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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 request for comments on the appropriate methodology for determining whether a producer is entitled to a duty drawback adjustment on its U.S. sales. See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 Fed. Reg. 61716 (Oct. 19, 2006) ("Request for Comments"). In accordance with the Department's instructions, we are submitting an original and six copies of these comments, as well as an

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electronic version on the accompanying CD-ROM. This submission contains no business proprietary information.

As discussed in greater detail below, POSCO submits that no changes to the Department's existing duty drawback policy are necessary. Rather, the Department should continue its long-standing practice of granting a duty drawback adjustment to U.S. price where a respondent party satisfies the existing two-prong test. However, if the Department decides to adopt the proposed change stated in the Request for Comments, then POSCO requests that the Department confirm that there will be no additional reporting burdens for those producers that can specifically link duty drawback received to finished products that are exported to the United States, as is the case under Korea's "individual rate" duty drawback system.

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). Otherwise, if the Department did not adjust for duty drawback, it could erroneously conclude that a company had sold merchandise below normal value when, in fact, the prices were otherwise identical. Accordingly, the statute accounts for these differences in price comparability by permitting a duty drawback adjustment to export price or constructed export price if: (1) import duties are imposed; and (2) there is a

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rebate or non-collection of those duties by reason of the exportation of merchandise to the United States. See id. 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 Machinery Co., Ltd. v. United States, 699 F. Supp. 309, 314 (Ct. Int'l Trade 1988) (explaining that "price comparability is maintained by the addition of drawback to U.S. price, since receipt of duty drawback on goods exported to the United States allows the seller to charge a lower price on exports than the price charged on home market sales, without practicing price discrimination.")

The Department's long-standing duty drawback practice, embodied in its two-prong 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 respondents to show whether they had a sufficient quantity of imported inputs to support the 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 the Republic of Korea, 69 Fed. Reg. 32492 (June 10, 2004), Issues and Decision Memorandum at Comment 2. Moreover, the U.S. Court of International Trade has "consistently upheld" the Department's two-prong 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).

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Accordingly, POSCO respectfully submits that no modification is necessary to the Department's existing practice because it is already fully consistent with the statute.

II. THE DEPARTMENT SHOULD NOT ADOPT THE PROPOSED REVISION TO ITS DUTY DRAWBACK ANALYSIS

In the Request for Comments, the Department proposed to abolish its long-standing practice and, instead, require producers to "allocate the total amount of duty drawback received across all exports that may have incorporated the duty-paid input in question, regardless of destination, to ensure that the adjustment claimed on U.S. sales is not overstated." 71 Fed. Reg. at 61723.¹ However, the Department also stated that it would "continue to permit a full adjustment for duty drawback received should the foreign producer claiming such adjustment demonstrate that it can directly trace the particular imported duty-paid inputs through the subsequent production process and into particular finished goods that are exported to the United States." Id. at 61723-24.

In essence, the Department has proposed that, if a producer does not meet the traditional two-prong test, then it will instead allocate duty drawback received across all exports that included the particular inputs in question. POSCO respectfully submits that this proposal adds an unnecessary third step to the duty drawback analysis. In particular, the Department has consistently stated that the "only limitation placed on the duty drawback adjustment is that the

¹ Several commenters urged the Department to revise the duty drawback analysis by limiting the adjustment to the amount reflected in the inputs used in merchandise sold in the home market. However, the Department correctly chose not to adopt that proposal in its October 19th notice, consistent with its decisions in other cases. See, e.g., Certain Circular Welded Non-Alloy Steel Pipe from Korea, *supra*.

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adjustment to U.S. price may not exceed the amount of import duty actually paid.”² The Department’s long-established two-prong test for granting a duty drawback adjustment has consistently been found to fulfill this statutory requirement. Adding such a “third prong” would unnecessarily increase the burden on the Department’s already limited resources by requiring the Department to gather and analyze substantially more information in order to perform this proposed allocation method when, under the traditional two-prong test, a producer would have already demonstrated its entitlement to the adjustment. Moreover, in several prior instances, the Department has thoroughly analyzed and rejected substantially similar proposals to allocate total duty drawback over total exports of subject merchandise.³ Accordingly, no reasonable basis exists for the Department to abandon its long-standing practice or to limit the duty drawback adjustment where a producer has satisfied the traditional two-prong test.⁴

III. KOREA’S DUTY DRAWBACK SYSTEM FULFILLS THE PURPOSE OF THE DUTY DRAWBACK PROVISION UNDER THE ANTIDUMPING STATUTE

The Department has consistently and correctly determined that Korea’s “individual rate” duty drawback system fully satisfies the purpose and statutory requirements of the duty

² Where a duty drawback adjustment satisfies the two-prong test, the “adjustment {is} granted in full.” *Id.* (citing Laclede Steel Co. v. United States, 18 C.I.T. 965 (1994)); see also Certain Circular Welded Carbon-Quality Line Pipe from the Republic of Korea, 69 Fed. Reg. 59885, 59889 (Oct. 6, 2004) (prelim. determination) (rejecting petitioner’s request to obtain additional information from respondent regarding the total duties paid, quantities, and values of imported inputs during the period of investigation and granting respondent’s drawback adjustment in full).

³ See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 71 Fed. Reg. 7513 (Feb. 13, 2006), Issues and Decision Memorandum at Comment 2 (“Petitioners have provided no compelling evidence that our long-standing practice is flawed and should be modified.”)

⁴ Certain Circular Welded Non-Alloy Steel Pipe from Korea, *supra* (citing Circular Welded Non-Alloy Steel Pipe from Korea, 63 Fed. Reg. 32833, 32844 (June 16, 1998) and Expandable Polystyrene Resins from the Republic of Korea, 65 Fed. Reg. 69284 (Nov. 16, 2000)).

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drawback adjustment. Specifically, in order to qualify for duty drawback under Korean law, a Korean producer must export products made from imported raw materials within two years from the date of importation within the limits of the duty amounts paid. Korean law further requires the producer to demonstrate that the raw materials were used in manufacturing exported goods by completing the Korean duty drawback application and a matching table. Thus, a Korean producer must use these documents in order to link (a) each export permit entitling a Korean producer to a duty drawback to (b) an import permit certifying payment of duties on the import of raw materials.

The Department has examined the Korean individual rate system on numerous occasions and has determined that the system enables the Department to examine the criteria for receiving a duty drawback adjustment. Indeed, the Department has explained that the Korean individual rate drawback system fully complies with the statute and the existing two-prong test:

In prior investigations and administrative reviews, the Department has examined the individual-rate system and found that the government controls in place enable the Department to examine the criteria under this system for receiving a duty drawback adjustment (i.e., that (1) the rebates received were directly linked to import duties paid on the inputs used in the manufacture of the subject merchandise, and (2) there were sufficient imports to account for the rebates received).

Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, supra (citing Certain Polyester Staple Fiber from Korea, 68 Fed. Reg. 34378, 34380 (June 9, 2003) and Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, 62 Fed. Reg. 55574, 55577 (Oct. 27, 1997)).

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As the foregoing discussion demonstrates, the Department has recognized that Korea's individual rate system fully conforms to 19 U.S.C. § 1677a(c)(1)(B) because it ensures that the amount of duty drawback received on exports to the United States can be directly linked to the particular imported duty-paid inputs. To the extent that the Department adopts its proposed change in practice, therefore, POSCO urges the Department to confirm that it will not apply this new "third prong" to companies that can establish the type of direct linkage that exists under Korea's individual rate system. Otherwise, the Department would effectively require companies to report duty drawback on a more general basis when they have the ability to report the adjustment on a specific basis that reflects the amount of duty drawback actually received on the particular U.S. exports.

IV. CONCLUSION

For the foregoing reasons, POSCO strongly urges the Department to reject the proposed adjustment to its existing duty drawback policy and, instead, maintain its current two-prong test for determining whether to grant a duty drawback adjustment to U.S. price.

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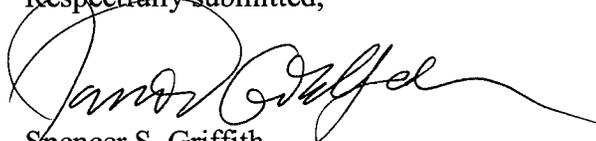
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If you have any questions regarding this submission or require any additional information,
please do not hesitate to contact the undersigned.

Respectfully submitted,



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