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October 23, 2013

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

FROM: Christian Marsh *CM*  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of  
Antidumping Duty Administrative Review: Circular Welded  
Carbon Steel Pipes and Tubes from Thailand; 2011 – 2012  
Administrative Review

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### Summary

The Department of Commerce (the Department) has analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Thailand. As a result of this analysis, we have made changes to the Preliminary Results. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

### Background

On April 9, 2013, the Department published the Preliminary Results.<sup>1</sup> The review covers two producers and/or exporters of the subject merchandise, Saha Thai Steel Pipe (Public) Company, Ltd. (Saha Thai), and Pacific Pipe Company Limited (Pacific Pipe). The period of review (POR) is March 1, 2011, through February 29, 2012. Saha Thai, Wheatland Tube Company, and United States Steel Corporation submitted case briefs on May 9, 2013, and rebuttal briefs on May 21, 2013,<sup>2</sup> with respect to the Preliminary Results.

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<sup>1</sup> See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 21105 (April 9, 2013) (Preliminary Results).

<sup>2</sup> Wheatland Tube Company resubmitted its rebuttal brief on July 10, 2013, with certain bracketing of information removed pursuant to the instructions of the Department.



INTERNATIONAL  
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## Scope of the Order

The products covered by the antidumping order are certain circular welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as “standard pipe” or “structural tubing” are hereinafter designated as “pipes and tubes.” The merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085 and 7306.30.5090. Although the HTSUS subheadings are provided for convenience and purposes of U.S. Customs and Border Protection (CBP), our written description of the merchandise subject to the order is dispositive.

## Determination of No Shipments for Pacific Pipe

In the Preliminary Results, we found no shipments of subject merchandise from Pacific Pipe to the United States.<sup>3</sup> No parties have commented on this issue. Therefore, for the final results of this review, we continue to find that Pacific Pipe had no shipments during the POR.

## List of the Issues

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

- Comment 1: Issues with the Differential Pricing Analysis
- Comment 2: Withdrawal of the Targeted Dumping Regulation
- Comment 3: Use of an Alternative Comparison Method in Administrative Reviews
- Comment 4: Denial of Offsets with the Average-to-Transaction Comparison Method
- Comment 5: Freight Revenue Cap
- Comment 6: Date of Sale for Saha Thai’s U.S. Sales
- Comment 7: Saha Thai’s Grade Distinctions
- Comment 8: “Schedule” as a Model Matching Characteristic
- Comment 9: Warehouse Costs Incurred on Painted Products
- Comment 10: Treatment of Non-Prime Products in Calculating the Cost of Production
- Comment 11: Steel Scrap Offset
- Comment 12: General and Administrative Expense Ratio (Warehouse Rental Income and Expense)
- Comment 13: Zinc Scrap Offset

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<sup>3</sup> See Preliminary Results, 78 FR at 21105.

## Discussion of the Issues

### **Comment 1: Issues with the Differential Pricing Analysis**

#### *Saha Thai's Arguments*

- The differential pricing analysis violates the statute and Congressional intent to identify targeted dumping.
- The differential pricing analysis fails to account for differences in prices that are explainable by market factors specific to the industry under review, including changes in production costs.
- Saha Thai claims that the Cohen's  $d$  test has been set up to systematically to find differential pricing.
- The Cohen's  $d$  test does not consider the relative magnitude of the observed pricing differences. Saha Thai provides a hypothetical example where small difference in prices could still be found to be significantly different when there is little variation in prices.
- The thresholds of small, medium and large are arbitrary, and the use of the large threshold of 0.8 is actually less than the one standard deviation threshold of the *Nails* test.
- The Cohen's  $d$  test, as applied in this administrative review, has no statistical significance because of the small sample sizes in this analysis. Further, because of the lack of base groups with an adequate number of sales or quantity of sales, many combinations of purchasers, regions, or time periods are not even tested.
- The Cohen's  $d$  test as applied by the Department does not account for "directionality" in that it is not limited to identifying targeted "pricing that is aberrational low."
- The Cohen's  $d$  test is inappropriate to identify differential pricing because it systematically results in affirmative findings rather than the exception contemplated in the statute.
- The Department wrongly used customer code rather than consolidated customer code to define purchasers in the differential pricing analysis.
- The Department has failed to explain why the average-to-average method cannot account for any observed price differences. Further, the Department cannot support its explanation using calculations based on average-to-transaction comparisons with zeroing because this methodology has been banned by the WTO.
- Further, Saha Thai asserts that before abandoning the average-to-average method, it should adjust the average groups because the averaging groups eliminates "noise" that is present in transaction-specific data.

#### *U.S. Steel's Rebuttal Arguments*

- The Department does not have to discern the causes for any pattern of significant price differences, whether based on market factors or the intentions of the seller. Further, the Department has stated this fact in other proceedings as such a requirement would be unmanageable and immaterial
- The Cohen's  $d$  test, as a measure of the extent of the differences between the average prices of the test and comparison groups, is precisely what the statute directs the Department to determine. Further, the statute does not specify how the Department is to

determine whether a pattern of significant price differences exists, and that it is within the Department's discretion to use the differential price analysis for this purpose.

- U.S. Steel rejects Saha Thai's assertion that the Department must account for "directionality" and only consider low prices to part of the pattern of significant price differences.
- U.S. Steel also rejects the assertion that the Department's analysis must include a statistical "confidence interval" as no such requirement is specified in the statute.
- The Department has correctly used the results of the average-to-transaction method to determine whether the average-to-average method can account for the observed price differences. The statute specifically authorizes the use of the average-to-transaction method, and the SAA states that it is the "preferred methodology in reviews. Further, the courts have upheld the Department's use of the average-to-transaction method with zeroing to unmask dumping.
- U.S. Steel rejects the claim that the Department should somehow modify the average-to-average method as this is nowhere suggested in the statute.

#### *Wheatland Tube's Rebuttal Arguments*

- The statute does not require the Department to provide an explanation or motivation for the observed price patterns.
- The Department use of the Cohen's *d* test is a reasonable method and within its discretion for identifying whether a pattern of significant price differences exists.
- The statute specifies no "directionality" when defining a pattern of significant price differences, and that the use of the term "targeted" perhaps causes confusion in this respect. Further, if the Department were only to consider low priced sales, then it may be missing one side of the pattern which could be causing masked dumping.
- As noted above, the WTO has not banned the use of zeroing when considering the application of an alternative comparison method. Further the use of the average-to-transaction method, with zeroing, is the best method to measure the degree that a pattern of significant price differences may mask dumping.

**Department's Position:** Because we are applying the standard average-to-average comparison methodology in this administrative review, it is not necessary to address these comments in these final results.

#### **Comment 2: Withdrawal of the Targeted Dumping Regulation**

##### *Saha Thai's Arguments*

- The Department is subject to the rule-making requirements of the Administrative Procedures Act (APA) in both promulgating as well as withdrawing regulations.
- The Department codified its targeted dumping regulation in May 1997.<sup>4</sup>
- The Department's December 2008 withdrawal of the targeted dumping regulation<sup>5</sup> failed to demonstrate "good cause" as required by the APA.

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<sup>4</sup> See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27374-76 (May 19, 1997).

- The Department improperly withdrew the targeted dumping regulation and it should therefore reinstate this regulation and apply it in this review.

#### *U.S. Steel’s Rebuttal Arguments*

- Upon withdrawal of the targeted dumping regulation, the Department did demonstrate “good cause” to support its waiver of the notice and comment under the APA.
- The Department has rejected such arguments in the past,<sup>6</sup> and should continue to do so in this review.

#### *Wheatland Tube’s Rebuttal Arguments*

- The Department has repeatedly that its withdrawal of the targeted dumping regulation was in full compliance with the APA.<sup>7</sup>

**Department’s Position:** Please see the Department’s position in Comment 1.

### **Comment 3: Use of an Alternative Comparison Method in Administrative Reviews:**

#### *Saha Thai’s Arguments*

- Under section 777A(d)(1)(B) of Tariff Act of 1930, as amended (the Act), the use of the average-to-transaction comparison method as an exception to one of the standard comparison methods in section 777A(d)(1)(A) of the Act, is applicable to only antidumping investigations and not administrative reviews.
- If Congress had intended make this section of the statute applicable to administrative reviews, then Congress would have done so, and Congress’ omission of administrative reviews from Section 777A(d)(1)(B) was purposeful.
- In Gray Portland Cement,<sup>8</sup> the Federal Circuit upheld this principle of statutory interpretation.
- Further, in GPX Int’l Tire Corp., the Federal Circuit stated “{a}lthough Commerce has wide discretion in administering countervailing duty and antidumping law, it cannot exercise this discretion contrary to congressional intent.”<sup>9</sup>

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<sup>5</sup> See Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Investigations, 73 FR 74930 (December 10, 2008) (Withdrawal Notice).

<sup>6</sup> See, e.g., Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 59217 (September 27, 2010) and accompanying Issues and Decision Memorandum at Comment 3.

<sup>7</sup> See, e.g., Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2010 to 2011, 78 FR 16247 (March 14, 2013), and accompanying Issues and Decision Memorandum at Comment 1.B.

<sup>8</sup> See Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement v. US, 13 F.3d 398 n.9 (Fed. Cir. 1994) (Grey Portland Cement).

<sup>9</sup> See GPX Int’l Tire Corp. v. US, 666 F.3d 732, 745 (Fed. Cir. 2011) (GPX Int’l Tire Corp.).

### *U.S. Steel's Rebuttal Arguments*

- Section 777A(d)(2) of the Act specifically states that the Department may use average-to-transaction comparisons in administrative reviews. The SAA states that the average-to-transaction comparison method is the preferred method in administrative reviews because it addresses the problem of masked dumping. Therefore, there is no discussion in the statute with respect to an alternative comparison method for administrative reviews because it is specifically recognized.
- The Department has rejected such arguments on numerous occasions,<sup>10</sup> and should continue to do so in this review.

### *Wheatland Tube's Rebuttal Arguments*

- The statute is silent on the use of the alternative average-to-transaction comparison method in administrative reviews.
- The Department has repeatedly held that it does have the authority apply an alternative comparison method in administrative reviews as well as investigations, and Saha Thai's arguments should be rejected here for the same reasons.

**Department's Position:** Please see the Department's position in Comment 1.

### **Comment 4: Denial of Offsets with the Average-to-Transaction Comparison Method**

#### *Saha Thai's Arguments*

- The use of average-to-transaction comparisons with zeroing (i.e., denying offsets) has been banned by the World Trade Organization (WTO).
- If the Department continues to use zeroing, it should only deny offsets to the low, differentially priced sales.

### *U.S. Steel's Rebuttal Arguments*

- There have been no WTO decisions addressing the Department's use of an alternative comparison method based on the average-to-transaction method with zeroing.

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<sup>10</sup> See, e.g., Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011, 77 FR 73415 (December 10, 2012) and accompanying Issues and Decision Memorandum at Comment 1; Circular Welded Carbon Steel Pipes and Tubes From Turkey: Final Results of Antidumping Duty Administrative Review; 2010 to 2011, 77 FR 72818 (December 6, 2012) and accompanying Issues and Decision Memorandum at Comment 1; Stainless Steel Plate in Coils from Belgium: Antidumping Duty Administrative Review, 2010-2011, 77 FR 73013 (December 7, 2012) and accompanying Issues and Decision Memorandum at Comment 2.

### *Wheatland Tube's Rebuttal Arguments*

- The WTO has never ruled that zeroing is not allowed when applying an alternative comparison method. WTO decisions have no legal standing under U.S. law, and under U.S. law, zeroing remains permissible under the average-to-transaction method.
- In order for the Department to unmask dumping, it must use zeroing for U.S. sales priced at both a low and high level. Low priced sales generally have positive comparison results which indicate dumping. High priced sales generally have negative comparison results, which if zeroing is not applied, will offset and mask dumping.

**Department's Position:** Please see the Department's position in Comment 1.

### **Comment 5: Freight Revenue Cap**

#### *Saha Thai's Arguments*

- The Department aims to eliminate profits made from ancillary services from its calculations, but in Saha Thai's case, there is no pattern of freight charges consistently exceeding actual costs that would justify capping freight revenue.
- Saha Thai does not price freight services separately but instead breaks out freight in certain documents as a service to the importer or importing agent. Saha Thai stated the company is not making a "profit" on its freight charges and on average, the actual freight expenses and the freight charges are almost the same.
- Saha Thai's practice of breaking out freight charges separately is not reflective of an entirely separate business line, but rather it is for the convenience of its customer.
- Saha Thai's freight charge break-outs differ from actual freight costs by very small amounts, and are in both positive and negative values.
- As Saha Thai is not following a deliberate strategy of maximizing its U.S. sales price through ancillary products pricing, the Department should not apply freight revenue cap to Saha Thai's U.S. price calculation.
- Unlike Orange Juice from Brazil,<sup>11</sup> Saha Thai priced its product on CnF (freight included) basis and did not bill the client separately for freight costs that are borne by Saha Thai, therefore, the Department should not apply a freight revenue cap in this case.
- Saha Thai's contract with its customer requests a break out of "the value" of freight on the cover sheet accompanying the invoice because the importers must deduct international freight charges and other port-related charges from the invoice price in order to calculate entered value.
- The Department's application of a "cap" for revenues charged to customer for ancillary services should be applied only when the customers are separately charged for those services.

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<sup>11</sup> See Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 2 (Orange Juice from Brazil).

- If the Department continues to cap freight revenue, it should do so on a POR basis, as the differences between estimates and actual amounts and exchange rates swing in both directions.

*U.S. Steel's Rebuttal Comments*

- The Department followed its standard practice and capped the amount of freight revenue by the amount of freight expense incurred for Saha Thai's U.S. sales.
- The Department consistently treats freight revenue as an offset to movement expenses because both relate to the movement and transportation of subject merchandise and are covered under section 772(c)(2) of the Act.
- Saha Thai's contentions with regard to its billing practices for its freight charges are irrelevant to the issue of whether the Department should cap the freight revenue.
- Saha Thai provided no legal basis for the freight revenue to be capped on an average contract or yearly basis, should the Department continue to cap the freight revenue.

*Wheatland Tube's Rebuttal Comments*

- The Department rejected Saha Thai's same argument regarding the freight revenue cap in the prior review. Saha Thai has not argued that the relevant facts are different now than they were in the last review, and Saha Thai has not set forth any legal authority supporting its request that the Department abandon its normal freight revenue cap methodology. The Department should continue to apply its normal practice on the freight revenue cap in the final results, rejecting Saha Thai's argument on this point as lacking any authority.
- The Department should continue to make the freight revenue adjustment on a shipment-specific basis, not on a POR basis that uses the same average freight revenue value for all U.S. sales.

**Department's Position:** Like in the previous administrative review, the Department is following its normal practice of treating freight revenue as an offset to freight expenses rather than as an addition to U.S. price where freight revenue exceeds freight expenses.<sup>12</sup>

Based on the plain language of the law and the Department's regulations, it is the Department's practice to decline to treat freight-related revenue as an addition to U.S. price under section 772(c)(1) of the Act or as a price adjustment under 19 CFR 351.102(b)(38).<sup>13</sup> The term "price adjustment" is defined at 19 CFR 351.102(b)(38) as "any change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser's net outlay." The Department has stated that, although we will offset freight expenses with freight revenue, where freight revenue earned by a respondent exceeds the freight charge incurred for the same type of activity, the Department will cap freight revenue at the corresponding amount of freight charges incurred because it is

<sup>12</sup> See Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 77 FR 61738 (October 11, 2012) (Thai Pipes 2010-11 Final Results), and accompanying Issues and Decision Memorandum at Comment 3.

<sup>13</sup> See Orange Juice from Brazil.

inappropriate to increase gross unit selling price for subject merchandise as a result of profit earned on the sale of services (i.e., freight).<sup>14</sup>

Saha Thai's sales contracts indicate that the gross unit price included an amount for freight revenue.<sup>15</sup> Saha Thai would have us ignore this record evidence on grounds that the amount of freight revenue identified in the sales contracts does not reflect actual revenue, but was instead provided for the convenience of its customers. However, Saha Thai has argued, and we have agreed, that the material terms of sales were established at the time of contract. See Comment 3, below. This particular aspect of the sales contracts must therefore be given meaning as a material term of sale. Moreover, for certain sales, Saha Thai provided sample sales documentation, including commercial invoices. The freight amounts indicated on these sample invoices tied to the amounts stipulated in the sales contracts, thus providing further support for the conclusion that these are not estimates provided for the convenience of customers, but separately negotiated charges that the customer must pay.

For these reasons, we have continued to use the information contained in these sales contracts in conjunction with the sales database to derive an invoice-specific freight revenue amount for each transaction where freight revenue was incurred.<sup>16</sup> While Saha Thai once again seeks to introduce a test of intentions in applying the freight revenue cap, neither the Act nor the Department's regulations delineate or discuss such an exception. Specifically, Saha Thai's argument, that because it does not bill its freight charges separately the Department should not apply a revenue cap, is not contemplated by the statute or the regulations.<sup>17</sup> Moreover, Saha Thai identifies no legal authority to support its position.

Furthermore, Saha Thai's argument that its freight charge break-outs differ from actual freight costs by very small amounts in both positive and negative values is not accurate.<sup>18</sup> Where there is no expense, we have not made a deduction, and where the expense is greater than revenue, we have deducted the actual cost.<sup>19</sup>

We also disagree with Saha Thai's arguments with regard to applying the freight revenue cap on an aggregate annual or POR basis because it also requires that we make an exception to our practice of capping freight revenue at the corresponding amount of freight charges for each sale. As noted in the preceding paragraph, Saha Thai's premise for using an alternative methodology – that the differences are small when considered on an aggregate or average basis and result from slight differences between estimates and actual amounts – is not accurate. Freight is incurred on a shipment-specific basis and adjusted for on a shipment-specific basis, not on an aggregate or average basis. The Department is thus adhering to our normal practice and we are continuing to make the freight revenue adjustment on a shipment-specific basis.<sup>20</sup>

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<sup>14</sup> See Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011) (Wood Flooring), and accompanying Issues and Decision Memorandum at Comment 39; see also Orange Juice from Brazil.

<sup>15</sup> See Saha Thai's June 15, 2012, Section A Questionnaire Response at Exhibit A-11.

<sup>16</sup> See Preliminary Analysis Memo and Final Analysis Memo.

<sup>17</sup> See section 772(c)(1) of the Act and 19 CFR 351.102(b)(38).

<sup>18</sup> See Preliminary Analysis Memo and Final Analysis Memo.

<sup>19</sup> See id.

<sup>20</sup> See Wood Flooring and Orange Juice from Brazil.

## **Comment 6: Date of Sale for Saha Thai's U.S. Sales.**

### *U.S. Steel's Arguments*

- The Department should reject the use of the original contract date and instead use the shipment date as the date of sale for Saha Thai's U.S. sales in the final results, as the record evidence demonstrates that Saha Thai's original sales contracts did not establish the material terms of sale and that the material terms of sale were not fixed until the shipment date.
- Saha Thai cannot properly claim that the Department should use the original contract date as the date of sale because the Department has done so in prior segments of this proceeding. The Department must conduct the date of sale analysis in each review based on the facts of that review.
- As Saha Thai has not met and cannot meet its burden to show that the material terms were established on the original contract date, the Department should treat shipment date as the date of sale for Saha Thai's U.S. sales in the final results.

### *Saha Thai's Rebuttal Arguments*

- The Department has considered and rejected the same arguments raised by U.S. Steel in its case brief in prior reviews. Because U.S. Steel presents no new grounds for altering the Department's policy of using contract date as the date of sale in this proceeding, the Department should reject U.S. Steel's request for the final results.
- The Department changed the U.S. date of sale from shipment date to contract date in the 1998-99 review, and used contract date as the U.S. date of sale in the subsequent seven reviews of Saha Thai.
- In this review, Saha Thai negotiated and concluded its U.S. sales in the same way that it has in the past.
- Changing the date of sale from one review to the next when sales negotiations and "consummation practices" remain the same is inherently unfair and administratively burdensome.
- The record shows not one instance where there is even a minor change in sales terms between contract or revised contract date and shipment date. Thus, there is no evidence in this review that the basic terms of sale remain open until time of shipment.

**Department's Position:** 19 CFR 351.401(i) sets a rebuttable presumption that "the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business" as the date of sale. However, the Department's regulations also state that the Department "may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale."<sup>21</sup>

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<sup>21</sup> See 19 CFR 351.401(i);

The Department has concluded in previous reviews that the contract date best reflects the date on which Saha Thai's material terms of sale are set, even when there are amendments to the contracts, in which case we have relied on the amended contract dates.<sup>22</sup> Record evidence in this review again demonstrates that the contract date, or amended contract date, best reflects the date on which Saha Thai's material terms of sale are set. In this review, as in previous reviews, the U.S. sales are always made pursuant to contracts that specify the price and the quantity within a tolerance.<sup>23</sup> There were no changes in sales terms between contract (or amended contract) date and shipment date.<sup>24</sup> In the instances where Saha Thai issued a revised contract involving changes in destination or price, Saha Thai has correctly submitted the dates of the revised contracts as the dates of sale.<sup>25</sup> Therefore, for this review, we will continue to use contract date, or amended contract date, as the date of sale for the final results.

## **Comment 7: Saha Thai's Grade Distinctions**

### *Wheatland Tube's Arguments*

- Saha Thai's carbon-based grade distinctions should be rejected and were inappropriately accepted by the Department in the Preliminary Results.
- Saha Thai reported that its carbon levels vary and distinguished home market products based on the characterization of their carbon content as "Mid," "Mid-High," and "High." These qualitative characterizations do not reflect significant differences in actual carbon content and are meaningless in the context of the Department's recent decision to ignore carbon distinctions in the Korean circular welded pipe review.<sup>26</sup>
- The Department should collapse Saha Thai's reported grade codes into two categories. Grade codes 10, 15, 20, 25, 30, and 90 should be designated as ordinary pipe, and grade codes 60 and 70 should be designated as structural pipe.
- Saha Thai has not demonstrated that its Grade 90 pipes have different physical characteristics compared to other products.
- The current grade codes are unreliable because they could serve as a basis for creating differences between products that are identical in terms of their physical characteristics.
- Wheatland's margin analysis indicates that Saha Thai is benefiting from not providing or tracking grade information for Grade 90 products.

### *Saha Thai's Rebuttal Arguments*

- The Department should continue to use the grade classifications that it has developed over many years of annual reviews. These grade classifications are meaningful to both customers and the industry in general as can be seen from the prominence of these classifications in

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<sup>22</sup> See, e.g., Thai Pipes 2010-11 Final Results, and accompanying Issues and Decision Memorandum at Comment 1.

<sup>23</sup> See Saha Thai's January 10, 2013, Supplemental Questionnaire Response at Exhibit SR2-9.

<sup>24</sup> See *id.*

<sup>25</sup> See *id.*

<sup>26</sup> See 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), and accompanying Issues and Decision Memorandum at Comment 5; see also Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review, 76 FR 36089 (June 21, 2011), and accompanying Issues and Decision Memorandum at Comment 4.

Saha Thai's catalog. Since the Korean pipe and tube reviews referenced by Wheatland Tube, the Department has returned to its historical practice of distinguishing grade by various ASTM and BS specifications.

- Most of Saha Thai's Grade 90 products are made-to-order products and, by definition, these pipes cannot be classified as ASTM, BS, etc. products. Moreover, the specifications for these customized products are wide and varied and they are made in small volumes for individual customers. Saha Thai claims these products are furniture tubing that is not a standardized product, and, as the volumes are small and the products are customized, the costs are substantially higher; thus the prices for these products are higher.
- Wheatland's arguments that the Department must collapse some product characteristics, eliminate other product characteristics, and determine matches contrary to the Department's instructions are misguided and unjustified. Wheatland's suggested changes would result in bad model matching and would serve only as a last-minute effort to distort the results of this review.
- Even if the Department wanted to change the model matching criteria at this late stage in this review, the record in this case does not contain a concordance between Saha Thai's internal grade codes and the codes used by the Department in the Korean reviews.

**Department's Position:** The Department is keeping the current grade specifications as detailed in the Department's questionnaires and is not reclassifying Grade 90 as ordinary pipe or otherwise grouping it together with pipe made to ASTM or BS specifications. The Department finds that Saha Thai's product catalog indicates these specifications are still relevant to the industry and Saha Thai's customers.<sup>27</sup> Moreover, as Saha Thai notes, the Department's most recent proceedings involving this product, for example, the investigation conducted of circular welded carbon-quality steel pipe from the United Arab Emirates, followed the same definitions for the codes reported for this physical characteristic that we have followed under this order for numerous reviews.<sup>28</sup> Wheatland Tube has provided no evidence that a change in the market, the industry, or technology warrants a change to the reporting of this physical characteristic.<sup>29</sup> Thus, we see no compelling reason to change how these codes are reported. Likewise, we see no reason to reclassify products reported as Grade 90. The Department agrees with Saha Thai that Saha Thai provided adequate responses to the Department's questionnaires regarding these products and that a reclassification of these product codes is not warranted.<sup>30</sup> Moreover, the fact that these products have a higher than average sales price alone is not a basis for reclassifying these products as standard pipe, as the higher price is explained by the fact that furniture pipe is produced from cold-finished steel, which is a stronger and more expensive feedstock.<sup>31</sup>

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<sup>27</sup> See Saha Thai's June 15, 2012, Section A Questionnaire Response at Exhibit A-16 (Saha Thai's Product Brochure).

<sup>28</sup> See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates, 77 FR 64475 (October 22, 2012).

<sup>29</sup> See Fagersta Stainless AB v. United States, 577 F. Supp. 2d 1270, 1276-77 (Ct. Int'l Trade 2008) (Fagersta Stainless) (recognizing that there must be "compelling reasons" for changing preexisting model-match physical characteristics).

<sup>30</sup> See Saha Thai's January 10, 2013, Supplemental Questionnaire Response.

<sup>31</sup> See Saha Thai's June 15, 2012, Section A Questionnaire Response at Exhibit A-16, Saha Thai's Product Brochure.

## Comment 8: “Schedule” as a Model Matching Characteristic

### *Wheatland Tube’s Arguments*

- The Department should eliminate Schedule as a separate product characteristic because wall thickness accurately distinguishes the same physical characteristic (*i.e.*, wall thickness).
- The Court of International Trade has stated that the Department must treat like situations the same or explain its basis for departing from established precedent.<sup>32</sup> Therefore, the Department should not define products differently when the circular welded pipe is imported into the United States from Korea, Turkey or the United Arab Emirates.
- The Department should also eliminate Schedule as a separate reporting product characteristic because it results in distortive product costs. Certain Saha Thai pipes have identical CONNUMs except for Schedule (*i.e.*, the other model matching physical characteristics are the same, but one product has an ASTM Schedule and the other has a BS Schedule), leading to illogical cost differences for products with identical model matching physical characteristics.

### *Saha Thai’s Rebuttal Arguments*

- Schedule has been included over the history of this order in the model matching methodology because it is a significant physical characteristic specific to pipe and tube produced by Saha Thai and it should not be set aside simply because it is not required in other cases.
- The example Wheatland cites was the only instance where CONNUM was identical except for Schedule, and this example involves a comparison of a CONNUM with no sales to either the home market or to the U.S. to a CONNUM with Schedule BS-M with no production during the POR.

**Department’s Position:** The Department is continuing to include Schedule in the model matching hierarchy. Schedule indicates whether a pipe is for light, medium, or heavy duty applications and is one of the standard ASTM, BS specifications along with grade.<sup>33</sup> Wall Thickness, by contrast, is simply a measurement of the pipe’s actual thickness in millimeters. Thus, a particular Wall Thickness might be light for one type of pipe and heavy for another type of pipe. For example, an ASTM A53 A pipe with Wall Thickness 0.145 inches would be considered heavy for ½ inch pipe, medium for 1.5 inch pipe, and light for 3 inch pipe. Moreover, the Department has been relying on Schedule as a matching characteristic for more than 10 administrative review periods.<sup>34</sup> For the reasons given above, the Department disagrees with Wheatland that a redundancy exists when both Schedule and Wall Thickness are included in the model matching hierarchy. Accordingly, the Department is continuing to include Schedule as one of the physical characteristics in the model matching hierarchy for these final results. While we try to use consistent physical characteristics across all orders involving the same product, the selection of physical characteristics is driven not just by the product itself, but by other country-specific factors such as the market, the industry, or the production technology.<sup>35</sup>

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<sup>32</sup> See *Pakfood Public Co. v. United States*, 724 F. Supp. 2d 1327, 1337 (Ct. Int’l Trade 2010).

<sup>33</sup> See the Department’s initial questionnaire to Saha Thai at Sections B and C.

<sup>34</sup> See, e.g., *Thai Pipes 2010-11 Final Results*.

<sup>35</sup> See *Fagersta Stainless* at 1276-77, discussed above.

In this instance, we agree with Saha Thai that there is no compelling reason to change a country-specific (or order-specific) determination made by the Department over 10 years ago for products exported by Saha Thai. Accordingly, we are not deviating from our existing practice for this proceeding.

### **Comment 9: Warehouse Costs Incurred on Painted Products**

#### *Wheatland Tube's Arguments*

- As the denominator used in the domestic warehouse calculation was not limited to domestic painted sales, Saha Thai's warehouse costs should be assigned to all painted products including U.S. sales of painted products, and the Department should revise Saha Thai's U.S. dataset to include these additional costs.

#### *Saha Thai's Rebuttal Arguments*

- Worksheets submitted in its questionnaire response demonstrate Saha Thai has adequately reported its home market warehouse costs. Because the warehouse costs were not incurred on behalf of Saha Thai's sales to the U.S., the expense should not be applied to U.S. sales.

**Department's Position:** We agree with Saha Thai. Saha Thai's March 20, 2013 supplemental questionnaire response at Exhibit SR4-3, regarding cost-related issues, demonstrates that the quantity of painted pipe produced during the POR, of both subject and non-subject domestic painted pipe and exported pipe, is more than the figure used in the allocation denominator. Therefore, we agree that Saha Thai has adequately reported its home market warehouse costs and that these warehouse costs should not be allocated to U.S. sales of subject merchandise.

### **Comment 10: Treatment of Non-Prime Products in Calculating the Cost of Production**

#### *Wheatland Tube and U.S. Steel's Arguments*

- In the Preliminary Results, according to the Wheatland Tube, the Department improperly accepted Saha Thai's request to reclassify Grade B<sup>36</sup> pipe as a co-product. Consistent with findings in the previous review, the Department should reject the proposed co-product treatment of Grade B pipe.<sup>37</sup>
- Saha Thai's request is inconsistent with its normal books and records.<sup>38</sup> Saha Thai must demonstrate that the by-product treatment of Grade B pipe in its normal books is unreasonable.<sup>39</sup>

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<sup>36</sup> Saha Thai's internal use of Grade A and Grade B to distinguish prime and non-prime merchandise is completely unrelated to the "Grade" model matching characteristic discussed elsewhere in this memorandum or grade A and grade B ASTM specifications. See Saha Thai's July 17, 2012 Section B Questionnaire Response at 16.

<sup>37</sup> See Thai Pipes 2010-11 Final Results.

<sup>38</sup> See Section 773(f)(1)(A) of the Act.

<sup>39</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvedge from Taiwan, 75 FR 41804 (July 19, 2010), and accompanying Issues and Decision Memorandum at Comment 18; Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and

- Saha Thai failed to provide the product characteristics of its Grade B pipe which makes it impossible to discern the particular application of any product. Moreover, reporting the product characteristics is critical in ascertaining the end-use application of a particular product. Thus, it is unreasonable to characterize the Grade B pipe sales as anything more than scrap sales.
- Saha Thai should not be entitled to the co-product treatment of its Grade B pipe because it has not adhered to the Department's standard reporting requirements for non-prime merchandise (i.e., CONNUM designation, corresponding product characteristics, production quantity, per-unit cost).
- The submitted affidavits from Saha Thai's Grade B pipe purchasers should not have probative weight. The relevant question is whether these Grade B pipes were actually used in a Grade A pipe application and none of the statements from the purchasers demonstrated the actual use of Grade B pipe.
- The proposed Grade B pipe adjustment is distortive because it disproportionately shifts costs away from matching products.
- Based on the assumption that the quantity associated with the Grade B pipe cost reduction is consistent with the quantity associated with the Grade A pipe costs, the estimated POR production quantity of Grade B pipe is significantly higher than the POR sales quantity of Grade B pipe. Thus, it would be inappropriate for the Department to make a determination regarding the end-use application of products that for the most part have not even been sold.
- In determining whether a product should be treated as a by-product or a co-product, the Department's practice is to examine 1) how the company records and allocates costs in the ordinary course of business; 2) the product's relative sales value compared to that of other main products produced during the same time period; 3) whether significant additional processing occurred after the point at which the product became a separately identifiable product; and 4) whether management took steps to intentionally produce the product or whether it is an unavoidable consequence of production.<sup>40</sup> Based on these factors, Saha Thai's Grade B pipe is a by-product.

### *Saha Thai's Rebuttal Arguments*

- The Department has a long standing policy of treating non-prime and prime products as co-products and allocating costs evenly over their combined production quantity. This policy has been upheld by the courts.<sup>41</sup>
- The Department has deviated from the company's normal books and records whenever it finds such costs were contrary to its policy.<sup>42</sup>

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Tube from Mexico, 73 FR 35649 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 10.

<sup>40</sup> See Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Argentina, 60 FR 33539 (June 28, 1995), and accompanying Issues and Decision Memorandum at Comment 7; Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from South Africa, 67 FR 35485 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 4.

<sup>41</sup> See Oil Country Tubular Goods from Canada; Final Determination of Sales at Less Than Fair Value, 51 FR 15029 (April 22, 1986) (OCTG from Canada), and accompanying Issues and Decision Memorandum at Comment 17; IPSCO Inc. v. United States, 965 F.2d 1056, 1060-61 (Fed. Cir. 1992) (IPSCO); and Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan, 64 FR 30573 (June 8, 1999), and accompanying Issues and Decision Memorandum at "Cost Issues" Comment 1 (SSSS from Japan).

- In the previous review, the Department treated the Grade B pipe as by-product because Saha Thai did not establish that the Grade B pipe is used for the same application as the Grade A pipe. In this review, Saha Thai presented evidence that the Grade B pipe is used for the same application as the Grade A pipe.
- Saha Thai's customers are specialized pipe distributors or end-users and their affidavits confirmed that the Grade B pipe can be used in the same application as the Grade A pipe. The only difference between the Grade A and the Grade B pipe is the imperfection in appearance. Also, Saha Thai's customers do not purchase the Grade B pipe for use as scrap or sell them to scrap dealers.<sup>43</sup>
- No national standard certification is provided to customers who purchase the Grade B pipe. However, if customers request any certification, Saha Thai provides a mill certificate for its Grade B pipe the same way it would for its Grade A pipe.
- Made-to-order pipe is also uncertified, yet Wheatland Tube does not argue that it should be treated as a by-product. To do so would run contrary to Wheatland Tube's argument that the made-to-order pipe should be lumped in with products made to the national grade standard.
- While the Grade B pipe is generally sold at lower prices than the Grade A pipe, this fact does not affect the treatment of the lower grade product as a co-product.<sup>44</sup> However, it is relevant that the Grade B pipe was sold for substantially higher prices than scrap. Thus, the Department should continue to treat the Grade B pipe as a co-product in its final results.

**Department's Position:** We agree with Saha Thai that Grade B pipe products should be classified as non-prime pipe products and the production costs should be allocated over both Grade A and Grade B pipe production. In the normal course of business, Saha Thai produces Grade A pipe (i.e., prime product) and Grade B pipe (i.e., down-graded non-prime product) and assigns full production costs to only Grade A pipe, and offsets the cost of Grade A pipe with the revenue from the sales of Grade B pipe.<sup>45</sup> Nevertheless, for reporting purposes, Saha Thai classified the Grade B pipe as a non-prime product and assigned the same per-unit costs to the Grade B pipe as the Grade A pipe.<sup>46</sup>

Section 773(f)(1)(A) of the Act directs that the reported costs should be calculated based on a respondent's normal books and records if such records are kept in accordance with home country GAAP and reasonably reflect the costs associated with the production and sale of the merchandise. In the prior review, the Department treated the Grade B pipe as scrap, as recorded in Saha Thai's normal books, and used the sales revenue as an offset to the cost of manufacturing because the record evidence was inconclusive as to whether the Grade B pipe was sold for use in the same applications as the Grade A pipe.<sup>47</sup> Here, however, we have more conclusive record evidence concerning the application of Grade B pipe. In this review, Saha Thai provided affidavits from its customers which stated that both Grade A and B pipe products can be used for the same general intended end-use applications.<sup>48</sup> In addition, Saha Thai provided information

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<sup>42</sup> See SSSS from Japan; Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 75 FR 64696 (October 20, 2010), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>43</sup> See Saha Thai's March 20, 2013, section D submission at Exhibit 5.

<sup>44</sup> See IPSCO, 965 F.2d at 1060-61.

<sup>45</sup> See Saha Thai's July 17, 2012, section D submission at 6-7.

<sup>46</sup> Id.

<sup>47</sup> See Thai Pipes 2010-11 Final Results, and accompanying Issues and Decision Memorandum at Comment 7.

<sup>48</sup> See Saha Thai's October 26, 2012, section D submission at Exhibit 25, and Saha Thai's March 20, 2013, section

regarding the Grade B pipe production and sales. Saha Thai provided a Grade B pipe adjustment worksheet, which demonstrated that the adjustment was calculated based on the proportion, by quantity, of the Grade A and B pipe produced during the POR, and the total POR production quantity of both grades, along with the supporting production records.<sup>49</sup> As a result, the Department was able to trace the production quantity of Grade B pipe produced during the POR for a selected product to the production records and examine the Grade B pipe adjustment methodology used by Saha Thai.

In distinguishing whether a product should be considered a non-prime product or scrap, the Department considers the intended end use or application of the product.<sup>50</sup> Essentially prime and non-prime products can be used for the same general purpose, whereas, scrap is used for a totally different purpose than the intended use or application of the prime product.<sup>51</sup> As such, costs for prime and non-prime products should be allocated evenly over the total output tons of both types of products.

As noted above, the Department's established practice is to calculate costs by allocating total production costs over the total production quantity of both prime and non-prime products.<sup>52</sup> Analogous with both of these cases, Saha Thai incurred the same materials, labor, and overhead costs to produce the Grade A and B pipe products. Since both grades of product are made using the same inputs and conversion, and are used in the same general application, we consider it unreasonable not to allocate full production costs to both grades of product. As such, we consider Saha Thai's normal accounting treatment of assigning full production costs only to its Grade A products unreasonable. Accordingly, for the final results, we determined that it is appropriate to classify the Grade B pipe as non-prime product and allocate full production costs to the Grade B products.

Wheatland Tube argues that it is unreasonable to characterize the Grade B pipe sales as anything more than scrap sales due to the lack of record evidence related to the complete product characteristics of these products. We find this argument unpersuasive. Saha Thai provided the product code data associated with product characteristics of the non-prime product through the forming stage of the production process and provided a supporting production report that shows the quantity of Grade A and B pipe produced for a selected job order.<sup>53</sup> We also note that the Department has accepted a respondent's reported costs of non-prime products based on the weighted-average cost of prime products when certain product characteristics were missing for

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D submission at Exhibit 5.

<sup>49</sup> See Saha Thai's January 28, 2013, section D submission at Exhibit 7, and Saha Thai's March 20, 2013, section D submission at Exhibit 4.

<sup>50</sup> See Polyethylene Terephthalate Film, Sheet and Strip From Korea: Final Results of Antidumping Duty Administrative Review, 65 FR 55003 (September 12, 2000), and accompanying Issues and Decision Memorandum at Comment 1; IPSCO, 965 F. 2d at 1060-61.

<sup>51</sup> See IPSCO, 965 F.2d at 1060-61 (upholding the Department's reasoning that off-spec merchandise (i.e., non-prime product) used for the same general purpose can be very similar to prime merchandise).

<sup>52</sup> See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Taiwan, 65 FR 34658 (May 31, 2001) (CR Flat-Rolled Carbon-Quality Steel Products from Taiwan), and accompanying Issues and Decision Memorandum at Comment 6; IPSCO, 965 F.2d at 1060-61.

<sup>53</sup> See Saha Thai's January 28, 2013, section D submission at Exhibit 7 and March 20, 2013, section D submission at Exhibit 4.

non-prime products.<sup>54</sup> Further, Saha Thai's records showed that the POR average sales value of Grade B pipe was significantly higher than the POR average sales value of steel scrap.<sup>55</sup> Thus, for all of the reasons stated above, we did not make an adjustment to Saha Thai's reported costs for the Grade B pipe adjustment.

### **Comment 11: Steel Scrap Offset**

In the Preliminary Results, we limited Saha Thai's reported scrap offset, based on a reasonable calculation of the amount of scrap generated during the POR.<sup>56</sup>

#### *Saha Thai's Arguments*

- Saha Thai claims that limiting its scrap offset to the yield losses incurred only at the slitting and forming production stages (i.e., Grade C pipes generated) understates the scrap offset because it fails to take into account scrap generated during the POR at other stages in the production process.
- Saha Thai states that record evidence shows that scrap generated during the fiscal year 2011, which is only two months apart from the POR, is more than the scrap sold during the same period.<sup>57</sup> Unless the Department has a reason to believe that Saha Thai generated an aberrational amount of scrap during the first two months of the fiscal year 2011, it has to conclude that Saha Thai generated at the very least as much scrap as was sold during the POR.
- The quantity of scrap sold by Saha Thai from month to month is relatively constant.<sup>58</sup> In addition, because Saha Thai is subject to a review on a yearly basis, any favorable scrap inventory change in one year will be offset by any unfavorable change in the subsequent year. Thus, the total POR scrap sold is a reasonable proxy for the total POR scrap generated.
- Saha Thai is not a scrap dealer. As such, Saha Thai's scrap sales cannot be inflated by the resale of purchased scrap. Moreover, the Department has accepted the quantity of scrap sold for the purposes of calculating the scrap credit in other reviews.<sup>59</sup>

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<sup>54</sup> See SSSS from Japan.

<sup>55</sup> See Saha Thai's March 20, 2013, section D submission at Exhibit 2.

<sup>56</sup> See Memorandum to Neal Halper, Director of Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Saha Thai Steel Pipe (Public) Company Ltd.," (April 2, 2013) (Prelim Saha Thai Cost Memorandum) at Attachment 1.

<sup>57</sup> See Saha Thai's January 28, 2013, section D submission at Exhibit 10.

<sup>58</sup> See Saha Thai's March 20, 2013, section D submission at Exhibit 3.

<sup>59</sup> See Notice of Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination Not to Revoke in Part, 69 FR 6255 (February 10, 2004), and accompanying Issues and Decision Memorandum at Comment 22; Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review, 68 FR 47543 (August 11, 2003), and accompanying Issues and Decision Memorandum at Comment 15; and Notice of Final Determination of Sales at Less than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products from India, 66 FR 50406 (October 3, 2001), and accompanying Issues and Decision Memorandum at Comment 17.

### *Wheatland Tube and U.S. Steel's Rebuttal Arguments*

- The Department is required to estimate Saha Thai's scrap offset because it does not track the quantity of scrap generated during the production process in the normal course of business. In the prior review, the Department addressed the same flaws associated with Saha Thai's recordkeeping and proposed a similar scrap offset adjustment.<sup>60</sup>
- The Department appropriately examined available information and determined that the scrap offset should be reduced because the estimated volume of scrap generated was less than the volume of scrap sold during the POR.
- The Department's longstanding practice is to limit the amount of the scrap offset to the amount of scrap generated.<sup>61</sup>
- The record shows that Saha Thai did not generate any scrap subsequent to the forming process (*i.e.*, galvanizing, threading and coupling, painting, and varnishing processes).<sup>62</sup> Therefore, the Department's preliminary determination methodology reasonably estimated the scrap generated by Saha Thai during the POR.
- In fact, according to Wheatland, the record shows that the output production volume exceeded the input volume for the production stages subsequent to the forming process which indicates Saha Thai was consuming steel scrap, as opposed to generating scrap. As such, the Department should further reduce the estimated amount of scrap generated by Saha Thai during the POR.

**Department's Position:** We disagree with Saha Thai. The Department's practice is to allow for a scrap offset related to the quantity of such scrap generated during the POR.<sup>63</sup>

In the normal course of business, Saha Thai does not track the quantity of scrap generated in its normal books and records and the steel scrap that is produced is not weighed until it is shipped to its customers. Because Saha Thai is not able to determine the quantity of scrap generated during the POR, we looked to the available record evidence to determine the quantity of scrap that could have reasonably been generated during the POR. Accordingly, in our review of the record evidence, it appears that the slitting and forming production stages were the only stages in the production process where Saha Thai generated steel scrap during the POR.<sup>64</sup> Specifically, the record shows that Saha Thai experienced zero yield loss in the production stages subsequent to

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<sup>60</sup> See Thai Pipes 2010-11 Final Results, and accompanying Issues and Decision Memorandum at Comment 7.

<sup>61</sup> See, *e.g.*, Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less than Fair Value, 73 FR 33985 (June 16, 2008), and accompanying Issues and Decision Memorandum at Comment 12; Notice of Final Determination of Sales at Less than Fair Value: Structural Steel Beams from Taiwan, 67 FR 35484 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2; and Mid Continent Nail Corp. v United States, Slip Op. 2010-47, Court No. 08-00224 (Ct. Int'l Trade May 4, 2010) (Mid Continent Nail).

<sup>62</sup> See Saha Thai's March 20, 2013, section D submission at Exhibit 7.

<sup>63</sup> See, *e.g.*, Thai Pipes 2010-11 Final Results, and accompanying Issues and Decision Memorandum at Comment 7; Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Thirteenth Administrative Review, 73 FR 14220 (March 17, 2008) and accompanying Issues and Decision Memorandum at Comment 5; and Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman: Final Determination of Sale at Less Than Fair Value, 77 FR 64480 (October 22, 2012) and accompanying Issues and Decision Memorandum at Comment 3; see also Mid Continent Nail, Slip Op. 2010-47, Court No. 08-00224, at \*19-\*20 (affirming the Department's practice concerning scrap offset).

<sup>64</sup> See Saha Thai's March 20, 2013, section D submission at Exhibit 7.

the slitting and forming stages.<sup>65</sup> Therefore, consistent with the Preliminary Results, we have continued to limit the scrap offset to the quantity of scrap that could have been reasonably generated during the POR using Saha Thai's yield loss at both the slitting and forming production stages.

We disagree with Saha Thai's argument that since its fiscal year end (FYE) quantity of scrap generated exceeded its FYE quantity of scrap sold, there is no need to adjust the submitted POR scrap offset. The POR differs from the FYE by two months. As such, we consider it inappropriate to draw any conclusions regarding the quantity of Saha Thai's scrap generated and sold during the POR based on the quantity of scrap generated and sold up until the FYE. Saha Thai does not track the quantity of scrap generated throughout the year. At the FYE, the company can calculate the amount of scrap generated during the fiscal year by relying on its year-end physical inventory count of scrap (*i.e.*, the change in the beginning and ending inventory balance of scrap) and the quantity of scrap sold during the fiscal year. The FYE scrap inventory balances bear no relationship to the POR scrap inventory balances because inventory levels are based on a specific point in time and those inventory levels can fluctuate significantly, both within a given month and from month to month, depending on a number of factors (*e.g.*, production levels, sales, *etc.*). Therefore, the Department disagrees with Saha Thai's argument that we can conclude, based on the FYE scrap sales and production data, that the quantity of scrap generated during the POR exceeds the amount of scrap sold during the POR.

With respect to the Wheatland Tube's argument that we should further reduce the estimated amount of scrap generated because, based on Saha Thai's reported yields, it was consuming scrap in the production stages subsequent to the forming process, we disagree. Record evidence does not show that steel scrap was consumed in the production stages that follow the forming production stage (*i.e.*, galvanizing, threading and coupling, painting, and varnishing). Although the output quantity does exceed the input quantity at the production stages in question, the weight gain may be the result of other added materials. Regardless, there is no support in the record for Wheatland Tube's allegation. Thus, we find that no further adjustment is necessary.

#### **Comment 12: General and Administrative Expense Ratio (Warehouse Rental Income and Expense)**

In the Preliminary Results, we revised Saha Thai's general and administrative (G&A) expense ratio to exclude the revenue and expenses associated with its warehouse rental activity.

#### *Saha Thai's Arguments*

- Saha Thai claims that excluding the warehouse rental income and expenses from the calculation of the G&A expense ratio overstates Saha Thai's G&A expenses. Although the direct costs related to the rental activity were excluded from the G&A expenses, the indirect costs related to the rental activity still remain. Consequently, according to Saha Thai, to avoid a mismatch of revenues and expenses, the Department should include both rental income and the related expenses in the G&A expense ratio calculation for the final results.

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<sup>65</sup> Id.

### *Wheatland Tube and U.S. Steel's Rebuttal Arguments*

- The warehouse rental activities are related to affiliated transactions. The Department's established practice is to exclude the profits earned from the affiliated transactions from the G&A expenses.<sup>66</sup>
- The Department's established practice in calculating the G&A expense ratio is to exclude items that are not related to the general operations of the company.<sup>67</sup> There is no evidence that the rental property is a part of Saha Thai's general manufacturing operations.

**Department's Position:** We have included, for the final results, both the warehouse rental income and associated expenses in the G&A expenses because these amounts are associated with general operations of the company as a whole. When determining if an activity is related to the general operations of the company, the Department considers the nature, the significance, and the relationship of that activity to the general operations of the company.<sup>68</sup> In the instant case, the warehouse rental income and expenses are a minor activity that relates to the general operations of the company as a whole. Saha Thai's rental activity in question does not relate to a separate line of business. Instead, it represents a minor activity associated with the company's general operations, resulting in a very small amount of net gain. Accordingly, we consider it appropriate to include both the income and related expenses in the calculation of Saha Thai's G&A expense ratio.

With respect to the Wheatland Tube's argument that the rental income should be excluded because the transactions were between affiliated parties, we disagree. There is no record evidence showing that the rental income occurred at non-arms-length prices. In fact, the accompanying notes to Saha Thai's fiscal year 2011 audited financial statements states that the affiliated warehouse rental pricing policy is at market price.<sup>69</sup> Further, we find that the cases cited by Wheatland Tube, Magnesia Bricks from Mexico and HR Flat-Rolled Carbon-Quality Steel Products from Japan are misplaced. Unlike the instant case, in Magnesia Bricks from Mexico, the Department eliminated the intercompany profit because the respondent and its affiliated company were collapsed for reporting purposes.<sup>70</sup> In the HR Flat-Rolled Carbon-Quality Steel Products from Japan, the Department eliminated the intercompany profit, not because it was an affiliated transaction, but because it was not related to the general operations of

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<sup>66</sup> See Certain Magnesia Carbon Bricks from Mexico: Notice of final Determination of Sales at Less than Fair Value, 75 FR 45097 (August 2, 2010), and accompanying Issues and Decision Memorandum at Comment 3 (Magnesia Bricks from Mexico); Hot-rolled Flat-Rolled Carbon-Quality Steel Products from Japan: Final Results of Antidumping Duty Administrative Review, 67 FR 2408 (January 17, 2002), and accompanying Issues and Decision Memorandum at Comment 7 (HR Flat-Rolled Carbon-Quality Steel Products from Japan)

<sup>67</sup> See Oil Country Tubular Goods, Other than Drill Pipe from Korea: Final Results of Antidumping Duty Administrative Review, 72 FR 9924 (March 6, 2007), and accompanying Issues and Decision Memorandum at Comment 1; CR Flat-Rolled Carbon-Quality Steel Products from Taiwan, and accompanying Issues and Decision Memorandum at Comment 11 .

<sup>68</sup> See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Korea, 67 FR 73196, 73210 (December 29, 1999)

<sup>69</sup> See Saha Thai's June 15, 2012 Section A Questionnaire Response at Exhibit 12.

<sup>70</sup> See Magnesia Bricks from Mexico, and accompanying Issues and Decision Memorandum at Comment 3.

the company as a whole.<sup>71</sup> Here, we determined that the income and expense items in question do relate to the general operations of the company as a whole. Therefore, for the final results, we included the rental income and expenses in the calculation of the G&A expense ratio.

### **Comment 13: Zinc Scrap Offset**

#### *Wheatland Tube's Arguments*

- According to Wheatland Tube, the calculation worksheets used to support the zinc scrap offset amount do not agree to the offset reported in the cost database. As such, the Department should revise Saha Thai's reported zinc scrap offset amount to reflect an amount that is consistent with the zinc scrap offset calculation worksheet.

#### *Saha Thai's Rebuttal Arguments*

- Wheatland Tube's analysis failed to account for all cost components used in the calculation of reported zinc scrap offset. Thus, the Department should continue to use Saha Thai's reported zinc scrap offset for the final results.

**Department's Position:** We agree with Saha Thai. Saha Thai calculated the zinc scrap offset amount based on three components; the zinc scrap offset ratio, the period of investigation standard zinc costs, and a variance adjustment.<sup>72</sup> We reviewed the Wheatland Tube's analysis of the zinc scrap offset submitted in its case brief and found that the analysis failed to take into account the variance adjustment. However, when all three components of the zinc scrap offset are taken into account, the supporting calculation worksheets tie to the offset reported in Saha Thai's cost database. Thus, we have continued to rely on Saha Thai's reported zinc scrap offset for the final results.

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<sup>71</sup> See HR Flat-Rolled Carbon-Quality Steel Products from Japan, and accompanying Issues and Decision Memorandum at Comment 7.

<sup>72</sup> See Saha Thai's March 20, 2013, section D submission at Exhibit 3 and the Cost file.

**Recommendation**

We recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this administrative review in the Federal Register.

  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

23 OCTOBER 2013  
\_\_\_\_\_  
(Date)