

AKIN GUMP
STRAUSS HAUER & FELD LLP

Attorneys at Law

July 25, 2005

RECEIVED
JUL 25 2005
DEPT. OF COMMERCE
ITA
IMPORT ADMINISTRATION

SPENCER S. GRIFFITH
202.887.4575/fax: 202.887.4288
sgriffith@akingump.com

PUBLIC DOCUMENT

Total Pages: 5
Public Comment

This document contains no business
proprietary information.

VIA HAND DELIVERY

The Honorable Carlos M. Gutierrez
Secretary of Commerce
U.S. Department of Commerce
Attn: Import Administration
Central Records Unit, Room 1870
14th Street & Constitution Avenue, NW
Washington, D.C. 20230

**Re: Antidumping Proceedings: Public Comments on the Treatment of Duty
Drawback Adjustments to U.S. Price**

Dear Secretary Gutierrez:

On behalf of POSCO, we hereby respond to the Department's June 30, 2005 request for comments regarding the Department's duty drawback adjustment policy and practice. See 70 Fed. Reg. 37764. As discussed in greater detail below, POSCO submits that the Department should not change its existing duty drawback policy and should continue its long-standing practice of granting a duty drawback adjustment to export price where a respondent party satisfies its current two-part test.

The Honorable Carlos M. Gutierrez
July 25, 2005
Page 2

I. The Department's Current Practice Is Consistent With the Duty Drawback Provision Under the Antidumping Statute

The purpose of the duty drawback adjustment is to account for the imbalance between the price charged for subject merchandise in the home market (after duties are paid on imported inputs) and the price charged in the United States (where the producer receives either a duty rebate on the imported inputs or an exemption from paying the duties on the inputs by reason of exporting the product). *See* 19 U.S.C. § 1677a(c)(1)(B). If the Department did not adjust for duty drawback, it could find mistakenly that a company dumped where the prices were otherwise identical. Accordingly, the U.S. antidumping statute accounts for these differences in price comparability by permitting a duty drawback adjustment to U.S. price if: (1) import duties are imposed and (2) there is a rebate or non-collection of those duties by reason of the exportation of merchandise to the United States. *See* 19 U.S.C. § 1677a(c)(1)(B). The U.S. Court of International Trade has recognized that the duty drawback provisions give due allowance for differences which affect price comparability. *See Far East Mach. Co., Ltd. v. United States*, 699 F. Supp. 309, 314 (Ct. Int'l Trade 1988) (“{P}rice comparability is maintained by the addition of drawback to U.S. price.”)

The Department's long-standing duty drawback practice, embodied in its two-part test, accurately reflects the statutory requirements. The statute mandates that U.S. price be adjusted by the amount of any import duties that have been rebated or not collected by reason of exportation. *See* 19 U.S.C. § 1677a(c)(1)(B). Thus, the Department requires only that respondents show whether they had a sufficient quantity of imported inputs to support the

The Honorable Carlos M. Gutierrez
July 25, 2005
Page 3

amount of duty drawback claimed, and “the only limitation placed on the duty drawback adjustment is that the adjustment to the U.S. price may not exceed the amount of import duty actually paid.” See *Circular Welded Non-Alloy Steel Pipe from Korea*, 69 Fed. Reg. 32492 (June 10, 2004), Issues and Decision Memorandum at Comment 2. The U.S. Court of International Trade has “consistently upheld” the Department’s two-part test as fulfilling the Department’s statutory obligations. See *Laclede Steel Co. v. United States*, 18 C.I.T. 965, 972 (1994); *Avesta Sheffield, Inc. v. United States*, 838 F. Supp. 608, 611 (Ct. Int’l Trade 1993).

In numerous recent cases, however, domestic parties have urged the Department to abolish its long-standing practice and, instead, impose burdensome new requirements on foreign respondents. Notably, the Department has previously remarked that the change repeatedly espoused by domestic parties (and perhaps within the Department’s current contemplation) is “supported neither by the statute nor Department practice.” *Corrosion-Resistant Carbon Steel Flat Products from Korea*, 70 Fed. Reg. 12443, Issues and Decision Memorandum at Comment 4. Consistent with such decisions, the Department should not change its long-standing practice to address petitioners’ unwarranted claims and should continue to use its successful, long-standing practice.

II. Korea’s Duty Drawback System Fulfills the Purpose of the Duty Drawback Provision Under the Antidumping Statute

The Department has also consistently and correctly determined that the Korean “individual rate” duty drawback system satisfies the purpose of the duty drawback adjustment as well as the statutory requirements. In order to qualify for duty drawback under Korean law, a

AKIN GUMP
STRAUSS HAUER & FELD LLP
Attorneys at Law

The Honorable Carlos M. Gutierrez
July 25, 2005
Page 4

Korean producer must export products made from imported raw materials within two years from the date of importation, within the limits of duty amounts paid. The Korean producer must also demonstrate that the raw materials were actually used in manufacturing exported goods by completing the Korean duty drawback application and the matching table. These documents require the Korean producer to link each export permit entitling a Korean producer to a duty drawback to an import permit certifying payment of duties on the import of raw materials. The linking requirements in these documents reduce the already low possibility of Korean producers to overstate the adjustment claimed on U.S. sales. Accordingly, the Department has examined the Korean duty drawback system on numerous occasions and has determined that the system is adequate to enable the Department to examine the criteria for receiving a duty drawback adjustment. See *Corrosion-Resistant Carbon Steel Flat Products from Korea*, 70 Fed. Reg. 12443 (Mar. 14, 2005), Issues and Decision Memorandum at Comment 4; *Certain Polyester Staple Fiber from Korea*, 68 Fed. Reg. 34378, 34380 (June 9, 2003). Therefore, the Department should not unnecessarily change its long-standing practice that already contains the necessary controls to mitigate the possibility of distortion.

* * * * *

In accordance with the Federal Register notice, we have enclosed an original and six copies of this response. This submission contains no business proprietary information.

AKIN GUMP
STRAUSS HAUER & FELD LLP

Attorneys at Law

The Honorable Carlos M. Gutierrez
July 25, 2005
Page 5

If you have any questions or desire any additional information, please feel free to contact
the undersigned.

Respectfully submitted,



Spencer S. Griffith
Phyllis L. Derrick
J. David Park
Jarrod M. Goldfeder
Lisa W. Ross
Jason A. Park

AKIN GUMP STRAUSS HAUER & FELD LLP
Counsel for POSCO