

April 20, 2009

MEMORANDUM TO: Ronald K. Lorentzen  
Acting Assistant Secretary  
for Import Administration

FROM: John M. Andersen  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty  
Administrative Review of Certain Cut-to-Length Carbon-Quality  
Steel Plate Products from the Republic of Korea for the Period of  
Review February 1, 2007, through January 31, 2008

### Summary

We have analyzed the comments filed in 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 (Korea) for the period of review (POR) February 1, 2007, through January 31, 2008. We recommend that you approve the positions described 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 comments and rebuttal comments by parties:

1. U.S. Indirect Selling Expenses
2. Home-Market Freight Expenses
3. Brokerage and Handling Expenses
4. Short-Term Interest Rate
5. Bank Charges

### Background

On December 19, 2008, the Department of Commerce (the Department) published Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review, 73 FR 77614 (December 19, 2008) (Preliminary Results), in the Federal Register.

We invited parties to comment on the Preliminary Results. We received case briefs from the respondent, Dongkuk Steel Mill Co., Ltd. (DSM), and a domestic producer and interested party, ArcelorMittal USA Inc. (ArcelorMittal), on January 21, 2009, and March 27, 2009, respectively. The case brief from ArcelorMittal was initially filed on January 22, 2009, but later returned by the Department due to improper bracketing. See the letter to ArcelorMittal concerning the bracketing of proprietary information dated March 24, 2009. We received a rebuttal brief from DSM on March 2, 2009. The rebuttal brief was initially filed on January 29, 2009, but later returned by the Department because it contained new factual information. See letters to DSM and to ArcelorMittal concerning new factual information dated February 26, 2009. At the request of ArcelorMittal, we held a hearing on February 4, 2009.

## Discussion of the Issues

### ***U.S. Indirect Selling Expenses***

Comment 1: ArcelorMittal argues that the Department should modify DSM's reporting of U.S. indirect selling expenses (ISEs) so that it conforms to the information on the record and to the Department's practice. ArcelorMittal points out that the sales value DSM used in its U.S. ISE calculation is higher than the sales value it reported in its financial statements. The reason given by DSM, ArcelorMittal explains, is that DSM's U.S. affiliate, Dongkuk International, Inc. (DKA), reported in its financial statements only the markup for its re-sales of raw materials back to DSM in Korea due to a recent change in the U.S. Generally Accepted Accounting Practice (GAAP). ArcelorMittal asserts that the fact that DKA reported only the amount of the markup earned on its re-sales back to DSM in Korea but reported the sales value for its sales to its unaffiliated customers in the United States suggests that different types of expenses were incurred for the two types of sales. Nevertheless, ArcelorMittal argues, DSM has reported a single ISE ratio for all of DKA's sales and calculated the ratio using a sales value that is not supported by the record.

For reporting home-market ISEs, ArcelorMittal contends, DSM used a different methodology by calculating separate expense ratios for domestic sales and export sales. ArcelorMittal explains that DSM described its derivation of separate expense ratios for its home-market ISEs by allocating the total amount of ISEs for the sales department between domestic and export activities based on the relative salaries of the personnel responsible for domestic and export sales. ArcelorMittal asserts that the two ratios are different; thus, it is obvious that DSM expended more resources to make sales to unaffiliated parties than it did to sell to its U.S. affiliate, DKA. Given the information about DSM's U.S. sale types and its home-market ISEs calculation, ArcelorMittal contends that DSM's reporting of a single U.S. ISE ratio does not meet the Department's requirement to provide the most specific reporting. According to ArcelorMittal, DSM could have allocated U.S. ISEs between domestic sales and export sales in the same manner it employed for allocating home-market ISEs. Although DSM claims that its method for allocating U.S. ISEs in this review has been approved in other administrative reviews, ArcelorMittal argues, in those reviews the Department relied on audited financial records supplied by the respondent, citing Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-

Resistant Carbon Steel Flat Products from the Republic of Korea, 70 FR 12443 (March 14, 2005), and accompanying Issues and Decision Memorandum (2005 Carbon Steel Products) at Comment 20 and Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 71 FR 7513 (February 13, 2006), and accompanying Issues and Decision Memorandum (2006 Carbon Steel Products) at Comment 16. Because no such records exist on the record of this review, ArcelorMittal asserts, there is no evidence to support the allocation of DKA's ISEs to sales other than its U.S. sales to unaffiliated parties.

ArcelorMittal argues further that, even if DSM had met the Department's requirements for allocated reporting, because DSM relied on different ISE calculation methodologies for U.S. and home-market sales, the Department has not made an "apples-to-apples" comparison when comparing normal value to U.S. price. Citing Micron Technology, Inc. v. United States, 243 F.3d 1301, 1313 (CAFC 2001), ArcelorMittal asserts that not making such a comparison is contrary to the Department's practice and judicial precedent. As further support for its argument, ArcelorMittal points to the Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea, 71 FR 29310 (May 22, 2006), and accompanying Issues and Decision Memorandum at Comment 7, where the Department states that "one of the underlying themes to the statute is that dumping margins should be calculated on a consistent, apples-to-apples basis." ArcelorMittal also points to Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part, 73 FR 52823 (September 11, 2008), and accompanying Issues and Decision Memorandum (Ball Bearings) at Comment 13, where the Department found it necessary to make additional adjustments in order to make an apples-to-apples comparison.

ArcelorMittal concludes that, because DSM has not provided evidence to support the sales value it used in its U.S. ISE calculation, the Department should use a ratio based on facts available to recalculate the expenses. In the alternative, if the Department relies on the sales value DSM used in the U.S. ISE calculation, ArcelorMittal urges the Department to alter the single-allocation ratio to reflect two ratios--one for DKA's sales to unaffiliated customers in the United States and one for DKA's export sales back to DSM in Korea. ArcelorMittal suggests a methodology for making such an adjustment to DSM's reported information.

DSM argues that it has allocated its U.S. ISEs correctly. DSM asserts that applying GAAP when reporting the sales value in its financial statement does not suggest in any way that DKA incurred different levels of expenses in connection with its sales. DSM asserts further that the principles underlying the GAAP provision it used concern solely the issue of revenue recognition for purposes of fair financial-statement presentation. DSM adds that the Department has held in previous reviews that it is appropriate to use the gross sales value in the denominator in order to ensure that the U.S. ratio is not understated, citing 2006 Carbon Steel Products at Comment 16.

With respect to its home-market ISEs, DSM contends that the reason it was able to calculate separate ISE ratios is because it maintains separate sales departments for domestic and export sales in Korea. DSM adds that, because there are separate sales departments, the salaries for the sales personnel can be directly attributed to either export or domestic sales. With respect to U.S. ISEs, DSM explains, DKA does not have the ability to segregate selling expenses incurred in connection with U.S. sales to unaffiliated customers and sales of raw materials to DSM in Korea because a single sales unit is responsible for both types of sales. DSM points out that the Department verified DKA in another administrative review of another order and found that it was not able to allocate ISEs more precisely, citing 2005 Carbon Steel Products at Comment 20.

DSM argues further that ArcelorMittal's claim that the home-market ISE ratio for domestic sales is higher than the ratio for export sales due to the lower cost of selling to affiliated parties is not supported by any evidence on the record. DSM explains that the reason expenses for domestic sales are higher than expenses for export sales is that DSM typically sells through unaffiliated Korean trading companies and the trading companies assume many of the selling expenses. With respect to export sales to the United States, DSM explains, it is selling through DKA which, like the trading companies, performs many of the selling activities on behalf of DSM. DSM asserts that there is no comparable entity in the United States that handles similar selling activities on behalf of DKA for its sales of raw materials to DSM in Korea. Citing 2005 Carbon Steel Products at Comment 20, DSM points out that the Department found that DKA's sales of raw materials to DSM could not be considered merely inter-company transfers because the selling activities involved were very similar to those required for DKA's sales of finished products. Moreover, DSM explains, DKA's U.S. ISE rate not only includes selling expenses but also general and administrative expenses which, by definition, do not vary by market or product. For these reasons, DSM contends, ArcelorMittal cannot conclude that DKA's ISE ratio on sales of raw materials to DSM should be lower than the ratio for DKA's sales of subject merchandise to unaffiliated parties in the United States. Hence, DSM asserts, its calculation of a single ISE ratio for all of DKA's selling activities in the United States was proper.

Contrary to ArcelorMittal's argument that financial records do not exist on the record of this review, DSM explains, in response to the Department's supplemental questionnaire, DSM reconciled the reported sales value used in the denominator of the U.S. ISE calculation to DKA's financial statement. According to DSM, ArcelorMittal has not identified any discrepancy in the sales reconciliation and the Department did not request additional documentation. Moreover, citing 2005 Carbon Steel Products at Comment 20, DSM asserts that more specific information (such as sales ledgers and invoices) that was on the record in administrative reviews of other orders was there as a result of verification. In this review, DSM continues, the Department did not conduct nor did ArcelorMittal request that the Department conduct a verification of DSM. DSM concludes that, as a result, ArcelorMittal's position that the record of this review does not include similar information as the record of other reviews is irrelevant because such information is normally obtained during verification.

Department's Position: We have determined to accept DSM's reporting of U.S. ISEs for this review. With respect to the sales value used in the calculation of the U.S. ISE ratio, as we stated in 2006 Carbon Steel Products at Comment 16, we recognize that U.S. GAAP principle EITF 99-19 requires DKA to report its sales of raw materials to DSM as agent sales for the purpose of preparing its financial statements. As we found in 2006 Carbon Steel Products, we find here that it is necessary to use DKA's total sales revenue rather than the sales revenue based on the markup only for its re-sale of raw materials as reported in its financial statements. This is because the ISE ratio is applied to the gross unit selling prices of DKA's U.S. sales. As DSM has pointed out, in responding to our supplemental questions, DSM provided a reconciliation of the sales-value amount to DKA's Income Statement. See data at 1 and Exhibit C-24 of DSM's response dated November 25, 2008. Therefore, we find that the sales value DSM used in the calculation is supported by the record of this review. This finding is consistent with 2005 Carbon Steel Products at Comment 20, which states that a substantial portion of DKA's expenses related to the sales of raw materials are embedded in DKA's total ISEs. We found in both 2005 Carbon Steel Products and 2006 Carbon Steel Products that it is appropriate to include DKA's total sales revenue in the denominator in order to calculate the ISE ratio for application to the gross unit selling prices of DKA's U.S. sales.

Further, the record supports DSM's argument that, although it was able to calculate separate home-market ISE ratios for domestic sales and export sales, it was not able to do so for U.S. ISEs. Specifically, it is evident from the information DSM provided in its organizational chart at Exhibit A-2 of its May 22, 2008, response that DSM maintains separate sales departments for domestic and export sales. In addition, DSM provided sufficient information in its questionnaire responses of how it was able to determine domestic and export expenses for calculating the two home-market ratios. See DSM's response dated June 16, 2008, at 31 and DSM's response dated September 9, 2008, at 38. With respect to the U.S. ISEs, it is evident from information provided in DKA's organizational chart at Exhibit A-3 of DSM's May 22, 2008, response that DKA does not have a separate department for export sales. Based on the above evidence, we find that DKA was not able to report U.S. ISEs for sales to U.S. customers separately from sales of raw materials to DSM. Although we did not conduct verification in this review, our findings here are consistent with the findings we made based upon a verification of DKA conducted in the review of another antidumping duty order. As DSM points out, the Department verified DKA in 2005 Carbon Steel Products and found that it was not able to allocate ISEs more precisely. Specifically, the Department found during verification that DKA's selling functions for sales of raw materials to DSM were substantial and that a large amount of DKA's ISEs were common and could not be tied directly to sales of raw materials or sales of finished products. See 2005 Carbon Steel Products at Comment 20.

While we agree in principle with ArcelorMittal's argument concerning the importance of making an apples-to-apples comparison in antidumping proceedings, we must also ensure that we have calculated the most accurate margin possible. In the one administrative review cited by ArcelorMittal for which the apples-to-apples comparison was considered when making an

adjustment to price (Ball Bearings), the information on the record allowed for the necessary adjustments to be made to the costs at issue to ensure an apples-to-apples comparison. In this review, however, we find that the information on the record does not allow for the separation of expenses on raw materials exported back to DSM in Korea and finished products sold to unaffiliated customers in the United States. Nevertheless, we find that DSM provided sufficient information in its questionnaire responses to support its U.S. ISE calculation. Because we did not request additional information or require DSM to separate expenses by market, we cannot penalize it by altering the single rate to reflect two rates as suggested by ArcelorMittal. Moreover, ArcelorMittal's suggested methodology for calculating separate rates is based on the difference in the two rates reported for home-market ISEs. Assuming that expenses were incurred on U.S. sales in the same manner they were incurred on home-market sales would be mere speculation and would not produce more accurate results than the information already provided by DSM. Therefore, given the circumstances surrounding the U.S. ISEs in this particular case and given that the reported information is supported by the record, we do not find it necessary to revise the U.S. ISEs calculation for the final results of review.

### ***Home-Market Freight Expenses***

Comment 2: ArcelorMittal argues that the Department should modify DSM's reported home-market freight expenses to reflect actual costs incurred by DSM. According to ArcelorMittal, the record illustrates that the prices paid by DSM to its affiliate, Dongkuk Transportation Co., Ltd. (DTC), for freight are greater than the prices paid by DTC to its unrelated subcontractors. Because the prices paid by DSM to DTC exceed market prices, ArcelorMittal argues, the prices were not at arm's length. For this reason, ArcelorMittal asserts, the prices should not be used to adjust DSM's home-market prices. To support its position, ArcelorMittal cites, for example, the Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom, 58 FR 6207, 6211 (January 27, 1993), where the Department accepted international-freight charges from a related party because the record demonstrated that the prices were at arm's length. To correct the reported home-market freight expenses, ArcelorMittal requests that the Department reduce the freight expenses reported for DSM's home-market sales by the portion by which the expenses exceed amounts paid by DSM to unaffiliated subcontractors.

DSM argues that the Department should not make any adjustments to DSM's reported home-market freight expenses. Given the fact that DTC is supplying services in addition to those performed by the unaffiliated subcontractors, DSM asserts, DTC charged DSM for its services in the form of a markup over the rate DTC was charged by the unaffiliated subcontractors. DSM argues that, because it demonstrated that DTC properly charged DSM for its services, no adjustment to DSM's reported freight expenses is warranted.

Department's Position: Based on our analysis of the information on the record, we have not modified DSM's reported home-market freight expenses. DSM explained in its questionnaire response that merchandise was transported in the home market by its affiliate,

DTC, or by DTC's unrelated subcontractors. See DSM's June 16, 2008, response at 23. DSM provided a price-comparison chart illustrating freight prices by destination between DSM and DTC and DTC and its subcontractors. DSM also provided the transportation contract it had with DTC which supports that, in addition to services provided by subcontractors, DTC provided additional services to DSM. See DSM's June 16, 2008, response at Exhibit B-8. Because we find that DSM has illustrated that the prices it paid to DTC were made at arm's length, we have not made any changes to the reported freight expenses for the final results of review.

### ***Brokerage and Handling Expenses***

Comment 3: ArcelorMittal argues that the Department needs to ensure that U.S. sales are adjusted properly for brokerage and handling expenses. ArcelorMittal argues that, although the record includes sample transactions identified in DSM's questionnaire response which indicate that brokerage and handling expenses were allocated on a quantity basis, transactions with similar quantities in DSM's sales list do not reflect similar expenses, suggesting that DSM has underreported such expenses on its U.S. sales. ArcelorMittal requests that the Department adjust expenses by increasing amounts that are not consistent with the amounts in the sample transactions.

DSM argues that ArcelorMittal's allegation that DSM's brokerage and handling expenses may be underreported is incorrect. DSM argues that ArcelorMittal's claim is based on its evaluation of a few sample transactions that were identified in DSM's questionnaire response. DSM points out that ArcelorMittal ignores the fact that there are transactions with expenses higher than those of the sample transactions. DSM comments further that it would be inaccurate to assume that brokerage and handling expenses would not vary by transaction. In this review, DSM asserts, expenses do not vary depending on quantity as ArcelorMittal has speculated; they vary depending on the U.S. port of entry of the transaction.

Department's Position: DSM provided a complete explanation for this expense and reported expenses on a transaction-specific bases. See DSM's June 16, 2008, response at 20 and Exhibit C-6. ArcelorMittal's reliance on certain sample transactions does not demonstrate that these expenses were generally miscalculated. In particular, we find that the fact that transactions with similar quantities do not have similar expenses reported for brokerage and handling is consistent with transaction-specific reporting of this expense and not an indication of misreported expenses. Based on the information on the record, we do not find that DSM calculated brokerage and handling expenses inaccurately. Therefore, we have not made changes to the reported expenses for these final results of review.

### ***Short-Term Interest Rate***

Comment 4: ArcelorMittal argues that the Department should not use DSM's reported home-market credit expenses and inventory-carrying costs (ICCs) due to the inaccurate information DSM provided concerning its short-term interest rate. ArcelorMittal explains that

DSM reported in its original questionnaire response that all of its short-term Korean Won borrowings during the review period were in the form of bank overdrafts which were based on the interest rate specified by the Korean National Tax Service. According to ArcelorMittal, the Department requested that DSM report a currently published commercial short-term lending rate from a Korean banking entity to which DSM responded by repeating its claims that it only had

short-term borrowings and that the interest rate applicable to its borrowings was provided in the original questionnaire response. ArcelorMittal asserts that contradictory information exists on the record; specifically, DSM's non-consolidated financial statement includes short-term borrowings in the form of "Banker's Usance" which show a range of rates that are lower than what DSM reported and "over draft" which do not show any rates. ArcelorMittal also contends that DSM's consolidated financial statement includes short-term borrowings in the form of "Usance" and "overdrafts" which both show a range of rates lower than what DSM reported.

Citing 19 CFR 351.401(b)(1), ArcelorMittal states that the Department requires that the "interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment." ArcelorMittal argues that, because DSM reported inaccurate information concerning its interest rate, it did not meet its burden of justifying its claim for an adjustment and, thus, it is not entitled to an adjustment for home-market credit expenses or ICCs. Further, ArcelorMittal continues, because DSM asserted repeatedly that the information it reported concerning its interest rate was correct, DSM failed to cooperate by not acting to the best of its ability to comply with the Department's request for information. Consequently, ArcelorMittal asserts, the Department is entitled to use facts available with an adverse inference to determine an interest rate for DSM.

DSM contends that ArcelorMittal's argument is misleading in that it implies that DSM refused to supply a commercial short-term lending rate as requested by the Department. Contrary to ArcelorMittal's argument, DSM argues, it not only provided the Department with the requested information in its supplemental response, it reported revised credit expenses and ICCs which were recalculated using the published short-term borrowing rate it provided, referring to its September 9, 2008, response at 29 and Exhibit B-22. DSM adds that the Department did not request additional information on this issue and it used the revised expenses and costs in its Preliminary Results. Therefore, DSM contends, ArcelorMittal's claim that DSM did not act to the best of its ability to cooperate with the Department is without merit.

DSM asserts that ArcelorMittal's reference to DSM's financial statement to illustrate that DSM concealed actual short-term borrowings is also misleading. DSM explains, first, that the Banker's Usance is a form of foreign-currency denominated borrowing related to the purchase of imported raw materials and, thus, would not be an acceptable basis for calculating a home-market interest rate. DSM explains, second, that although there were bank-overdraft amounts in its consolidated financial statements, DSM had already informed the Department that it was not



possible to calculate a reliable weighted-average interest rate for those borrowings based on DSM's financial records. Instead, DSM explains, it provided the overdraft interest rate established by the Korean Tax Services. DSM asserts that it described the nature of its short-term borrowings during the period of review properly and it provided a complete response to the Department's request for information. Accordingly, DSM concludes, there is no basis for revising the credit expenses or ICCs for the final results of review.

Department's Position: DSM reported in its original response that, although it had bank overdrafts during the period of review, it was not feasible to calculate an actual average interest rate using the balances recorded in DSM's normal accounting records. DSM reported that, as a result, it based its weighted-average interest rate on the bank-overdraft interest rate specified by the Korean National Tax Service. See DSM's June 16, 2008, response at 26 and 27 (footnote 13). As DSM has pointed out, in response to our supplemental questions concerning the interest rate, DSM reported a currently published commercial short-term lending rate and it reported revised credit expenses and ICCs which were recalculated using the updated interest rate. See DSM's September 9, 2008, response at 29 and Exhibit B-22. We used the revised expenses in the Preliminary Results. See the Preliminary Analysis Memorandum for DSM dated December 19, 2008, at 3-4. We find that DSM has cooperated in this review to the best of its ability by providing a complete response to our request for information. We are satisfied that DSM provided information for its calculation of credit expenses and ICCs pursuant to 19 CFR 351.401(b)(1) and, therefore, have continued to use these expenses and costs in the final results of review.

### ***Bank Charges***

Comment 5: ArcelorMittal argues that the Department should ensure that U.S. sales prices are adjusted properly for banking charges. ArcelorMittal explains that, even though DSM stated in its questionnaire response that it incurred bank charges for each U.S. sale, it appears that it may not have reported all of the expenses in its sales database.

DSM asserts that it reported all of its bank charges. According to DSM, there was an error in its explanation of bank charges that may have prompted ArcelorMittal's argument. DSM explains that, although it described the bank charges as pertaining to the sales between DSM and DKA, in fact, the charges pertain to sales between DKA and the customer.

Department's Position: Because there is no indication on the record that DSM has not reported all of its bank charges, we have continued to accept DSM's reported bank charges. With respect to DSM's clarification about the sales to which the bank charges pertain, the fact that they pertain to sales between DKA and the customer can be ascertained from the record. See DSM's June 16, 2008, response at 32 and Exhibit C-14.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of the review and the final dumping margin for DSM in the Federal Register.

Agree \_\_\_\_\_

Disagree \_\_\_\_\_

*/s/ Ronald K. Lorentzen*

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Ronald K. Lorentzen  
Acting Assistant Secretary  
for Import Administration

\_\_\_\_\_  
(Date)