



UNITED STATES DEPARTMENT OF COMMERCE  
International Trade Administration  
Washington, D.C. 20230

A-549-502

POR: 3/1/2012 – 2/28/2013

Public Document

AD/CVD VI: JPR

October 21, 2014

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; 2012 – 2013  
Administrative Review

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### Summary

The Department of Commerce (the Department) 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 made changes to the *Preliminary Results*.<sup>1</sup> We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

### Background

On April 24, 2014, the Department published the *Preliminary Results*. 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, 2012, through February 28, 2013. Saha Thai and Wheatland Tube Company submitted case briefs on June 16, 2014, and rebuttal briefs on June 23, 2014.

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<sup>1</sup> See *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 22794 (April 24, 2014) (*Preliminary Results*).



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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>2</sup> No parties 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: The Department Inadvertently Used the Incorrect Section D Cost File in the Preliminary Results Calculations
- Comment 2: For Transactions with Sale Dates Prior to the POR, the Department Should Use the Corresponding Costs from the Prior POR
- Comment 3: The Department Should Revise Saha Thai’s Reported Costs To Exclude the Grade B Adjustments
- Comment 4: Calculation of Saha Thai’s Freight Revenue Cap
- Comment 5: Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Less-Than-Fair-Value Investigations
- Comment 6: Consideration of an Alternative Comparison Methodology in Administrative Reviews
- Comment 7: Differential Pricing
- Comment 8: Calculation of Saha Thai’s Duty Drawback Adjustment
- Comment 9: Application of Adverse Facts Available to Affiliated Party Transactions Discovered at Verification

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<sup>2</sup> *Id.*, 79 FR at 22794.

## Discussion of the Issues

### **Comment 1: The Department Inadvertently Used the Incorrect Section D Cost File in the Preliminary Results Calculations**

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

- The Department inadvertently used the cost database “SAHACOP01” instead of the “SAHACOP02” cost database in calculating the weighted-average dumping margin for the *Preliminary Results*.
- The “SAHACOP01” cost database was submitted on June 28, 2013 with the original section D response and the “SAHACOP02” cost database was submitted on September 13, 2013.
- The Department verified the cost data submitted in the “SAHACOP02” database.
- The Department intended to use the “SAHACOP02” cost database<sup>3</sup> and accordingly, Saha Thai requests that the Department use the “SAHACOP02” cost database for calculating its weighted-average dumping margin for the final results.

*Wheatland Tube submitted no rebuttal comments.*

#### **Department's Position:**

We agree with Saha Thai. For the final results, we used the “SAHACOP02” cost database to calculate Saha Thai's weighted-average dumping margin.

### **Comment 2: For Transactions with Sale Dates Prior to the POR, the Department Should Use the Corresponding Costs from the Prior POR**

#### *Wheatland Tube's Arguments:*

- The Department uses the cost data from the prior POR to conduct the cost test per section 773(b)(1) of the Tariff Act of 1930, as amended (the Act) when a significant volume of home market sales have sale dates prior to the POR.<sup>4</sup>
- The Department requested in a different proceeding that the respondent place on the record the cost data from the prior POR when approximately 50 percent of home market sales occurred prior to the POR.<sup>5</sup>

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<sup>3</sup> See the Memorandum to Neal M. Halper, Director, Office of Accounting, through Peter S Scholl, Lead Accountant, from Sheikh M. Hannan, Senior Accountant, titled “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Saha Thai Steel Pipe (Public) Company Ltd.” dated April 17, 2014 at pages 1 and 3.

<sup>4</sup> See *Notice of Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from Romania*, 72 FR 18204 (April 11, 2007) (*Hot-Rolled Carbon Steel Flat Products from Romania*), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>5</sup> See *Notice of Final Results of Antidumping Duty Administrative Review and Determination to Revoke in Part: Certain Steel Concrete Reinforcing Bars from Turkey*, 73 FR 66218 (November 7, 2008) (*Steel Concrete Reinforcing Bars from Turkey 2006-2007*), and accompanying Issues and Decision Memorandum at Comment 2.

- In this review, a significant portion of Saha Thai's reported home market sales<sup>6</sup> and U.S. market sales<sup>7</sup> had sale dates prior to the POR.
- For the final results, the Department should use Saha Thai's reported costs from the prior POR for the transactions with sale dates prior to the POR.

### *Saha Thai's Rebuttal Arguments*

- Wheatland Tube raised the issue regarding the appropriateness of the cost reporting period for the first time in its June 16, 2014 case brief.
- Wheatland Tube should have made this argument earlier in the review and not 11 months after the sales were placed on the record on June 28, 2013.
- Only a small portion of its reported home market sales had sale dates before the POR,<sup>8</sup> and, therefore, the Department should reject Wheatland Tube's request.
- The Department normally uses the POR as its cost reporting period unless there are compelling reasons to do otherwise. For example, an argument for calculating costs for an alternative cost reporting period could be supported by an analysis showing that the POR costs are not representative of the merchandise under consideration. This could be demonstrated if, for example, input costs were substantially different between the POR and before the POR. Wheatland Tube failed to make such a showing in this review.
- The majority of the reported home and U.S. market sales were produced during the POR. Saha Thai often signs contracts many months before shipments. Since Saha Thai ships products soon after they are made,<sup>9</sup> shipment date is a better proxy than sales or contract dates for determining approximately when the products were produced.
- The complete cost data from the prior POR is not on the record of this proceeding<sup>10</sup> and has not been verified. The cost files of the previous review period should have been placed on the record before the Department conducted the cost verification.
- The use of previous review period cost data will lead to numerous issues: (1) for the products that were sold prior to the POR and also during the POR, should the Department use two different costs for the two periods or a weighted average of the costs from these two different periods; (2) the duty drawback adjustments included in the production cost data would be based on two different review periods, unlike the adjustment applied to the U.S. market prices; and, (3) issues associated with the merging of the current period sale files with the previous period cost files.

### **Department's Position:**

The methodology suggested by Wheatland Tube represents an unwarranted departure from our normal practice of calculating an annual weighted-average cost of production (COP) for the POR

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<sup>6</sup> See Saha Thai's September 27, 2013 second supplemental sections A, B, and C responses at exhibit SR2-21.

<sup>7</sup> See Saha Thai's June 28, 2013 section C response at exhibit C-1.

<sup>8</sup> Saha Thai further states that while a higher proportion of U.S. market sales fell outside the POR, it is the home market sales that are actually relevant, as the U.S. sales' production costs come into play only if the Department uses constructed value (CV).

<sup>9</sup> See Saha Thai's June 12, 2013 section A response at pages 26 to 27.

<sup>10</sup> Saha Thai states in its case brief that although Wheatland Tube placed paper versions of cost submissions from the prior POR on the record in this proceeding in its August 19, 2013 Factual Information Submission, the cost file exhibits were incomplete because they contained every 10<sup>th</sup> observation of the cost file. Saha Thai argues that the complete cost files from the prior POR were never placed on the record in this review.

for use in the sales-below-cost test, where we compare comparison market prices to annual weighted-average costs for the POR,<sup>11</sup> or for calculating the CV of the products sold in the U.S. market. The statute does not dictate a specific method of calculating COP, nor does it provide a definition for the term “period” in calculating COP and CV.<sup>12</sup> The Department’s normal practice is to use weighted-average COP for the POR.<sup>13</sup> Thus, under our normal practice, we calculate the COP for all comparison market sales using only costs which were incurred during the POR. The Department’s practice stems in part from sections 773(b)(1)(B), 773(b)(2)(B), and 773(b)(D) of the Act, where an extended period of time for cost recovery is defined as being normally one year and the cost recovery test references the “weighted average per unit cost of production for the period of investigation or review.”<sup>14</sup> In most cases, we make the reasonable assumption that POR costs are representative of the costs for all reported sales, including those sales made during the window periods (*i.e.*, three months prior to the first, and two months after the last, U.S sale).

The Department in the past departed from this practice by shifting the cost reporting period to match more closely the time period surrounding the reported sales in cases where all or a significant portion of the sales occurred prior to the POR and the COPs changed appreciably between the prior and current POR. While our usual practice is to use COPs that were incurred by a manufacturer during the current POR when we test home market sales prices under section 773(b)(1) of the Act, in *Certain Hot-Rolled Carbon Steel Flat Products from Romania*, we found it appropriate to use cost data from the previous POR (2003-2004) to conduct the sales-below-cost test.<sup>15</sup> In *Certain Steel Concrete Reinforcing Bars From Turkey 2006-2007*, the Department used COPs from the prior POR because approximately 50 percent of its reported home market sales occurred prior to the POR.<sup>16</sup> In *Certain Steel Concrete Reinforcing Bars From Turkey 2011-2012*, the Department departed from its normal practice of using POR COPs for all home market sales and used COPs from the prior POR to test pre-POR home market sales in the sales-

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<sup>11</sup> See, e.g., *Notice of Final Results of Antidumping Duty Administrative Review of Certain Pasta from Italy (Pasta from Italy)*, 65 FR 77852 (December 13, 2000), and accompanying Issues and Decision Memorandum at Comment 18; and *Notice of Final Results of Antidumping Duty Administrative Review of Carbon and Certain Alloy Steel Wire Rod from Canada (Steel Wire Rod from Canada)*, 71 FR 3822 (January 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department’s practice of computing annual weighted-average COPs for the entire period).

<sup>12</sup> See section 773(b) of the Act.

<sup>13</sup> See, e.g., *Pasta from Italy*, and accompanying Issues and Decision Memorandum at Comment 18; *Steel Wire Rod from Canada*, and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department’s practice of computing annual weighted-average COPs for the entire period).

<sup>14</sup> See section 773(b)(D) of the Act.

<sup>15</sup> See, e.g., *Hot-Rolled Carbon Steel Flat Products from Romania*, and accompanying Issues and Decision Memorandum at Comment 2 (where the Department used COPs from the prior review period because all of the U.S. transactions examined had dates of sale prior to the POR under consideration).

<sup>16</sup> See *Notice of Final Results of Antidumping Duty Administrative Review: Certain Steel Concrete Reinforcing Bars from Turkey*, 73 FR 62218 (November 7, 2008), and accompanying Issues and Decision Memorandum at Comment 2 (where approximately fifty percent of its reported home market sales occurred prior to the POR) and *Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Steel Concrete Reinforcing Bars from Turkey*, 73 FR 24535, 24538 (May 5, 2008).

below-cost test because the magnitude of the difference between the respondent's POR weighted-average COPs and the pre-POR weighted-average COPs demonstrated that the POR weighted-average COPs did not reasonably reflect the production costs incurred during the pre-POR period.<sup>17</sup>

The facts of the instant case differ from those of the cases cited above. In this case, we do not consider that Saha Thai had a significant number of reported home market sales with dates of sale prior to the POR.<sup>18</sup> Further, there is no evidence on the record to demonstrate that Saha Thai's COPs changed appreciably between the prior and current PORs and that the current POR COPs are not reasonably reflective of the pre-POR period's COPs.

We note that the petitioner raised this argument very late in the review process. Wheatland Tube did not address this issue in any of their multiple submissions commenting on the deficiencies in Saha Thai's questionnaire responses until the filing of its case brief. Further, Wheatland Tube did not claim or provide evidence showing that the COPs changed appreciably between the prior and current PORs, or that the current POR COPs are not reasonably reflective of the pre-POR period COPs. Petitioner points solely to Saha Thai's sales data. Therefore, the instant review's record does not support departing from our normal practice of calculating annual weighted-average COPs for the POR. Consistent with our decision in *Shrimp from Thailand*,<sup>19</sup> we continue to follow our standard practice of using a POR cost averaging period in the sales-below-cost test in the final results.

### **Comment 3: The Department Should Revise Saha Thai's Reported Costs To Exclude the Grade B Adjustments**

#### *Wheatland Tube's Arguments*

- The Department, in the previous 2011-12 review of this order, accepted Saha Thai's Grade B adjustment because the Grade B pipes were used in the same applications as Grade A pipes.<sup>20</sup> In this current 2012-13 review, the Department should disallow the Grade B adjustment because Saha Thai failed to provide evidence that the Grade B pipes sold in this current review were used in the same applications as Grade A pipes.

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<sup>17</sup> See *Notice of Final Results of Antidumping Duty Administrative Review: Welded Carbon Steel Standard Pipe and Tube Products from Turkey*, 78 FR 79665 (December 31, 2013) (*Steel Concrete Reinforcing Bars from Turkey 2011-2012*), and accompanying Issues and Decision Memorandum at Comment 1 (where the Department noted that departure from its normal practice may be appropriate if the record evidence shows that the POR COPs are not reasonably reflective of the COPs for the pre-POR period).

<sup>18</sup> See Saha Thai's September 27, 2013 supplemental sections A, B, and C responses at exhibit SR2-21.

<sup>19</sup> See *Notice of Final Results of Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Thailand*, 75 FR 54847 (September 9, 2010), and accompanying Issues and Decision Memorandum at Comment 13 (where we found it inappropriate to depart from our normal methodology of relying exclusively on POR COPs when conducting the sales-below-cost test to determine whether home market sales made before the POR should be disregarded when calculating the normal values).

<sup>20</sup> See *Notice of Final Results of Antidumping Duty Administrative Review: Circular Welded Carbon Steel Pipes and Tubes from Thailand*, 78 FR 65272 (October 31, 2013) (*Circular Welded Carbon Steel Pipes and Tubes from Thailand*), and accompanying Issues and Decision Memorandum at Comment 10.

- The Department requested Saha Thai to provide evidence explaining the end use of Grade B pipes.<sup>21</sup> Rather than provide new certifications related to current period Grade B sales, Saha Thai provided the certifications that were submitted in the prior 2011-2012 review.<sup>22</sup> The record contains no information about the end-use of the Grade B pipes sold during the current POR.
- The Department should require Saha Thai to provide more proof than the certifications provided and should identify the buildings and the responsible individuals using the Grade B pipes.
- Saha Thai's analysis that its pricing information supports the reclassification of Grade B pipes as non-prime products because Grade B pipes are sold at a higher price than Grade C pipes,<sup>23</sup> is flawed. The correct analysis is to compare the sales prices of Grade A, Grade B, and Grade C pipes and determine whether the average price of Grade B pipes is closer to average corresponding price of Grade A pipe or Grade C pipe.
- The average pre-POR sale price of Grade B pipe compared to the corresponding average POR sale price supports that Grade B pipe sold in the current POR is scrap and not a non-prime product.
- Each review must stand on its own.<sup>24</sup> Saha Thai, in this current review, did not provide sufficient evidence to demonstrate that its normal treatment of Grade B pipes as scrap is unreasonable.
- In the 2010-2011 review of this case, the Department rejected Saha Thai's claim that Grade B pipes should be treated as non-prime products because the record evidence did not adequately support that the Grade B pipes were used in the same application as Grade A pipes.<sup>25</sup>
- The Department for the final results should disallow the Grade B adjustment reported in the cost database.

*Saha Thai's Rebuttal Arguments*

- The Department appropriately treated its Grade B pipes as non-prime products in the previous and current reviews.
- This issue was extensively briefed in the previous review<sup>26</sup> and nothing has changed since that time that would lead to a different conclusion.
- 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>27</sup>

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<sup>21</sup> See the First Supplemental Section D Questionnaire issued by the Department to Saha Thai on August 9, 2013 at question No. 22.d

<sup>22</sup> See Saha Thai's September 13, 2013 first supplemental section D response at page 35 and exhibit SR1-22

<sup>23</sup> *Id.*, at page 34.

<sup>24</sup> See *Notice of Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 77 FR 73616 (December 11, 2012), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>25</sup> See *Notice of Final Results of Antidumping Duty Administrative Review: Circular Welded Carbon Steel Pipes and Tubes from Thailand*, 77 FR 61738 (October 11, 2012), and accompanying Issues and Decision Memorandum at Comment 7.

<sup>26</sup> See *Circular Welded Carbon Steel Pipes and Tubes from Thailand*, and accompanying Issues and Decision Memorandum at Comment 10.

- In this review, the record evidence adequately supports that Grade B pipes were used in the same applications as Grade A pipes because the customers of Grade B pipes provided declarations in this regard.<sup>28</sup> One of the five declarations was dated October 25, 2012 (which is during the POR) and four were dated March 18, 2013 (which is immediately after the POR).
- These declarations were not limited to a specific time period, but to the customers' end uses and purchasing policy in relation to Saha Thai's Grade B products. Pipe is a mature product and Wheatland Tube provided no information or argument as to why the uses of Grade B pipes could possibly have changed from the previous POR to the current POR.
- Saha Thai made a conscious effort to provide complete information regarding the uses of Grade B products. The Department asked for a description of Saha Thai's customers' ultimate use of the Grade B pipes, and Saha Thai provided the requested description and voluntarily provided the supporting evidence.
- At the cost verification, the Department's verifiers were able to observe the Grade B products and noted that Grade B pipes had very minor surface area defects<sup>29</sup> compared to Grade A pipes.
- None of the arguments offered by Wheatland Tube against the treatment of Grade B pipes as non-prime products are new, and each has been addressed by the Department in the previous review.
- In this current review, the Department thoroughly investigated Saha Thai's Grade B adjustment, obtained the necessary information, and verified the information.
- For the final results, the Department should continue to allow the Grade B adjustment reported in the cost database.

**Department's Position:**

In its normal books and records, Saha Thai treats Grade B pipes as scrap and assigns no costs to Grade B pipes. Instead, all manufacturing costs are assigned to Grade A pipes. For reporting purposes to the Department, Saha Thai considers the Grade B pipes as non-prime products and reduces the costs of the Grade A pipes through the Grade B adjustment (*i.e.*, total manufacturing costs are allocated to Grade A and Grade B pipes).<sup>30</sup> In essence, Saha Thai assigned the same costs to Grade A and Grade B pipes.

We agree with Saha Thai that the Department appropriately treats its Grade B pipe as non-prime product for the purposes of reporting in administrative reviews. The issue here is whether the downgraded Grade B pipes can still be used in the same applications as the merchandise under

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<sup>27</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Canada*, 51 FR 15029 (April 22, 1986) at Comment 17; and *IPSCO Inc. v. United States*, 965 F.2d 1056 (Fed. Cir. 1992) (IPSCO v. US).

<sup>28</sup> See Saha Thai's September 13, 2013 first supplemental section D response at page 35 and exhibit SR1-22.

<sup>29</sup> See the Memorandum to Neal M. Halper, Director, Office of Accounting, through Peter S Scholl, Lead Accountant, from Sheikh M. Hannan, Senior Accountant, titled "Verification of the Cost Response of Saha Thai Steel Pipe (Public) Company Ltd. In the Antidumping Duty Administrative Review of Circular Welded Carbon Steel Pipes and Tubes from Thailand" dated April 17, 2014 (Cost Verification Report) at page 28.

<sup>30</sup> *Id.*

consideration (*i.e.*, is it still a circular welded carbon steel pipe and tube).<sup>31</sup> The downgrading of a product from one grade to another will be situation specific and may vary from review to review. Sometimes the downgrading is minor and the product remains within a product group, while at other times the downgraded product differs significantly and it no longer belongs to the same group and cannot be used for the same applications. In the latter case, the product's market value is usually significantly impaired, often to a point where its full production cost cannot be recovered. Instead of attempting to judge the relative values and qualities between different levels of product quality, the Department has adopted the reasonable practice of looking at whether the downgraded product can still be used in the same applications as its prime counterparts.<sup>32</sup> 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. 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. *See IPSCO Inc. v. United States*, where the court upheld 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>33</sup> As such, costs for prime and non-prime products should be allocated evenly over the total output tons of both types of products.

With this distinction in mind, we reviewed the information on the record of this administrative review related to Saha Thai's downgraded Grade B merchandise and determine that it is appropriate to classify the Grade B pipe as in-scope non-prime product and allocate full production costs to Grade B products. In this review, there is evidence on the record that the Grade B pipes were used in the same applications as Grade A pipes. We requested Saha Thai to provide a description of its customers' ultimate use of the Grade B pipes.<sup>34</sup> Saha Thai replied that according to its customers, Grade B pipes are used for the same non-water application as the Grade A pipes.<sup>35</sup> In addition, Saha Thai voluntarily placed on the record statements made by its customers. All of these statements were contemporaneous with the POR.<sup>36</sup> Moreover, Saha Thai reported the sales of Grade B pipes in the sales database.<sup>37</sup> Contrary to petitioner's arguments, we find these descriptions to be responsive to our questions on the intended application of the Grade B products.

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<sup>31</sup> *See Notice of Final Determination of Sales at Less Than Fair Value: Pre-stressed Concrete Steel Rail Tie Wire from Thailand*, 79 FR 25574 (May 5, 2014), and accompanying Issues and Decision Memorandum at Comment 3; *see also Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods from the Republic of Korea*, 79 FR 41983 (July 18, 2014) (*OCTG from Korea*), and accompanying Issues and Decision Memorandum at Comment 18.

<sup>32</sup> *See Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods from the India*, 79 FR 41981 (July 18, 2014) (*OCTG from India*), and accompanying Issues and Decision Memorandum at Comment 8; *see also OCTG from Korea*, and accompanying Issues and Decision Memorandum at Comment 18.

<sup>33</sup> *See IPSCO v. US*.

<sup>34</sup> *See* the First Supplemental Section D Questionnaire issued by the Department to Saha Thai on August 9, 2013 at question # 22.d.

<sup>35</sup> *See* Saha Thai's September 13, 2013 first supplemental section D response at page 35.

<sup>36</sup> *See* Saha Thai's September 13, 2013 first supplemental section D response at exhibit SR1-22. The customer statements were either dated October 26, 2012 (which is during the POR) or March 18, 2013 (which is three weeks after the end of the POR).

<sup>37</sup> *See* Saha Thai's September 27, 2013 supplemental sections A, B, and C responses at exhibit SR2-21.

During the cost verification, we conducted a plant tour and observed the production of pipes. The same hot-rolled coils, the slitting and forming processes, direct labor, and manufacturing overhead costs go into the manufacturing of pipes. At the end of the production process, the pipes are inspected for appearance. Pipes with no surface defects are classified as Grade A pipes while pipes with surface defects are downgraded to Grade B pipes. We inspected a stack of grade B pipe products and noted that they had very minor surface defects.<sup>38</sup> The main difference between Grade A and B pipes is in appearance. Grade B pipes have minor scratches while Grade A pipes have no scratches.<sup>39</sup>

Wheatland raises an argument regarding the pricing of the different grades of pipe, however, we note that our practice in analyzing prime and non-prime products focuses on end use.<sup>40</sup>

Consistent with our decision in the previous review,<sup>41</sup> we determine that it is appropriate to classify the Grade B pipe as non-prime product and allocate full production costs to the Grade B products. Accordingly, we accepted Saha Thai's Grade B adjustment for the final results.

#### **Comment 4: Calculation of Saha Thai's Freight Revenue Cap:**

##### *Saha Thai's Position:*

- The use of the Department's freight revenue cap methodology in this review is not based upon substantial evidence on the record and is otherwise contrary to law.
  - Given that Saha Thai is not following a deliberate strategy of maximizing its U.S. sales price through ancillary product pricing, the Department should not apply its so-called freight revenue cap to Saha Thai's U.S. price calculation.
    - 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. The freight charges reported by Saha Thai to the customer sometimes are slightly higher and sometimes are slightly lower than actual freight costs.
    - Saha Thai does not price freight services separately but instead breaks out freight in certain documents as a service to the importer or the importing agent. Saha Thai is not making a "profit" on its freight charges: on average, the actual freight expenses and the freight charges are almost the same.
  - Because Saha Thai does not charge separately for freight, a freight revenue cap should not be applied.
    - The record clearly demonstrates that Saha Thai prices its product on a C&F (freight included) basis and does not bill the client separately for freight costs that are borne by Saha Thai.
  - If the Department caps freight revenue, it should do so on a POR basis.

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<sup>38</sup> See Cost Verification Report at page 12.

<sup>39</sup> *Id.*, at page 28.

<sup>40</sup> See *OCTG from India*, and accompanying Issues and Decision Memorandum at Comment 8.

<sup>41</sup> See *Circular Welded Carbon Steel Pipes and Tubes from Thailand*, and accompanying Issues and Decision Memorandum at Comment 10.

- If the Department caps freight revenue, it should include all of Saha Thai’s freight expenses in the cap calculation.
  - Should it continue to apply its freight revenue cap in the final results, the Department should include all freight expenses incurred on U.S. sales including Domestic Inland Freight - Plant/Warehouse to Port of Exportation (DINLFT1U and DINLFT2U) in its calculation of total freight expenses.

*Wheatland Tube’s Rebuttal Argument:*

- The Department accurately calculated Saha Thai’s freight revenue cap.
  - The Department should continue to apply a shipment-specific freight revenue cap to Saha Thai as is its standard practice, which is also consistent with the previous administrative review.
  - The Department appropriately compared ocean freight revenue to ocean freight cost in its freight cap analysis.
    - Saha Thai's domestic inland freight costs (DINLFT1 U and DINLFT2U) include costs associated with a number of different activities related to exporting and delivering the product to the port.
    - Saha Thai cited no record evidence identifying the particular domestic inland freight activity for which revenues have been incorporated into international freight revenue (FREVEU).
    - Absent information about the specific activities and corresponding revenues that have been included in FREVEU, there is no basis to identify the particular costs reported as part of DINLFT1U and DINLFT2U that should be incorporated into the freight revenue cap analysis.

**Department’s Position:**

The Department’s normal practice is to deduct from the gross unit selling price the freight expenses actually paid by a company and then add back any payment received from the customer for the freight charges (the variable INTNFRU captures the international freight expense, and the variable FREVEU captures the unit revenue of freight). As explained below, the Department “caps” the freight revenue at the amount of the freight expense reported because it is inappropriate to increase the gross unit selling price as a result of profit earned on the sale of freight. As in the previous administrative reviews, 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>42</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>43</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

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<sup>42</sup> See *Circular Welded Carbon Steel Pipes and Tubes From Thailand*, and accompanying Issues and Decision Memorandum at Comment 5.

<sup>43</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).

adjustments, that are reflected in the purchaser's net outlay." The Department 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 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>44</sup>

Saha Thai's sales contracts indicate that the gross unit price included an amount for freight revenue.<sup>45</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 argued, and we agreed, that the material terms of sales were established at the time of contract.<sup>46</sup> 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 continue to use the information contained in these sales contracts in conjunction with the reported sales data to derive an invoice-specific freight revenue amount for each transaction where freight revenue was incurred. 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>47</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. 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>48</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

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<sup>44</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), and accompanying Issues and Decision Memorandum at Comment 39; see also *id.*

<sup>45</sup> See, e.g., Saha Thai's Sales Verification Exhibits (April, 3, 2014) at Exhibit SVE-25.

<sup>46</sup> See Saha Thai's June 28, 2013 Section B Response at page 24.

<sup>47</sup> See section 772(c)(1) of the Act and 19 CFR 351.102(b)(38).

<sup>48</sup> See Memorandum to the File entitled: "Final Results of the Administrative Review of Circular Welded Carbon Steel Pipes and Tubes from Thailand: Analysis Memorandum for Saha Thai Steel Pipe (Public) Company, Ltd. (October 21, 2014).

a shipment-specific basis and adjusted for on a shipment-specific basis, not on an aggregate or average basis.<sup>49</sup> 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>50</sup>

With respect to Saha Thai's argument that the Department should include all freight expenses incurred on U.S. sales including DINLFT1U and DINLFT2U in its calculation of total freight expenses, we agree with Wheatland Tube that absent information about the specific activities and corresponding revenues that have been included in FREVU, there is no basis to identify the particular costs reported as part of DINLFT1U and DINLFT2U that should be incorporated into the freight revenue cap analysis. Saha Thai did not identify this information or break this down further during the course of this review, nor did it cite to any of the data it submitted on the record in its case brief. Therefore, for this administrative review, we will not include DINLFT1U and DINLFT2U in the freight expenses calculation.

#### **Comment 5: Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Less-Than-Fair-Value Investigations:**

##### *Saha Thai's Position:*

- The Department's finding of differential pricing is not based upon substantial evidence on the record and is otherwise contrary to law.
  - The differential pricing policy is not applicable here because the Department did not follow Administrative Procedures Act (APA) rule-making procedures.
    - The Department's development of the differential pricing policy and its application in this review is contrary to law because the Department's rescission of the previous targeted dumping regulation failed to comply with the Dictates of the APA.

##### *Wheatland Tube's Rebuttal Argument:*

- The withdrawn targeted dumping regulations have no relevance to this case. The old regulations do not apply in this review, which was initiated on May 1, 2013, because the withdrawal became effective when the 2012 *Final Modification* to 19 CFR 351.414 was published on February 14, 2012.

#### **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 6: Consideration of an Alternative Comparison Methodology in Administrative Reviews:**

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<sup>49</sup> The Department has a preference for using a transaction-specific methodology in allocating expense and price adjustments. See, e.g., 19 CFR 351.401(g) and *Antidumping Duties; Countervailing Duties; Final Rule* (Preamble to the Regulations), 62 FR 27296, 27346 (May 19, 1997) ("Paragraph (g)(1) {of 19 C.F.R. 351.401(g)} continues to establish a preference for transaction-specific reporting.")

<sup>50</sup> See *Circular Welded Carbon Steel Pipes and Tubes From Thailand*, and accompanying Issues and Decision Memorandum at Comment 5.

*Saha Thai's Position:*

- The statutory basis for differential pricing only applies to original investigations, not annual reviews.

*Wheatland Tube's Rebuttal Argument:*

- The Department has the statutory authority to conduct a differential pricing analysis and apply the average to transaction methodology (A-T method) in administrative reviews. Saha Thai's argument to the contrary has been repeatedly considered and rejected by the Department.

**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 7: Differential Pricing:**

*Saha Thai's Position:*

- The Department's finding of differential pricing is not based upon substantial evidence on the record and is otherwise contrary to law
  - The Department wrongly found differential pricing to be pervasive in this proceeding.
  - The Department's differential pricing analysis is based on a misuse of the Cohen's *d* test.
    - Cohen's *d* test as applied by the Department is an inappropriate method of identifying differential pricing because it systematically results in affirmative findings.
    - Cohen's *d* test is not an appropriate statistical tool for identifying a pattern of "targeting."
    - Cohen's *d* test does not consider the relative magnitude of pricing differences.
    - Because Cohen's *d* has no internal checks for statistical confidence, it is particularly ill-suited to test for targeting in cases where the results are generated from few observations.
    - Cohen's *d* test as applied by the Department does not account for directionality.
    - If it continues to use the Cohen's *d* test to identify differential pricing, the Department should zero only the low priced differential sales.
  - The Department failed to fulfill its statutory obligation to provide a meaningful explanation of why the use of averages cannot account for its finding of "differential pricing."
  - The Department wrongly treated high-priced sales that pass the Cohen's *d* test as being "targeted."

*Wheatland Tube's Rebuttal Argument:*

- The Department should reject Saha Thai's arguments regarding the Department's differential pricing analysis.

- The Department’s approach and analysis in this review are consistent with the methodology that the Department used in many other investigations and administrative reviews. Saha Thai identifies no distinction between the Department’s actions in this review and its now established practice. Likewise, Saha Thai identifies no reason that the Department should depart from its practice in this review. To the extent that Saha Thai even refers to the specific record of this review, it admits that the Department’s actions are consistent with prior Department decisions on this issue.
- Saha Thai’s various criticisms of the Cohen’s *d* test have all been addressed and rejected in several recent cases.
  - Saha Thai criticizes the Cohen’s *d* test’s statistical reliability, but the Department explained that “{t}he statute does not require that the difference be ‘statistically significant,’ only that it be significant.”<sup>51</sup>
  - The statute requires only a finding that there exists a “pattern of export prices” that “differ significantly among purchasers, regions, or periods of time.”<sup>52</sup> It requires no examination of the *causes* for such a pattern.
  - Any pattern of significant price differences, regardless of its cause, and regardless of the exporter’s motivation, has the potential to mask dumping. The purpose of applying the alternative A-T method is to unmask such dumping.<sup>53</sup>

**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 8: Calculation of Saha Thai’s Duty Drawback Adjustment:**

*Wheatland Tube’s Position:*

- The *Preliminary Results* incorrectly calculated Saha Thai’s duty drawback adjustment.
  - Assuming there are sufficient raw material imports, the proper basis for this import duty drawback adjustment is the export-based volume/value, because the statute requires that the duty drawback adjustment be determined “by reason of the exportation of the subject merchandise.”<sup>54</sup>
  - In explaining its obligation pursuant to section 772(c)(1)(B) of the Act and the findings of the Federal Circuit in *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1344 (Fed. Cir. 2011) (*Saha Steel*), the Department stated that the amounts added to the cost calculation should be the same as the amounts added to export price (EP).

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<sup>51</sup> See *Certain Steel Nails From the People’s Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014), and accompanying Issues and Decision Memorandum at Comment 7.

<sup>52</sup> See section 77A(d)(1)(B)(i) of the Act.

<sup>53</sup> See *Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930, 74931 (December 20, 2008); see also *Union Steel v. United States*, 713 F.3d 1101 at notes 3, 5, & 8 (Fed. Cir. 2013).

<sup>54</sup> See section 772(c)(1)(B) of the Act.

- Saha Thai’s submitted sales and cost duty drawback amounts, which the Department relied on for purposes of the *Preliminary Results*, were not equal in value.
- The Department should decrease the sales duty drawback adjustment to correct this error.
- Consistent with the statute and established Department practice, the Department should revise Saha Thai’s duty drawback adjustment so that the amount added to EP is consistent with the amount added to Saha Thai’s calculated COP.

*Saha Thai’s Rebuttal Argument:*

- The Department correctly calculated Saha Thai’s duty drawback adjustment.
  - The Petitioner’s argument is based on the false premise that the *per unit* duty drawback adjustment to U.S. sales value and the *per unit* adjustment for duty exemptions to cost should be the same.
  - However, the results are not the same because the purpose of the adjustments and methodologies are different: one is an adjustment to the price of products exported to the U.S., and the other is an adjustment to total POR production costs. The methodologies used by Saha Thai to calculate both adjustments are appropriate for their respective purposes and both were reviewed at verification with no issues being raised.
  - Because the calculations for both adjustments are not intended to measure precisely the same thing, they can and do differ.

**Department’s Position:**

We disagree with Saha Thai and determine that its duty drawback amount be adjusted so that the amount added to EP is consistent with the amount added to Saha Thai’s calculated COP.

The decision in *Saha Steel* is illustrative of the Department’s practice and the logic behind it. In *Saha Steel* the Court upheld the Department’s determination that adding exempted import duties to Saha Thai’s EP without also including the exempted duties of Saha Thai’s in COP and CV could have unfairly distorted the dumping margin in Saha Thai’s favor. The Court sided with the Department’s decision to match Saha Thai’s EP adjustment with an adjustment to its COP, stating: “We agree that Commerce reasonably decided that any increase to EP pursuant to a duty drawback adjustment should be accompanied by a corresponding increase to COP and CV.” The court further stated: “EP, COP and CV should be increased together, or not at all.” Accordingly, the Department should seek to adjust NV and EP to “level out” any cost differentials seen in the two markets. Thus, if import duty costs are reflected in the NV sales but not in EP sales, EP should be increased to account for the difference. In this case, both numbers must be increased by an equivalent amount to accurately reflect the amount of benefit seen when exporting the goods in question (as the goods sold domestically would not yield such benefit, and the NV should reflect that this benefit would not be seen domestically).

With regards to Saha Thai’s “per unit” argument, it is not the intent of the Department to use two distinct values for sales and cost duty drawback amounts. The Department stated that the

amounts added to the cost calculation should be equivalent to the amounts added to EP.<sup>55</sup> Further, we note that Saha Thai, in their rebuttal brief, did not cite authority in support of its “per unit” argument and did not further distinguish how their duty drawback calculation should be distinguished from the Department’s practice as upheld in *Saha Steel*.

We agree that, in this review, the data Saha Thai reported for duty drawback are not equivalent to the data it reported for duty exemption in the COP analysis.<sup>56</sup> As shown above, it is the Department’s intention to match expenses with the benefits derived from them. Therefore, we recommend adjusting Saha Thai’s duty drawback amount used to adjust the U.S. price to correspond with that reported in its COP data.

**Comment 9: Application of Adverse Facts Available (AFA) to Affiliated Party Transactions Discovered at Verification:**

*Wheatland Tube’s Position:*

- The Department should apply partial AFA to the undisclosed affiliated party transactions discovered at verification.
  - The questionnaire generally requested identification of affiliated parties in the Section A portion of the questionnaire, and the Department requested identification of affiliated party transactions that are included in specific reporting fields. Despite these requests for information, Saha Thai’s use of affiliated parties with respect to exportation of subject merchandise was not disclosed until the Department conducted its sales verification.
  - The Department should revise the inland transportation costs reported for certain sales of subject merchandise to base them upon partial AFA.
  - During verification, the Department discovered undisclosed affiliated party transactions associated with shipping products to the United States. Saha Thai’s failure to identify these affiliated party transactions prevented the Department from performing the appropriate test to determine if these transactions were at arm’s-length prices. In accordance with Department practice, these transactions should be based upon partial AFA.

*Saha Thai’s Rebuttal Argument:*

- The Department should not apply partial AFA to Saha Thai’s reported movement charges.
  - Saha Thai disclosed from the outset of this review that it received port services from its affiliate.

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<sup>55</sup> See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Administrative Review and Changed Circumstances Reviews*, 76 FR 52937 (August 24, 2011), and accompanying Issues and Decision Memorandum at Comment 8; see also *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 76 FR 12700 (March 8, 2011), and accompanying Issues and Decision Memorandum at Comment 5 (stating that “it is proper for the Department to add the duties that were not collected upon importation to the cost of producing the product.”).

<sup>56</sup> See Saha Thai’s Sales Verification Exhibits (April 3, 2014) at Exhibit SVE-14; see also Saha Thai’s Cost Verification Exhibits (March 7, 2014) at Exhibit CVE-18.

- The cost of the services provided constitute a very small portion of Saha Thai's total U.S. sales
- The record shows that the affiliate is profitable and sells its services to related parties on the basis of market prices.
- There is no requirement for the reporting of arm's length information on affiliated companies that supply logistics or selling services in the Section B or Section C questionnaires.
- Further arm's length information was not requested by the Department and as a result, the Department has no basis for applying partial AFA to Saha Thai's reported DBROK2U amounts.

**Department's Position:**

We do not agree that partial AFA should be applied to Saha Thai's reported movement costs.

Saha Thai disclosed its affiliation with Saha Thai Coastal Seaport Co., Ltd (Saha Thai Coastal) in its Section A response as requested by the Department.<sup>57</sup> Saha Thai also included financial statements listing Saha Thai Coastal as a wholly-owned subsidiary who engaged in coastal port management services, coastal port consultancy, tug boat services, inland transportation services, and related merchant marine business.<sup>58</sup> Further, the reported financial statements demonstrate that Saha Thai Coastal operated at a profit during the POR.<sup>59</sup> However, we do find that Saha Thai's Section C response omitted the information regarding Saha Thai Coastal in response to field 25 which asks the respondent to: "Describe the forms of transport you used to deliver the merchandise to port of exportation in the country of manufacture and any affiliations you had with the carriers during the POR."<sup>60</sup> While this information should have been included in Saha Thai's response to this section, Saha Thai did disclose their relationship with Saha Thai Coastal in their Section A response.

However, we agree with Saha Thai that, in this review, it was under no burden to report on the arm's length nature of its transactions with Saha Thai Coastal as the questionnaires do not specifically ask for arm's length information regarding logistics services and the Department never asked Saha Thai to provide additional information regarding Saha Thai Coastal.<sup>61</sup> Because the Department did not request further information regarding Saha Thai Coastal and Saha Thai otherwise disclosed its affiliation, we do not find that application of partial AFA is warranted for this omission.

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<sup>57</sup> See Saha Thai's June 12, 2013, Section A Questionnaire Response.

<sup>58</sup> *Id.*, at pages 7, 8.

<sup>59</sup> *Id.*, at page 34 and Exhibit A-12.

<sup>60</sup> See Saha Thai's Section C response at field 25.

<sup>61</sup> See, e.g., *Frontseating Service Valves from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 73825 (December 9, 2013), and accompanying Issues and Decision Memorandum at Comment 3.

**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  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

21 OCTOBER 2014  
(Date)