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DATE: October 13, 2010

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

FROM: Susan H. Kuhbach
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Antidumping Duty Administrative Review of Circular Welded Carbon Steel Pipes and Tubes from Thailand: Issues and Decision Memorandum for the Final Results

SUMMARY

We have analyzed the comments of the interested parties in the antidumping duty administrative review of circular welded carbon steel pipes and tubes (pipes and tubes) from Thailand, and we have considered the results and findings at verification conducted since the preliminary results. See Memoranda to File, Verification of the Cost Response of Saha Thai Steel Pipe (Public) Company, Ltd., in the Antidumping Review of Circular Welded Carbon Steel Pipes and Tubes from Thailand dated August 17, 2010 (Cost Verification Report), and Verification of the Sales Response of Saha Thai Steel Pipe (Public) Co., Ltd. in the Antidumping Review of Circular Welded Carbon Steel Pipes and Tubes from Thailand, dated August 18, 2010 (Sales Verification Report). As a result, we have made changes to the margin calculation for Saha Thai Steel Pipe (Public) Company, Limited (Saha Thai or respondent), which are described in the notice accompanying this memorandum, and/or in the Memorandum to File, Analysis of Saha Thai Steel Pipe (Public) Company, Limited, for the Final Results of the Antidumping Duty Administrative Review of Circular Welded Carbon Steel Pipes and Tubes from Thailand for the period 03/01/2008 through 02/28/2009, dated concurrently with this memorandum (Final Analysis Memorandum), and/or in the Memorandum to Neal M. Halper, Director, Office of Accounting, Cost of Production and Constructed Value Calculation Adjustments for the Final Results – Saha Thai Steel Pipe (Public) Company, Ltd.," also dated concurrently with this memorandum (Final Cost Calculation Memorandum). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

BACKGROUND

On April 13, 2010, the Department of Commerce (the Department) published the preliminary results of the antidumping duty administrative review of pipes and tubes from Thailand. See

Circular Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review, 75 FR 18788 (April 13, 2010) (Preliminary Results). This administrative review covers one producer/exporter, Saha Thai. The Department rescinded the administrative review with respect to Pacific Pipe Company Limited. See Preliminary Results, 75 FR at 18789-90. The period of review (POR) is March 1, 2008, through February 28, 2009.

We invited parties to comment on the level of trade analysis and adjustment methodology when using a quarterly cost methodology. We received comments on this issue from Saha Thai.

The Department conducted cost and sales verifications of Saha Thai in Thailand, from July 12 through July 23, 2010. See Cost Verification Report and Sales Verification Report. We invited parties to comment on the Preliminary Results and Verification Reports. We received a timely filed case brief from Saha Thai and a timely filed rebuttal brief from Allied Tube & Conduit Corporation on behalf of domestic interested parties,[1] (collectively, petitioners). The Department did not receive a request for a hearing. Based on our analysis of the comments received and revisions from verification, the weighted-average margin for Saha Thai has changed from that calculated in the Preliminary Results.

LIST OF THE ISSUES

Below is the complete list of issues in this review on which we received comments from interested parties:

Comment 1: Analysis of Transactions with an Affiliated Supplier
Comment 2: Treatment of Unpaid Exempted Duties
Comment 3: Use of Single Average Coil Costs
Comment 4: Use of Lower of Cost or Market (LCM) Write-down for Raw Materials
Comment 5: Treatment of LCM Write-Downs When Using the Alternative Cost Methodology
Comment 6: Annualizing Costs Over the Entire Cost Reporting Period
Comment 7: Total Cost Reconciliation
Comment 8: Treatment of Paid Import Duties on Raw Materials
Comment 9: Treatment of Other Material Costs
Comment 10: Level of Trade Adjustment
Comment 11: Use of the Zeroing Methodology

DISCUSSION OF THE ISSUES

Comment 1: Analysis of Transactions with an Affiliated Supplier

During the POR, Saha Thai obtained hot-rolled coils used in the production of the merchandise under consideration from an affiliated party. Therefore, in accordance with section 773(f)(2) of

[1] The domestic interested parties that requested this review are Allied Tube and Conduit Corporation (Allied Tube) and Wheatland Tube Company (Wheatland). The respondent, Saha Thai, also requested this review.

the Tariff Act of 1930, as amended (the Act), the Department applied the "transactions disregarded rule" in the Preliminary Results to test whether the affiliated transactions reflected arm's length values by comparing the transfer prices paid to the affiliated party to the market prices paid to unaffiliated parties.[2] Consistent with the Department's decision to rely on an alternative cost methodology for the Preliminary Results, the Department compared the transfer and market prices for each quarter of the POR. Based on these comparisons, we adjusted the third quarter (September 2008 to November 2008) affiliated transfer prices to reflect market values, specifically Saha Thai's third quarter unaffiliated purchase prices, for the Preliminary Results.

Saha Thai maintains that the Department's transactions disregarded adjustment for the third quarter was based on a comparison of non-contemporaneous affiliated and unaffiliated prices. According to Saha Thai, once contemporaneous prices are evaluated, the record supports that the prices paid to the affiliated supplier reflect market values. Consequently, it is Saha Thai's contention that all of its coil purchases were transacted at arm's length and no adjustment is required for the final results.

While all of the transactions in question were recorded in the third quarter, Saha Thai contends that typically there can be a significant time lag between the date when coil prices are negotiated and the date when coil purchases are recorded in the company's books. Moreover, Saha Thai posits that the third quarter situation was exacerbated since: 1) steel prices were rapidly declining during the second half of 2008; and 2) the affiliated purchases were made domestically and thus exhibit a shorter negotiation-to-delivery time lag as opposed to the unaffiliated purchases which were imported. As a result, the affiliated purchases reflect November 2008 prices while the unaffiliated purchases reflect July 2008 prices. Based on the American Metals Market (AMM) public pricing data, Saha Thai points out that hot-rolled coil prices peaked around $1,190 per metric ton in June/July 2008 and then fell to $843 by November 2008. Thus, Saha Thai contends that the Department should not rely on these non-contemporaneous affiliated and unaffiliated prices for its transactions disregarded analysis.

Instead, Saha Thai argues that its purchase data from earlier quarters effectively demonstrates that the company's purchases from the affiliated party reflects arm's length prices. Specifically, Saha Thai references its May 2008 purchases, where the company claims it is possible to compare affiliated and unaffiliated purchases of contemporaneous invoice dates. Upon comparing the May 2008 affiliated and unaffiliated average purchase prices, Saha Thai concludes that when invoice date is considered, its affiliated transactions pass the arm's length test in all instances. Hence, Saha Thai holds that the affiliated and unaffiliated price differentials observed in the third quarter are a reflection of the variance in shipment times for imported versus domestic sources and are not evidence of below-market pricing between the affiliated parties. As a result, Saha Thai suggests that, if a proper comparison is made, there is no basis for concluding that the affiliated hot-rolled coil purchases were not transacted at market values, and, therefore, the Department should not apply a transactions disregarded adjustment in the final results.

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[2] Based on the Department's analysis of the significance of the affiliated purchases to the total cost of manufacturing, the affiliated inputs were not considered to be a major input into the production of the merchandise under consideration. No parties has contested this finding. See section 773(f)(3) of the Act.

Saha Thai also opposes the Department's use of an average of AMM market prices for the third quarter. The company contends that the AMM steel prices reflect a 27 percent drop in prices between September 2008 and November 2008, which Saha Thai notes is greater than the Department's own test for significance in determining whether an alternative cost methodology is appropriate. Indeed, emphasizing the exaggerated nature of such broad comparisons, Saha Thai notes that a comparison of unaffiliated prices on a three-month average basis to unaffiliated party prices for the last month of the same period would find that the "unaffiliated prices" were not even at arm's length values. Consequently, Saha Thai argues that relying on a three-month average during a period of such significant price variations when the affiliated prices were only transacted in November would lead to distortive results.

Further, Saha Thai contests the use of the AMM data as a proxy for market values at all. Saha Thai holds that this data is problematic because it is for deliveries in the Midwest United States and because the record fails to establish whether the prices are for a grade or type of hot-rolled steel comparable to that purchased by Saha Thai. In conclusion, Saha Thai insists that the best information available for the transactions disregarded testing is its own May 2008 purchases. Because these purchases demonstrate that affiliated transactions were priced higher than the unaffiliated purchases, the Department should find that no adjustment is necessary for the final results. However, should the Department continue to use the AMM data as a proxy for market prices, Saha Thai proposes that the comparison should be limited to the same month as the affiliated party prices.

The petitioners reply that for purposes of testing whether affiliated party transactions are at fair value the Department should continue to rely on the date that material purchases are recorded in Saha Thai's accounting records, as opposed to the date that the prices were negotiated. The petitioners contend that Saha Thai's proposal would make the transactions disregarded and major input rule tests so burdensome, time consuming, and speculative that administering such provisions would be impractical. Moreover, the petitioners argue that relying on the date when prices were negotiated, rather than when purchases were recorded, is contrary to the statute, which provides that for purposes of determining the cost of production (COP) and constructed value (CV) "costs shall normally be calculated based on the records of the exporter or producer, if such records are kept in accordance with the generally accepted accounting principles."[3]

Finally, the petitioners contend that Saha Thai inconsistently argues for an advantageous alteration of the Department's third quarter comparisons, but remains silent regarding the first, second, and fourth quarter comparisons. According to the petitioners there is no basis for determining material costs in the third quarter of the review differently than how they are determined in the first, second, and fourth quarters. Based on the foregoing reasons, the petitioners argue that the Department should continue to rely on the date that material purchases are recorded in Saha Thai's accounting records for conducting the transactions disregarded comparisons.

[3] See section 773(f)(1)(A) of the Act.

<u>Department's Position</u>:

We agree with Saha Thai, in part. As discussed in the Cost Verification Report, the Department tested Saha Thai's third quarter unaffiliated purchases and found that they should not be used as a basis of comparison for the affiliated purchases because the prices were not contemporaneous with the affiliated purchases. The only contemporaneous affiliated and unaffiliated purchases during the POR occurred in May of 2008, when the transfer price was above the market price. See Cost Verification Report at Exhibit 7, page 5. Therefore, for these final results, we are relying on the transfer price for the November affiliated purchases.

We do agree with the petitioners' comments regarding the consistency of comparisons between quarters. However, based on our analysis of the data we find that the results of the transactions disregarded comparisons for the residual quarters would have no impact on the cost test or margin calculations. Specifically, the volume of affiliated purchases in the other quarters was very small and renders any adjustment immaterial.

Comment 2: Treatment of Unpaid Exempted Duties

During the POR, Saha Thai participated in a duty drawback program sponsored by the Government of Thailand (GOT) under which materials are exempt from Thai import duties to the extent that the imported materials are incorporated into merchandise that is subsequently exported.[4] Because section 772(c)(1)(B) of the Act provides for an adjustment to U.S. price for import duties including not only those that are drawn back or rebated but also those that are not collected, Saha Thai requested a duty drawback adjustment. At the Preliminary Results, the Department granted Saha Thai's request for a duty drawback adjustment and applied an upward adjustment to export prices. At the same time, the Department applied an upward adjustment to Saha Thai's reported costs to account for the exempted import duties in COP and CV.[5]

Saha Thai objects to the inclusion of the exempted import duties in the calculation of COP and CV by claiming that it contravenes U.S. law, Saha Thai's normal accounting records, generally accepted accounting principles (GAAP) in Thailand, and U.S. GAAP, and is inconsistent with other Department practices. Citing to section 773(b)(3) of the Act, where the statute outlines the costs to be included in COP, and section 773(f)(1)(A) of the Act, where the statute directs the Department to rely on a company's normal books and records, if such records are kept in accordance with GAAP and are not found to be distortive, Saha Thai concludes that the statute does not provide for the inclusion of "non-incurred" costs. Because the company's records are compliant with both Thai and U.S. GAAP, Saha Thai contends that the Department must not deviate from Saha Thai's normal books. Saha Thai stresses that it does not record exempted duties in its financial accounting system, either as a cost in the income statement or as a contingent liability in the balance sheet. In fact, Saha Thai maintains that Thai GAAP does not permit companies to record such costs since they will not be incurred. Yet, Saha Thai did disclose that, in certain circumstances, coil was imported for use in the domestic market, and, as

[4] See Saha Thai's July 27, 2009 submission at C-37.
[5] See Memorandum to Neal M. Halper from Heidi K. Schriefer, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Saha Thai Steel Pipe (Public) Company, Ltd. ("Saha Thai")" ("Preliminary Cost Calculation Memorandum"), dated April 7, 2010, at 6.

a result, import duties were paid at the time of entry. In such cases, Saha Thai agrees that the inclusion of paid duties in the reported costs is reasonable since the duties were recorded in Saha Thai's books in compliance with the company's normal practice as well as Thai GAAP.

Further, Saha Thai argues that the inclusion of exempted duties is also contrary to U.S. GAAP, which states that a liability must be "probable" for it to be recognized.[6] Because the exempted duties will never be paid, Saha Thai maintains that a liability will never be incurred. Consequently, Saha Thai reasons that it is prohibited from recording the exempted duties as costs under both Thai and U.S. GAAP. Furthermore, because the SAA dictates that, "{i}n determining whether a company's records reasonably reflect costs, Commerce will consider U.S. generally accepted accounting principles employed by the industry in question," Saha Thai argues that to continue to include exempted duties in the calculation of cost the Department must have a clear and compelling reason for claiming that the company's GAAP-based records are distortive.[7]

Next, Saha Thai argues that the inclusion of theoretical costs in COP is also contrary to Department practice. In support of this assertion, Saha Thai references the Department's standard section D questionnaire where respondents are directed to report actual costs "as recorded under your company's normal accounting system." Additionally, Saha Thai notes that the Department has a settled practice of excluding from cost any theoretical or imputed costs that are calculated in order to adjust for differences in the circumstances of sale. Saha Thai cites value added taxes (VAT) as an example of fully refundable costs that the Department excludes from COP. In fact, Saha Thai claims that in this regard, the VAT regime is identical to the import duty exemption and consequently, both should be excluded from COP.

Continuing, Saha Thai claims that the inclusion of unpaid exempted duties double-counts costs because the domestically sourced coils already reflect a duty-inclusive price. Saha Thai explains that under import duty regimes there is a presumption that domestic prices will increase to reflect world market prices plus the amount of the duties imposed on imports (i.e., the "duty wall"). Accordingly, Saha Thai insists that the domestic coil price effectively captures the cost of the duty. In fact, pointing to the record evidence in the current review, Saha Thai demonstrates that the prices paid for domestic coil consistently exceed its landed, pre-duty costs for imported coil. Thus, Saha Thai puts forward that adding exempted duties to the already higher domestic coil costs essentially double-counts the impact of duties on Saha Thai's costs. Next, Saha Thai objects to any proposed reliance on the accounting principle of matching costs to the revenues for which the costs were incurred. According to Saha Thai, the matching principle is only relevant where costs are real and actually incurred. Because the exempted duties are never paid, a cost is never incurred, thus Saha Thai infers that there is no need to "match" the cost to a revenue stream.

Citing to Turkish Pipe where exempted duties were included in the calculation of COP and CV, Saha Thai contests the Department's description of exempted duties as "real" revenues and

[6] See Financial Accounting Standards Board, Current Text, Accounting Standards, § C59.105a, (2007/2008 ed.).
[7] See Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc No. 316, 103d Cong., 2d Session at 834 (1994).

costs.[8] Indeed, Saha Thai hypothesizes that, even if the company received duty drawback refunds instead of a duty exemption, the refunds would be an offset to cost, not an addition to revenue. Moreover, Saha Thai claims that the purpose for the duty drawback adjustment to export price is not to make an adjustment for revenue that is not reflected in the exporter's accounting system or sales price. Instead, the real revenue is generated from export sales. Saha Thai disputes that the matching principle would call for a fictitious cost to be made "real" to match with the company's export sales revenue. As such, Saha Thai contends that neither real costs nor real revenues stem from the unpaid exempted duties; therefore, the matching principle is inapposite here.

After these arguments, Saha Thai concedes that the matching principle might justify the application of exempted duties to CV, but maintains that such an adjustment to COP is not warranted. Saha Thai explains that because export price to which duty drawback is added may be compared to CV, it may be appropriate to include the "fictitious" duties in the CV calculation. However, because there is no upward adjustment to home market sales, Saha Thai holds that including an upward adjustment to COP, which is compared to home market sales, would result in an unfair comparison. Furthermore, Saha Thai reiterates that, if imported steel is destined for the home market, no duty exemption or duty drawback is granted. Because the reported coil costs include all actual duties paid on imports, Saha Thai maintains that adding a theoretical duty to this amount would artificially inflate the COP. In fact, Saha Thai argues that the Department's exempted duty adjustment distorted the dumping margin in the Preliminary Results because numerous home market sales were discarded for failing the below-cost test solely on account of the Department's inclusion of the value of exempted import duty in COP.

Finally, Saha Thai argues that it would be disingenuous to justify the inclusion of the fictitious duty cost in both CV and COP because of the Department's single cost principle, i.e., the calculation of a single worldwide cost for each product. According to Saha Thai, it would also be logically inconsistent to use the matching principle to create a cost, only to disregard the principle to calculate a single cost for COP and CV. Furthermore, Saha Thai notes that there are numerous examples where the Department does not uniformly calculate a single COP. To illustrate, Saha Thai notes that COP includes domestic packing, while CV includes export packing.

Therefore, should the Department continue to include exempted import duties in the cost calculations for the final results, Saha Thai proposes that the duties may only be included for CV purposes. Furthermore, if exempted import duties are included in the cost calculations, Saha Thai contends that the general and administrative (G&A) and financial expense rate calculations should be adjusted accordingly.

The petitioners contend that Saha Thai failed to meet the requirements for a duty drawback adjustment to export price; therefore, the arguments regarding the addition of exempted duties to cost are moot. Specifically, the petitioners maintain that no import duties were imposed upon Saha Thai by the GOT because no merchandise from Saha Thai's bonded warehouse ever

[8] See Light-Walled Rectangular Pipe from Turkey: Notice of Final Determination of Sales at Less Than Fair Value, 69 FR 53675 (September 2, 2004) (Turkish Pipe).

entered Thailand for consumption. As a result, the GOT never informed Saha Thai that it was obligated to pay import duties on merchandise from the bonded warehouse. Because no import duties were imposed by the GOT on the merchandise in Saha Thai's bonded warehouse, the petitioners argue that an increase to the export price for import duties drawnback on this merchandise is inappropriate, and, consequently, an increase to the COP for import duties on this merchandise is also inappropriate.

Department's Position:

We disagree with Saha Thai and have continued to include exempted import duties in the calculation of both COP and CV. Section 772(c)(1)(B) of the Act directs the Department to increase U.S. price by "the amount of any import duties imposed by the country of exportation which have been rebated. . . , by reason of exportation of the subject merchandise to the United States," The reason for adding the rebated duties to U.S. price is that the respondent receives payments on the U.S. sale from both the customer and the government of the country of exportation, whereas the respondent receives payment on the domestic sale, used for normal value, only from the customer. Upon importation of the original raw materials, the respondent records the duties paid to the government as part of the cost of acquiring the raw materials. When reporting product costs to the Department, the respondent includes the duty and other costs of acquiring the raw material, along with the costs of acquiring the material from domestic sources, in the cost of production or constructed value of the merchandise under consideration. Thus, in the normal duty drawback scheme the duty drawback is added to U.S. price and the duties are included in the cost of production and constructed value. The duty drawback may be recorded as revenue or as an offset to cost in a company's books.

In some countries, the duty drawback scheme allows a company to hold on to its duty payment, as it is probable that subsequent exportation will occur. In such cases, the government does not remit the duty upon exportation, since the imposed duty was not collected. Section 772(c)(1)(B) of the Act anticipates such variations on the duty scheme and directs the Department to increase U.S. price even in cases where the duty is not remitted because such duties "have not been collected." The fundamental transactions are identical under this "expedited" scheme and the formal scheme, except for the remittance of monies between the government and the company. This type of duty scheme applies in the instant case, where the Department is granting an increase to U.S. price for duty drawback, even though the government did not remit the duty to Saha Thai. Saha Thai does not argue that this part of the transaction was "fictitious."

In the internal books of the company, it does not matter under either scheme whether the gross amounts of the duty and the gross amount of the drawback are individually recorded or whether the net amount of the two transactions (i.e., zero) is recorded. The net impact to the company will be the same using either method. In the instant case, Saha Thai does not record the imposition of the duties or the duty exemption, although in order to avoid the payment of the duty, it does provide evidence of the importation of the raw material and the exportation of the finished good to the GOT. In the case of duties that have "not been collected," the statute specifically directs the Department to treat the transactions as if they took place under the normal duty drawback scheme, that is, for the Department to grant the increase to U.S. price even though the money was not received.

It is reasonable and necessary for the Department to treat the entire transaction as if it was conducted under the normal duty drawback scheme. That is, it is proper for the Department to add the duties that were not collected upon importation to the cost of producing the product in order to account for the full transaction. The U.S. Court of International Trade (CIT) has upheld the Department's determination in a prior administrative review of this antidumping order "to increase Saha Thai's export price to account for the import duties drawn back on subject merchandise exported to the United States and to account, correspondingly, for the implied cost of import duties in Saha Thai's cost of production and constructed value are sustained." Saha Thai Steel Pipe (Public) Company, Ltd. v. United States, Consol. Ct. No. 08-00380, Slip Op. 09-116, at *12 (Ct. Int'l Trade October 15, 2009) (Saha Thai Steel),

Saha Thai incorrectly maintains that these duties are "theoretical" or "fictitious." As discussed above, while the entries made (or lack thereof) under an "expedited" duty scheme net out, they have the same impact on the company's books as the formal duty scheme. Alternatively, even if the duties were to be considered "theoretical" or "fictitious," we would have to recognize both sides of the "fictitious" entries in order to reflect the real transaction. It would be truly "fictitious" to add only the "theoretical" revenue to U.S. price and ignore the associated duty cost.

Saha Thai's contentions that the inclusion of the exempted duties is contrary to U.S. law, Thai GAAP, U.S. GAAP, the company's normal record-keeping, and the Department's normal practice are misplaced. First, in terms of U.S. antidumping duty law, the CIT's decision in Saha Thai Steel undermines Saha Thai's claim. The Court sustained the Department's determination to include exempted import duties in the COP and CV calculations. In doing so, the Court held that the Department's interpretation of the statutory provision, which is silent about the inclusion of implied costs in COP and CV, was reasonable and not distortive. See Saha Thai Steel, Slip Op. 09-116, at *9-*12. Moreover, the Court held that including exempted import duties in COP and CV was not contrary to U.S. law and was a permissible departure from Saha Thai's normal books (and thereby Thai and U.S. GAAP) under section 773(f)(1)(A) of the Act. Id.

We also find Saha Thai's VAT tax example unpersuasive. In executing the cost test and margin programs, the Department relies on VAT neutral costs and prices. That is, VAT is not included in the prices or costs used in the Department's comparisons. With regard to the duty drawback adjustment requested by Saha Thai under section 772(c)(1)(B) of the Act, the Department adds the exempted import duties to export price. Yet, at the same time, Saha Thai is arguing that including the exempted import duties in cost is not necessary. Thus, though these programs may be similar in some aspects, the VAT and duty drawback regimes are not identical when it comes to their treatment under the Act. We also disagree with Saha Thai's contention that the inclusion of exempted import duties in COP and CV diverges from Department practice. Saha Thai's own brief cites to a case where the Department has included exempted import duties in the calculation of COP and CV.[9]

[9] See the Saha Thai Case Brief, dated August 27, 2010, at 15, in which Saha Thai cites to the Department's Turkish Pipe decision in which exempted import duties were included in the calculation of COP and CV.

Saha Thai argues that any proposed reliance on the accounting principle of matching costs to the associated revenues is not appropriate. According to Saha Thai, the matching principle is only relevant where costs are real and actual. We agree with Saha Thai that the matching principle – the principle of identifying related revenue and expense with the same accounting period – is not at issue. The question at hand does not relate to which period the costs and revenues are assigned; the issue is that the antidumping duty law directs us to depart from Saha Thai's records (i.e., the netting out of the duty paid and the rebated duty) and, instead, to treat the duty exemption as an increase to the U.S. price.

We also disagree with Saha Thai's hypothesis that, even if the company received duty drawback refunds, instead of a duty exemption, the refunds would be an offset to cost, not an addition to revenue. If Saha Thai operated under the formal duty drawback scheme and received the duty, as discussed above, the statute would also direct us to add the rebated duty to U.S. price. The duties that Saha Thai would have remitted to the government would be included in their cost of material, just as we have done in applying our adjustment. Additionally, Saha Thai claims that the purpose of the duty drawback adjustment (to export price) is not to make an adjustment for revenue that is not reflected in the sales price or the exporter's accounting system. Instead, Saha Thai argues that the real revenue is generated from export sales. Again, this argument does not address the point that the statute would direct us to add the rebated duty to U.S. price, which under the formal duty scheme leaves the remitted duties in material cost.

We find unpersuasive Saha Thai's claims that the inclusion of unpaid exempted duties double counts costs because the domestically sourced coils already reflect a duty inclusive price. First, Saha Thai's attempt to apply an argument of double counting is misplaced. The duties for which we are granting a duty drawback adjustment to export price are clearly not in Saha Thai's reported costs, thus we cannot be double counting costs. By Saha Thai's own admission, the imported coils were recorded without the duty, and therefore the inclusion of the exempted duties for the imported coil that was consumed in the production of merchandise that was subsequently exported cannot be "double counted." Finally, our adjustment does not include duties associated with imported coils that were used to produce products sold domestically. We agree with Saha Thai that the duties paid on these coils were recorded and reported in their response. The Department's calculation of the exempted duties only contemplates the duties that would have been due on imported coils upon which duties were not paid. As a result, duties are not added for the domestic inputs or imported inputs upon which duties were paid. Under this methodology, the entire universe of inputs used to calculate COP and CV reflects a duty-inclusive cost.

Second, concerning Saha Thai's "duty wall" theory and the inclusion of the exempted duties only to CV, we disagree. As a preliminary point, we note that coils are not specifically tracked to an export sale or a domestic sale, nor does the Department's duty drawback methodology require such a standard. However, as to Saha Thai's theory that the duties may only be included for CV purposes, Saha Thai explains that because export price, to which duty drawback is added, may be compared to CV the duties could arguably be added to CV. Because there is no upward adjustment to home market sales, Saha Thai contends that including a duty adjustment to COP, which is compared to home market sales, would result in an unfair comparison. Because the reported coil costs include all actual duties paid on imports, Saha Thai maintains that adding a theoretical duty to this amount would artificially inflate the COP. Finally, Saha Thai argues that it would be wrong to justify the inclusion of the "fictitious" duty costs in both CV and COP under the Department's single cost principle (i.e., the calculation of a single worldwide cost for each product).

We disagree with Saha Thai's theory. As discussed above, under a formal duty drawback scheme, the duties initially paid on imported materials are captured in the cost of production, as the duties are recorded when the materials are purchased. The duty is later rebated upon export and taken as an increase to price. As discussed above, under an expedited duty scheme, the exempted duty is not in the cost of materials and thus the COP and CV are understated. This is because the cost of materials is allocated across total worldwide production for the respective period(s). As Saha Thai argues, under import duty schemes domestic prices will tend to increase to reflect the import price, plus the amount of the duties imposed on imports. Therefore, domestically sourced coils will tend to cost the same as the imported coils used for domestic sales (i.e., domestic price equals import price plus the duty). Additionally, the duty paid on the imported coils used for domestic sales would be included in the material cost. Thus, in the calculation of POR average material costs, for both COP and CV, the numerator includes the domestic sourced coils at the higher "duty wall" value, the imported coil used to product domestically sold products at the import price plus the duty, and the imported coils used to produce export sales (i.e., import price only). Thus, COP, which is compared to home market price, has been "diluted" by the inclusion in the numerator of the coils priced only at import price (i.e., without duties) and by the inclusion in the denominator of the calculation the quantity of the products sold in export markets. For CV purposes, the duty must also be included in the calculation of material cost because CV is a form of normal value, and therefore it is the cost of the product as if sold in the home market. Contrary to Saha Thai's claim, our adjustment corrects the COP and CV.

We also disagree with Saha Thai that the inclusion of exempted import duties in COP and CV warrants an adjustment to the G&A and financial expense rate calculations. The G&A and financial expense calculations were consistently calculated and applied to duty-exclusive figures (i.e., the cost of sales used in the calculations and the per-unit TOTCOMs to which the rates were applied did not include the exempted import duties).[10] The per-unit exempted import duties, along with the per-unit G&A and financial expenses were then applied to the per-unit TOTCOMs in calculating COP and CV.

Finally, we disagree with petitioners that Saha Thai failed to meet the requirements for a duty drawback adjustment. In determining whether an adjustment should be made to EP for this exemption, the Department looks for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported input be traced directly from importation through exportation. We do require, however, that the company meet our "two-prong" test in order for this addition to be made to EP. The first element is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another; the second element is that the company must demonstrate that there were sufficient imports of the imported

[10] We note that paid import duties were consistently included in both the cost of sales denominator to the calculations and in the per-unit TOTCOMs to which the rates were applied.

material to account for the duty drawback or exemption granted for the export of the manufactured product. See, e.g., Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 73 FR 61019 (October 15, 2008); see also Mittal Steel USA Inc. v. United States, 31 CIT 1395, 1412-1413 (2007); and Rajinder Pipes Ltd. v. United States, 70 F. Supp. 2d 1350, 1358 (Ct. Intl. Trade 1999). In this review Saha Thai demonstrated that it met both prongs of the "two-prong" test. Therefore, for these final results, we continue to make an upward adjustment to export price for these duty exemptions.

Further, the CIT has upheld our practice of adjusting export price for duty exemptions that function like duty drawback. See e.g., Wheatland Tube Co. v. United States, 414 F. Supp. 2d 1271, 1286-88 (Ct. Int'l Trade 2006) and Saha Thai Steel, Slip Op. 09-116 at *3-*8. As such, petitioners' argument is unavailing.

Comment 3: Use of Single Average Coil Costs

Saha Thai argues the Department should continue to accept a single average coil cost for reporting purposes. While the Department found at verification that certain grades of coil were used only for non-subject square products, Saha Thai points out that in its normal books and in prior administrative reviews, the company has relied on a single average hot-rolled coil cost. Moreover, Saha Thai claims that although the exclusion of these square coil grades would actually decrease its coil costs for reporting purposes, the company fears that varying from its normal books would hamper the company's ability to price its products at values that avoid the imposition of dumping duties. Consequently, Saha Thai encourages the Department to continue to follow Saha Thai's normal accounting system by relying on a single average coil cost. The petitioners did not comment on this issue.

Department's Position:

For these final results, we have excluded the cost of non-subject coil grades from the calculation of the reported costs. As noted by Saha Thai, the Department discovered at verification that certain coil grades were used only in the production of non-subject square grades.[11] At verification, we reviewed the company's purchase ledgers and were able to extract the purchases related to non-subject square grades.[12] As the information is clearly available from Saha Thai's normal books and records, we are uncertain why it would hinder the company's ability to price its products. Therefore, we have excluded the cost of these non-subject square grades from the calculation of the hot-rolled coil costs in the final results because we only rely on the cost of manufacturing for merchandise that is subject to the order.

Comment 4: Use of Lower of Cost or Market (LCM) Write-down for Raw Materials

In addition to reporting costs for the POR, Saha Thai also reported costs for each non-POR quarter in which the company had reportable sales, i.e., the two quarters immediately preceding

[11] See Cost Verification Report at 24.
[12] Id.

the POR spanning from September 2007 to February 2008.[13] In fact, Saha Thai reported three separate cost files: 1) a POR annual average cost file; 2) a POR quarterly cost file (four quarters); and, 3) a pre-POR and POR quarterly cost file (six quarters). In the Preliminary Results, the Department relied on Saha Thai's POR quarterly cost file and consistent with its alternative cost methodology employed indices to calculate the cost of products sold in the pre-POR quarters.[14] These indices were derived from Saha Thai's reported POR and pre-POR quarterly hot-rolled coil consumption values.

In its brief, Saha Thai claims that the hot-rolled coil consumption values that the company submitted for the pre-POR quarters were overstated. Saha Thai explains that the 2008 fiscal year-end inventory balances of hot-rolled coil were written down in accordance with the company's lower of cost or market (LCM) policy. Consistent with its treatment of the write-down in its normal books, Saha Thai incorporated the write-down relative to raw materials in its reported cost calculations. However, in addition to increasing the POR hot-rolled coil costs, Saha Thai also increased the pre-POR hot-rolled coil costs as a result of the fiscal year 2008 LCM write-down. According to Saha Thai, this resulted in an overstatement of the LCM write-down because the fiscal year 2008 LCM write-down was already fully recognized in the POR coil costs. Because the end of fiscal year 2007 fell within the prior POR, Saha Thai argues that it would have been appropriate to include any fiscal year 2007 LCM adjustments in the coil costs reported for the two pre-POR quarters. However, Saha Thai maintains that, at the close of fiscal year 2007, hot-rolled coil costs were increasing; therefore, there was no write-down of inventory balances at that time that would need to be included in the pre-POR costs. Saha Thai further states that there was no write-down of inventory balances during January or February 2009, the last two months of the POR which happen to fall within the company's 2009 fiscal year. Accordingly, Saha Thai concludes that the LCM adjustment should not be applied to the pre- or post-fiscal year 2008 costs.

Saha Thai requests that the Department rely on a revised calculation of hot-rolled coil costs which allocates the LCM write-down to fiscal year 2008 months only. The petitioners did not comment on this issue.

Department's Position:

We agree with Saha Thai that the pre-POR hot-rolled coil consumption costs were overstated by the inclusion of the fiscal year 2008 LCM write-down. For Saha Thai, the result of the December 31, 2008 inventory write-down was that inventoried coils were consumed in 2009 based on the lower December 31, 2008 value. While some companies simply record LCM adjustments as a contra-account to inventory and the actual adjustments do not flow through on a product costing level, Saha Thai in its books and records reduced the value that is recorded for the coils.

[13] The incident of reportable sales in non-POR quarters is a consequence of using contract date as the date of sale, while the universe of reportable sales is based on POR entries.
[14] Specifically, the hot-rolled coil costs would be based on the indexed cost, while all non-coil costs would be based on the CONNUM-specific POR annual average costs.

Regarding the calculation of the POR costs, Saha Thai's proposal to allocate the LCM write-down to only those POR months within fiscal year 2008 implies that Saha Thai considers the LCM adjustment to be a period expense. Based on the nature of the expense, we agree with Saha Thai that the LCM adjustment should be treated as a general period expense. Financial accounting textbooks define period expenses as costs that "are charged as expenses in the period in which they are incurred, regardless of when products are sold."[15] The LCM write-down fits within this definition as it was expensed as incurred, rather than matched to any particular revenue.

While Saha Thai recalculated the hot-rolled coil costs so that only the fiscal year 2008 months were burdened with the write-down, we believe that the write-down is a period expense and as such it is more appropriately classified with the company's other period expenses which are included in G&A expenses. Section 773(b)(3)(B) of the Act directs the Department to include an amount for selling and G&A expenses. Because G&A expenses are period-type expenses, the Department typically calculates G&A expenses from the fiscal year financial statements that most closely match the POR or period of investigation. In doing so, other expenses and non-operating expenses are typically included in the G&A calculation. See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil, 69 FR 76910 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 21 (describing inventory write-downs as period expenses), and Polyethylene Retail Carrier Bags From Thailand: Final Results of Antidumping Duty Administrative Review, 74 FR 65751 (December 11, 2009) and accompanying Issues and Decision Memorandum at Comment 3 (including inventory write-downs in G&A expenses).[16] Therefore, we have revised the hot-rolled coil cost and G&A expense rate calculations to reclassify the write-down relative to raw materials as a period expense.

Comment 5: Treatment of LCM Write-Downs When Using the Alternative Cost Methodology

Saha Thai claims that, in cases where quarterly costs are used, the LCM write-down should be fully allocated to the quarter in which the expense is booked. Because the LCM adjustment was recorded at December 31, 2008, Saha Thai declares that treating the write-down as a raw material cost in POR quarter four (i.e., December 2008 to February 2009) would be consistent with the Department's policy of recognizing costs in accordance with the company's books and records. Furthermore, Saha Thai argues that allocating the LCM write-down to the earlier POR

[15] See Granof, Michael H. and Philip w. Bell, Financial Accounting Principles and Issues, Fourth Edition, Englewood Cliffs, NJ: Prentice Hall, 1991, page 145.

[16] We note that the fact pattern in the instant case differs from Certain Welded Stainless Steel Pipes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 75 FR 27987 (May 19, 2010) (Pipe from Korea) and accompanying Issues and Decision Memorandum at Comment 2, and Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review, 75 FR 34980 (June 21, 2010) (Non-Alloy Pipe from Korea) and accompanying Issues and Decision Memorandum at Comment 2, where the Department states that the LCM adjustment should not be included in the cost of production. In both Pipe from Korea and Non-Alloy Pipe from Korea, the respondent recorded the LCM adjustments in a contra-inventory account whereby the individual raw material and work in progress (WIP) values were not written down, but still flowed through to product costs at their historical purchase value. Conversely, in the instant case, the individual raw material and WIP values are written-down and flow through to product costs at the lower written-down value.

quarters when hot-rolled coil prices were increasing would be wholly inappropriate as it would have been impossible for the company to foresee that its raw material costs would decline steeply in the future and leave it with overvalued inventory. Consequently, Saha Thai concludes that the write-down should be expensed to POR quarter four, that is, the quarter in which it was recorded on the company's books and records.

Alternatively, Saha Thai proposes that the Department simply allocate the write-down to the subsequent periods during which the coils in question are consumed. Hence, the costs recognized for raw materials consumed after December 31, 2008, would be revised to reflect historical values. Saha Thai argues that, although there are sound financial accounting reasons for adjusting inventory values to market, for dumping purposes the recognition of LCM adjustments belies the underlying premise for the use of quarterly costing, which is to match rapidly changing costs more closely to the actual timing of sales. Saha Thai contends that the inclusion of year-end LCM write-downs simply shifts costs from the period when materials are consumed and sales are consummated to an earlier period when materials were purchased. Saha Thai insists that this practice is inconsistent with calculating costs for dumping purposes since it violates GAAP's matching principle. Thus, Saha Thai presents that in order to achieve the underlying goal of the alternative cost methodology, which is to more precisely align costs and sales, the Department must reclassify the write-down to the period in which the coils are actually consumed.

The petitioners counter that the LCM adjustment is related to the entire fiscal year, not just the month or quarter in which the write-down happened to be recorded. As such, the petitioners conclude that the Department reasonably allocated the year-end adjustment over the entire year.

<u>Department's Position</u>:

We disagree with Saha Thai's suggestions for altering the recognition of LCM adjustments in cases subject to the alternative cost methodology. Nonetheless, we are mindful of Saha Thai's concerns regarding market unpredictability and the impact that significant swings in raw material prices play on a company's cost calculations and pricing practices. Indeed, such concerns were the reason for the implementation of the Department's alternative cost methodology. Yet, Saha Thai's initial suggestion, which advocates allocating the LCM write-down to the quarter in which the expense was recorded, would be an unreasonable practice for the Department to adopt. While the lack of fourth quarter U.S. sales makes it an attractive option for Saha Thai in the instant case (<u>i.e.</u>, Saha Thai's fourth quarter costs do not come into play), in other cases it could significantly distort the costs of the merchandise for the particular period in which inventory balances happened to be evaluated . Instead, we find that spreading the GAAP-based adjustment over an annual period more reasonably reflects the costs associated with the production of merchandise because it is less distortive and does not inequitably overburden product costs in a particular quarter. This methodology is also consistent with the Department's treatment of other period type costs such as G&A and financial expenses.

We also disagree with Saha Thai's recommendation that the Department revalue the company's future coil consumption costs to reflect historical purchase costs. Essentially, Saha Thai argues for the Department to ignore the company's normal books and records, which would be inconsistent with section 773(f)(1)(A) of the Act directing the Department to rely on a company's normal books unless they are not in accordance with GAAP or result in distortive cost calculations. While Saha Thai relies heavily on the GAAP-based "matching principle" as rationale for deferring the recognition of the LCM write-down, the Department recognizes that the revaluation of inventory to reflect the LCM is also based on GAAP. As described by Saha Thai, the matching principle holds that expenses should be recorded in the same period in which related revenues are recognized. Under a strict interpretation, this principle could logically be construed to mean that all expenses should be capitalized until matched to revenues. However, it is simply too difficult to meaningfully associate certain expenses with specific revenues, thus, period expenses are recognized as incurred. Consistent with this commentary and with Saha Thai's own books and records, we have recognized Saha Thai's December 2008 LCM write-down as an expense in the period incurred, i.e., in fiscal year 2008. See also supra Comment 6.

Comment 6: Annualizing Costs Over the Entire Cost Reporting Period

Saha Thai argues for the Department to expand the "25 percent test" of the two-tiered alternative cost methodology criteria to incorporate pre-POR costs when faced with a case that has reportable export sales from periods outside of the POR. In the instant case, the combination of defining the universe of sales as those with POR entry dates and date of sale as contract date resulted in Saha Thai having reportable U.S. sales in the two quarters immediately preceding the POR. While recognizing that it qualified for the alternative cost methodology using POR data alone, Saha Thai envisions that the expansion of the 25 percent test to incorporate the costs of all quarters with reportable sales may be necessary to qualify for the alternative cost methodology in future cases. Moreover, Saha Thai claims that in the Preliminary Results the Department used pre-POR quarterly costs to compare to pre-POR sales, but abstained from relying on the pre-POR costs for determining whether the alternative cost methodology was appropriate in the first place. Consequently, Saha Thai submits that, although the change in practice would have no effect on the current review, the Department should adjust its future alternative cost evaluations to incorporate the entire period of reported costs. The petitioners did not comment on this issue.

Department's Position:

As acknowledged by Saha Thai, the submitted recommendation would have no impact on the current review. Since the argument is moot in this administrative review, we have not performed an in-depth evaluation or arrived at a decision on this issue. In the interest of clarity, though, we address Saha Thai's assertion that the Department relied on all six quarters (pre-POR and POR quarters) of reported costs in the Preliminary Results. The exact fact pattern differs slightly. In the Preliminary Results, the Department relied on Saha Thai's reported POR quarterly cost file, which did not include costs for the pre-POR quarters.[17] We did, however, calculate indices for all six quarters.[18] Then, as stated in our Preliminary Cost Calculation Memorandum, "{i}f there was not a corresponding cost for a particular product within the quarter, we used the quarterly indices to compute surrogate costs."[19] Thus, in the case of pre-POR sales, COP and CV were based on the product-specific POR quarterly coil cost indexed to the pre-POR quarter, while the

[17] See Cost Calculation Memo at 3.
[18] Id.
[19] Id.

annual average other material and conversion costs were relied on as reported for the specific product.

Comment 7: Total Cost Reconciliation

Saha Thai requests that the Department adjust the revised total cost reconciliation presented in the Cost Verification Report for two errors. First, Saha Thai points out that the Department inadvertently failed to exclude packing labor from the total cost of manufacturing. Next, Saha Thai claims that the methodology employed by the Department to calculate work in process (WIP) greatly understates the hot-rolled coil costs associated with WIP. In the Cost Verification Report, the Department extrapolates the coil costs associated with WIP by dividing the WIP conversion costs by the percentage of non-coil costs to total costs for finished products. Saha Thai claims that this methodology assumes that the ratio of the value of hot-rolled coil in unfinished products is equal to the ratio of all other conversion costs in WIP. Saha Thai contends that this assumption is faulty since, in its records, coil costs are booked when the coil passes through the first stage of production, i.e., at the forming line. While all products must pass through the forming line, only a fraction of products pass through subsequent processing steps. Thus, Saha Thai proposes that there was much more WIP at the forming stage than at the subsequent production stages.

As an alternative, Saha Thai suggests that using the estimated number of WIP pieces is a more accurate method of calculating the coil costs associated with WIP. Specifically, this process estimates the net number of pieces in WIP by summing the total number of pieces produced at each stage less the total number of pieces of finished pipe that went through each stage. Saha Thai argues that this methodology more accurately captures the net amount of unfinished pipe on the factory floor at the end of 2008 and should be used in calculating the coil costs associated with WIP. Consequently, Saha Thai argues that the Department should apply its estimated WIP figure prior to calculating the difference between reported costs and the total costs based on the financial accounting system. The petitioners did not comment on this issue.

Department's Position:

We agree with Saha Thai, in part. While we agree that the total cost reconciliation should be adjusted to account for packing labor, we disagree with Saha Thai's proposed WIP calculation and have continued to employ the methodology outlined in the Cost Verification Report for purposes of estimating the value of WIP for the final results. Specifically, to calculate the WIP coil costs we relied on two figures: 1) a ratio of non-coil reported costs to total reported costs; and 2) the non-coil WIP costs that were derived by Saha Thai. We divided the non-coil WIP costs by the non-coil-to-total-cost ratio to extrapolate the coil costs associated with WIP. See Cost Verification Report at 13. We believe that for the reasons indicated below this calculation provides a reasonable estimate of the coil costs associated with WIP based on the record evidence available. Moreover, we note that it was Saha Thai's responsibility to provide a proper reconciliation. As such, we believe that the Department's reconciliation takes a reasonable approach to consider Saha Thai's cost to have verified.

At verification, we found that Saha Thai does not track WIP produced subsequent to the slitting line in its normal books and records. Instead, the company considers all products that proceed through the forming line to be finished.[20] For reporting to the Department, Saha Thai recognized only packed products as finished goods. Those products that had been formed, but not yet packed, were assumed to be WIP. However, there was no means of segregating WIP, i.e., products that had yet to be packed, from finished goods, i.e., packed products, in the finished goods inventory ledger. Consequently, Saha Thai was unable to use its inventory or production records to determine the actual quantity and value of WIP. As a result, the value assigned to WIP is an estimated figure that varied significantly based on the particular assumptions and methodologies employed in its calculation.

Because errors were identified in Saha Thai's originally reported WIP coil cost at verification that rendered the calculation unusable, the Department relied on the above-described methodology for estimating WIP in the Cost Verification Report. Saha Thai now proposes a new methodology for deriving the value of WIP; however, we find that this methodology is also flawed. Specifically, we find that relying on the estimated number of pieces to allocate coil costs between finished and unfinished goods is problematic because 1) the number of pieces in WIP is an estimate; and 2) the pieces are not uniform in size and weight. With regard to the latter concern, pipe pieces are not produced equally. For example, a review of Saha Thai's product brochure shows that plain end black and galvanized pipe pieces may range in weight from 0.670 kg per meter to 21.30 kg per meter.[21] Furthermore, our examination of products during verification showed that lengths are not identical, but instead vary based on customer requirements.[22] Because using a ratio of finished-to-total processed pieces assumes that all pieces consume the same quantity and value of hot-rolled coil, this methodology is not a reasonable basis for allocating hot-rolled coil costs. Additionally, a closer inspection of the underlying data relied upon in Saha Thai's proposed methodology reveals that the ratio was developed using POR quantities (pieces), while the ratio was applied to fiscal year coil costs. We emphasize, though, that the combination of Saha Thai's normal accounting records, which do not track WIP subsequent to the forming stage, and the complex nature of this year's cost reporting, involving, inter alia, fiscal year conversion and other material costs, POR quantities, and POR hot-rolled coil costs along with the use of the alternative cost methodology, provide no clear answers for determining the costs relative to WIP.

Thus, based on the foregoing, we find the methodology outlined in the Cost Verification Report provides the most reasonable calculation of coil costs associated with WIP for purposes of the total cost reconciliation. Therefore, we have revised the total cost reconciliation to account for packing labor costs, but have not altered the WIP figure. We have likewise recalculated the un-reconciled difference between the total reported costs and the total cost of manufacturing, as revised, from the company's financial accounting system.

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[20] See Cost Verification Report at 6.
[21] See Saha Thai's July 13, 2009 submission at exhibit A-16.
[22] See Cost Verification Report at Exhibit 8, page 8.

Comment 8: Treatment of Paid Import Duties on Raw Materials

Saha Thai claims that the Department's Preliminary Results contained a ministerial error that double-counted paid import duties. Specifically, Saha Thai states that the duties paid on POR imported coil purchases were included in the hot-rolled coil cost field. Subsequently, at the Department's request, Saha Thai reported the paid duties as a separate field "DUTY" in the cost database. However, Saha Thai states that the "DUTY" field was reported for informational purposes only and that the duties were still included in the hot-rolled coil cost field. In the Preliminary Results, the Department included both the hot-rolled coil and DUTY fields in the definition of the cost of production; hence, Saha Thai contends that the paid duties were double-counted. Consequently, Saha Thai requests that the Department correct this error in the final results. The petitioners did not comment on this issue.

Department's Position:

In the December 9, 2009 supplemental questionnaire, the Department instructed Saha Thai to "include the per unit duty expense calculated for each control number (CONNUM) in a separate field in the cost database (e.g., in the field 'DUTY')."[23] Saha Thai complied with the Department's request and based on the record evidence we calculated the Preliminary Results under the assumption that paid duties were reported separately in the DUTY field. However, at verification, we discovered that Saha Thai had also continued to include the duties in the hot-rolled coil field. Thus, the inclusion of both fields in the calculation of the cost of production double-counted the duties paid. Therefore, we have excluded the field "DUTY" from the calculation of the cost of production in the final results.

Comment 9: Treatment of Other Material Costs

Saha Thai contends that the Preliminary Results contained a ministerial error that double-counted the "other material" costs in the calculation of the total cost of manufacturing (TOTCOM). Specifically, Saha Thai states that the Department included the raw material fields for coil, galvanizing, painting, varnishing, threading and coupling, and other materials in TOTCOM. However, according to Saha Thai, the "other materials" field (OTHMAT) is a subtotal of the non-coil raw material fields. Consequently, according to Saha Thai, all non-coil costs were double-counted. Therefore, Saha Thai requests that the Department correct this error in the final results. The petitioners did not comment on this issue.

Department's Position:

We agree with Saha Thai. As acknowledged in the Department's Cost Verification Report, we discovered that the reported "other materials" field was simply a subtotal of all non-coil raw material costs.[24] Therefore, for the final results we have eliminated the field "OTHMAT" from the calculation of TOTCOM.

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[23] See the letter from Barbara E. Tillman, Office Director, to Saha Thai Steel Pipe (Public) Company Ltd., dated December 9, 2009, at 7.

[24] See Cost Verification Report at 22.

Comment 10: Level of Trade Adjustment

Saha Thai argues that the Department should continue to grant Saha Thai a level of trade (LOT) adjustment. In its comments on level of trade, submitted on April 23, 2010, Saha Thai argues that calculating the LOT adjustment using POR-wide data is accurate. According to Saha Thai, the fact that we calculate the LOT adjustment as a percentage of price obviates the need to use shorter time periods in calculating this adjustment even if we are using shorter periods to calculate the antidumping duty margin. Although the absolute price levels may change from one quarter to the next, the percentage mark-up, which the LOT adjustment addresses, remains constant in most cases. According to Saha Thai, the percentage mark-up does not change whether it is calculated on an annual or quarterly basis, even if the prices are changing, except in extreme instances.

According to Saha Thai, making LOT adjustments on a quarterly basis would introduce additional distortions. For example, when resellers maintain inventories, the Department would need to address whether it is appropriate "to lag" the quarterly prices at a lower LOT to properly compare the prices at the two different LOTs and calculate the LOT adjustment given the age of each company's inventory. Saha Thai contends that using an LOT adjustment based on the average sales over the entire POR eliminates the need to consider and incorporate inventory ages into the LOT-adjustment calculation.

Pointing out that dividing the calculation into shorter periods increases the risk of missing LOT adjustments in some periods, Saha Thai poses a series of hypotheticals: how an LOT adjustment would be calculated in a situation when there are sales at a less advanced LOT, but because of aging inventory at the reseller, no sales at the higher level of trade; how the Department would address sales that are at two distinct levels of trade within the POR, but not within the quarter; and whether we would assign the LOT adjustment from the closest quarter. Saha Thai also questions whether the Department should use an average, whether that average be weighted, and, if so, how should that average be weighted?

Given that the likely complexities of quarterly LOT adjustments only increase the difficulty and risk of distortive effects, with no discernible benefits, Saha Thai argues that the standard POR-wide method of calculating LOT adjustments will accurately capture the appropriate adjustments to apply.

Further, Saha Thai notes that our normal practice of using the 90/60 rule for matching sales and calculating the dumping margin coexists with our normal practice for addressing LOT adjustments on a POR-wide basis. Therefore, Saha Thai contends that the Department's normal practice undertakes these two operations using different time periods. Saha Thai urges the Department to conduct its LOT analysis and calculate the LOT adjustment using its normal practice, even when quarterly methodology is used to calculate costs and make price-to-price comparisons. The petitioners did not comment on this issue.

Department's Position:

For these final results, after incorporating all of the changes to the cost and sales information necessitated by the results of verification and our analysis of the comments submitted by Saha Thai, we find that all of Saha Thai's U.S. market sales are matched to sales in the home market at the same level of trade. Therefore, there is no need to conduct an LOT analysis and we do not reach the issues concerning how to conduct an LOT analysis when applying a quarterly cost methodology.

Comment 11: Use of the Zeroing Methodology

Saha Thai argues that the Department's use of the zeroing methodology in this review stands in stark contrast to its policy of refraining from using that methodology to calculate dumping margins in investigations, nothwithstanding the fact that the statutory basis for the antidumping calculation is the same in both investigations and in reviews. Saha Thai further points that the United States has publicly stated its commitment to implement decisions by the WTO Dispute Settlement Body by eliminating the use of the zeroing methodology in administrative reviews but has so far failed to do so. Thus, Saha Thai submits that using zeroing in this administrative review is an incorrect interpretation of the antidumping statute and is inconsistent with the international obligations of the United States, and requests that the Department recalculate Saha Thai's dumping margin without using the zeroing methodology. The petitioners did not comment on this issue.

Department's Position:

We have not changed our calculation of the weighted-average dumping margin, as suggested by the Saha Thai, in these final results. Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the NV exceeds the export or constructed export price of the subject merchandise" (emphasis added). Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when NV is greater than EP or CEP. As no dumping margins exist with respect to sales where NV is equal to or less than EP or CEP, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The CAFC has held that this is a reasonable interpretation of the statute. See, e.g., Timken Co. v. United States, 354 F.3d 1334, 1342-45 (Fed. Cir. 2004); NSK Ltd. v. United States, 510 F.3d 1375, 1380 (Fed. Cir. 2007) (NSK) ("Commerce's zeroing practice is in accordance with our well-established precedent."); Corus Staal BV v. United States, 593 F.Supp. 2d 1373 (CIT 2008) (Corus II).

Section 771(35)(B) of the Act defines weighted-average dumping margin as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." The Department applies this section by aggregating all individual dumping margins, each of which is determined by the amount by which NV exceeds EP or CEP, and dividing this amount by the value of all sales. The use of the term "aggregate dumping margins" in section 771(35)(B) of the Act is consistent with the Department's interpretation of the singular "dumping margin" in section 771(35)(A) of the Act, as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which EP or CEP exceeds the NV permitted to offset or cancel out the dumping margins found on other sales.

This methodology does not mean that non-dumped sales are disregarded in calculating the weighted-average dumping margin. It is important to note that the weighted-average margin will reflect any non-dumped merchandise examined during the POR; the value of such sales is included in the denominator of the weighted-average dumping margin, while no dumping amount for non-dumped merchandise is included in the numerator. Thus, a greater amount of non-dumped merchandise results in a lower weighted-average margin.

Saha Thai has generally cited WTO dispute-settlement reports finding the Department's "zeroing" methodology to be inconsistent with the United States' WTO obligations. As an initial matter, the Court of Appeals for the Federal Circuit has held that WTO reports are without effect under U.S. law, "unless and until such a [report] has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements Act (URAA). See Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005). Congress has adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports. See, e.g., 19 U.S.C. § 3538. As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute. See 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary). Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports. See 19 U.S.C. § 3533(g); Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Duty Investigation; Final Modification, 71 FR 77722 (December 27, 2006).

With regard to the denial of offsets in administrative reviews, the United States has not employed the above-described statutory procedure. Thus, there has been no implementation action taken by the United States pursuant to U.S. law that would require the Department to adopt a different methodology in this administrative review as suggested by Saha Thai. For all these reasons, the various WTO dispute-settlement reports regarding "zeroing" do not establish whether the Department's denial of offsets in this administrative review is consistent with U.S. law. Accordingly, and consistent with the Department's interpretation of the Act described above, the Department has continued to deny offsets to dumping based on EPs or CEPs that exceed NV. For the foregoing reasons, we have not changed the methodology employed in calculating the weighted-average dumping margins for these final results.

Recommendation

We recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results with Saha Thai's final weighted average dumping margin in the Federal Register.

Agree ________ Disagree________

____
Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

____
Date