requirements that the customer does not designate, and a customer cannot hold a manufacturer liable for supplying products that fail to meet requirements that were not specified in the customer’s order or the manufacturer’s sales document. In other words, if a customer places an order under a specification that does not require a controlled carbon equivalency, unless the customer explicitly specifies carbon equivalency as a supplemental requirement, the customer cannot expect to receive a product meeting a particular carbon equivalency. In reality, these customers may or may not receive products that meet the carbon equivalency requirements for weldable rebar. In such cases, the actual carbon equivalency is a coincidence of production, not a defining characteristic of the sale. By contrast, when a customer orders a specification that requires a controlled carbon equivalency, it can expect that the product it receives will meet a particular carbon equivalency. If not, it can hold the manufacturer liable for failing to supply a product that meets the agreed

upon product characteristics. In such cases, the actual carbon equivalency is a defining characteristic of the sale and not a coincidence of production. Consequently, as a commercial matter, the respondent argues that products for which carbon equivalency is controlled are different from products for which carbon equivalency is not controlled. However, within the category of products for which carbon equivalency is not controlled, the respondent asserts that the actual carbon equivalency is not a meaningful characteristic. The respondent contends that its yield strength reporting method reflects this basic commercial reality.

Accordingly, the respondent maintains that it properly reported the yield strength code for rebar without a controlled carbon equivalency. The respondent points out that for the U.S. and home market rebar grades with a minimum yield strength requirement between 55,000 and 75,000 psi that did not specify a maximum or minimum carbon equivalency, it did not control the carbon equivalency during production. Therefore, the respondent asserts that these sales were reported with a yield strength code 3 because both yield strength codes 2 and 4 have a minimum yield strength requirement between 55,000 and 75,000 psi as well as a maximum or minimum carbon equivalency specification. With respect to the sales of rebar in the home market which did specify a maximum carbon equivalent and were produced to welding specifications, the respondent reported these sales with a yield strength code 4.

In addition, the respondent claims that it explained in its questionnaire responses that, based on the manner in which its production records are maintained, it would be burdensome for it to report the actual carbon equivalency for each sale, and in certain instances, the information necessary to determine it is not maintained in its record-keeping system. However, notwithstanding these limitations, in response to the Department's request, it performed a manual review of its records (*i.e.*, mill test certificate data) to identify the carbon equivalency for selected sample transactions, where possible. Therefore, the respondent asserts that it acted to the best of its ability to respond to the Department's information requests in this review. According to the respondent, the petitioners' contention that it should be penalized because it does not maintain information in its computerized records that would allow it to report the carbon equivalency and actual yield strength for each U.S. and home market sale is without merit because nothing in the antidumping statute requires the respondent to modify its computer records and sales practices to conform to the Department's reporting requirements. To the contrary, the Department's reporting requirements are supposed to conform to commercial realities. The respondent also asserts that the cases cited by the petitioners to support their contention are inapposite, as they involve respondents which were penalized for not preserving information they originally had recorded.

Finally, in response to the petitioners' argument that some of the sales at issue should have been reported with a yield strength code 7 because the actual yield strength exceeded 75,000 psi, the respondent maintains that this argument is inconsistent with the instructions in the questionnaire, which require that yield strength be based on the ranges in which the minimum yield strength of the product falls. The respondent also asserts that the Department rejected a similar argument made by the petitioners in the first administrative review, and that the language on which the petitioners' argument now relies was part of a discussion in that review which addressed only the reporting requirement for carbon equivalency. The respondent adds that the petitioners' suggestion that actual yield strength be used to classify products for comparison purposes when

actual yield strength is not part of the customer specification would be contrary to commercial reality and lead to aberrant results, as customers cannot expect products to have characteristics that are not specified in their orders, and manufacturers cannot be held liable for failing to provide products with characteristics that are not identified in their specifications.

Department's Position:

We disagree with the petitioners that our preliminary recoding of yield strength for certain home market sales was inappropriate. As noted above, our preliminary analysis of the respondent's production data (*i.e.*, mill test certificate data) relevant to the sales in question indicated that this merchandise had a carbon equivalency of less than 0.55 percent. Therefore, these sales were appropriately assigned a code 4.

As discussed in our preliminary calculation memorandum, we calculated the carbon equivalency for all of the home market sales for which mill test certificate data were placed on the record by KISCO and HSI³ in response to the Department's supplemental questionnaires. The results of our calculations indicated that for each transaction examined, the carbon equivalency was less than 0.55 percent and, thus fell, within the reporting criteria for code 4 (*see* exhibit 6 of the calculation memorandum and KISCO's August 18, 2006, and HSI's September 7, 2006, responses.) With respect to the production data provided by DSM, we noted that virtually all of the selected home market transactions had a carbon equivalency below 0.55 percent and thus fell within the reporting code 4 (*see* DSM's August 23, 2006, response). In addition, we noted that the data provided by DSM for all of its U.S. sales reported with a code 3 indicated that these transactions had a carbon equivalency of less than 0.55 percent and thus likewise fell within the reporting code 4 (*see* DSM's August 15, 2006, responses).

Furthermore, after the preliminary results, we issued supplemental questionnaires that included additional selected sales transactions for which KISCO and HSI were asked to provide carbon equivalency data. Our analysis of the carbon equivalency data provided by KISCO and HSI for these additional transactions indicated that the carbon equivalency fell within the code 4 reporting criteria. (*See* KISCO's and HSI's November 1, 2006, response to the Department's October 18, 2006, supplemental questionnaires).

The petitioners' argument that some of these sales should have been recoded as a code 7 because their actual yield strength was greater than 75,000 psi is misleading. The petitioners' argument incorrectly focuses on actual yield strength as shown on the respondent's production records. However, the yield strength physical characteristic identified in the questionnaire for model-matching purposes requires the respondent to report codes in accordance with the minimum (not actual) yield strength associated with the product's grade specification, and with a carbon

³We calculated estimated carbon equivalency using a formula that excludes the concentration of some alloys such as molybdenum because KISCO and HSI reported that they were not able to calculate the carbon equivalency under the expanded formula contained in the Korean Industrial Standards in effect during the POR. The formula we used was the basic formula in effect under the Korean Industrial Standard in the 2001 - 2002 administrative review.

equivalency greater or less than 0.55 percent. More specifically, the physical characteristic in the questionnaire for yield strength (*i.e.*, field number 3.2 (YSTRH)) clearly requires the respondent to categorize the rebar within specified minimum yield strength ranges as defined in codes 1, 2, 4 and 7.⁴ Furthermore, the questionnaire instructs the respondent to report the actual yield strength of the rebar in field number 3.6 for informational purposes, but not for the purpose of constructing CONNUMS and conducting model matching. In addition, the petitioners' reliance on the 2001-2002 Administrative Review Final Results to support its claim that the Department's questionnaire instructions for yield strength require that the respondent report actual physical characteristics, not specification-based characteristics, is taken out of context because, in that review, the Department's discussion was primarily focused on the reporting of carbon equivalency as indicated below.

The results of the Department's analysis showed that the vast majority (by weight) of DSM/KISCO's U.S. sales of ASTM A615 Grade 60 rebar had an actual carbon equivalency of less than .55 percent. Since the ASTM A615 specification requires that rebar qualifying for Grade 60 have a yield strength of greater than or equal to 55,000 psi and less than 75,000 psi, our analysis indicates that, on an actual basis, these sales are appropriately categorized as having a yield strength code 4. Although ASTM A615 Grade 60 does not specify a carbon equivalency, our analysis indicates that the rebar DSM/KISCO produced to meet this grade does not have the variability that would be expected for a factor that is not controlled for in the production process. Because the vast majority of the ASTM A615 Grade 60 rebar that we examined had a carbon equivalency of less than .55 percent, we reclassified the yield strength for sales of this grade from code 3 to code 4. . . Moreover, for the final results, we also reclassified DSM/KISCO's home market sales of ASTM 615 Grade 60 rebar." See 2001-2002 Administrative Review Final Results at Comment 3.

Furthermore, we disagree with the petitioners that the respondent did not act to the best of its ability with respect to yield strength reporting in this review. To the contrary, the respondent cooperated with our requests for information, where possible, and where not possible, it provided an adequate explanation as to why the requisite information was not available. In addition, we note that the respondent's claimed reporting limitations in this review, based on its computerized record-keeping system, is consistent with our observations at verification (of KISCO and DSM) during the prior segments of this proceeding. However, notwithstanding these reporting limitations, through random sampling, we were able to obtain sufficient information to properly correct the yield strength coding of the sales in question. Therefore, there is no reason to apply adverse facts available.

⁴We note that the respondent's yield strength code reporting in this review was in accordance with the minimum yield strength reporting criteria. However, with respect to the products that had a minimum yield strength greater than or equal to 55,000 psi and less than 75,000 psi for which the respondent did not control the carbon equivalency (*i.e.*, the sales for which the respondent reported a yield strength code of 3), the respondent did not take into account the actual carbon equivalency. Therefore, the yield strength code reported for these sales was not in accordance with the questionnaire instructions.

In addition, we disagree with the petitioners' argument that we should apply adverse facts available to the respondent for not maintaining data in its records to enable it to report carbon equivalency and actual yield strength for each U.S. and home market sale. It is the Department's practice, pursuant to section 773(f)(1)(A) of the Tariff Act of 1930, as amended (the Act), to rely on the records of the exporter or producer of the merchandise if such records are kept in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the cost associated with the production and sale of the merchandise. See, e.g., Notice of Final Results and Rescission of Antidumping Duty Administrative Review in Part: Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 72 FR 4486 (January 31, 2007), and accompanying Issues and Decision Memorandum at Comment 8. Furthermore, we note that section 782(e) of the Act states that the Department will not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements, if : 1) the information is submitted by the deadline established; 2) the information can be verified; 3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; 4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements; and 5) the information can be used without undue difficulties. In addition, we note that in order for the Department to apply adverse facts available, the Department must first find that the application of facts available is warranted and then find that the respondent did not cooperate to the best of its ability to comply with a request for information. (See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbon from the Peoples Republic of Korea, 69 FR 17645 (April 5, 2004), and accompanying Issues and Decision Memorandum at Comment 11. See also, Nippon Steel Corp. v. United States, 337 F.3d 1373 (Fed. Cir. 2003). As stated above, in this review, we find that the application of facts available is not warranted and the respondent has cooperated to the best of its ability because it: 1) responded to the original questionnaire and multiple supplemental questionnaires within the established deadlines; 2) provided the requested information or a reasonable explanation as to why the information was not available⁵; 3) did not significantly impede this proceeding under the antidumping statute; and 4) the information provided can be used without undue difficulties.

Finally, the cases cited by the petitioners to support their contention that the Department should penalize respondents for not maintaining information required in an administrative review are inapplicable to the facts in this review. For example, unlike Ta Chen Stainless Steel Pipe, Ltd. V. United States, when in remand the court upheld the Department's application of a partial adverse inference to Ta Chen for withholding or failing to provide certain U.S. sales information, the respondent in this review provided the production data requested by the Department to the extent its recording-keeping allowed. Moreover, the Department determined that the data provided by the respondent in this review was sufficient.

⁵As noted above, the respondent's claims concerning its reporting limitations were consistent with the Department's experience during verification of DSM and KISCO in prior segments of this proceeding.

However, we continue to find unacceptable the respondent's yield strength coding distinction between sales for which it controlled the carbon equivalency and sales for which it did not based on the new Korean rebar specifications in effect during the POR because it is not in accordance with the yield strength reporting criteria in the questionnaire. At no point in this review did we give the respondent permission to deviate from the codes provided. We also find the fact that the Korean rebar specifications have changed and that the respondent is no longer required to control the carbon equivalency during production to be irrelevant to our analysis because there is no evidence on the record of this review that the product characteristics of the rebar being sold under the new specifications have changed. In other words, there is no evidence on the record suggesting that the rebar produced under the new specifications is physically different from that produced under the old specifications in effect during the previous administrative review, or that the respondent changed its production process in any way to meet the new specifications. Consequently, there is no basis on which to change our analysis of this issue from that in the previous review. Therefore, the foregoing reasons, we have not changed our preliminary recoding of the yield strength characteristic of the sales in question for the final results of this review.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above position. If this recommendation is accepted, we will publish the final results of review and the final weighted-average dumping margins for the reviewed firms in the Federal Register.

Agree ____

Disagree ____

David M. Spooner
Assistant Secretary
for Import Administration

(Date)