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MEMORANDUM TO: James J. Jochum
Assistant Secretary
for Import Administration

FROM: Jeffrey A. May
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty
Administrative Review of Certain Welded Carbon Steel Pipes and
Tubes from Thailand (March 1, 2002 - February 28, 2003)

Summary

In Section I, we identify the issues in this administrative review for which we received comments from the interested parties. Section II sets out the scope of the antidumping duty order. Section III analyzes the comments of the interested parties. Section IV identifies any changes made in the margin calculation since the preliminary results. Finally, we recommend approval of the positions developed for each of the issues.

I. List of issues:

1. Section 201 Duties
2. Section 201 Duty Billing Adjustments
3. Standard Customs Duty Exemptions
4. Antidumping Duty Exemptions
5. Yield Loss Constant for Duty Drawback
6. Duty Exemptions on Imported Inputs in the Cost of Production
7. Treatment of Non-Dumped Sales
8. Minor Corrections at Verification

II. Scope of the Antidumping Duty Order

The products covered by the antidumping duty order are certain 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 “pipe and tube.” The merchandise is classifiable under the Harmonized Tariff Schedule (HTS) 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 HTS subheadings are provided for convenience and U.S. Customs and Border Protection purposes, our written description of the scope of the order is dispositive.

III. Discussion of Interested Party Comments

Comment 1: Section 201 Duties

Petitioners argue that the all-inclusive language of the statute, requiring the deduction from U.S. price of “any . . . United States import duties,” does not permit the Department of Commerce (“the Department”) to exclude Section 201 duties, since Section 201 duties are clearly import duties. Petitioners maintain that the deduction of Section 201 duties does not, in effect, require the foreign producer or its affiliated U.S. importer to pay the Section 201 duty “a second time as an increase in the dumping margin” as the Department claims in SWR Korea. See Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 69 FR 19153, Appendix I (April 12, 2004) (“SWR Korea”). Petitioners maintain that the deduction merely offsets the increase in price caused by the Section 201 duty so that the resulting antidumping duty is no different than if there had not been any Section 201 duties imposed.

According to petitioners, Section 201 duties are not complementary to, or substitutable with, antidumping duties, as they claim the Department found in SWR Korea. Petitioners maintain that there is no evidence that the surge in imports that formed the basis for the Section 201 relief resulted from dumping, since even the Department has stated that safeguard actions do not indicate that dumping occurs. In addition to their general arguments that Section 201 duties should be deducted, petitioners also argue that Section 201 duties should be deducted in this case because Saha Thai increased its export price (EP) to reflect the Section 201 duties, discussed below under Comment 2.

Saha Thai argues that the Department must follow its own precedent, established in SWR Korea, and not deduct 201 duties for the final results. The company notes that the Department determined not to deduct Section 201 duties from U.S. prices under Section 772(c)(2)(A) of the Act in calculating dumping margins either as “United States import duties” or as selling expenses. SWR Korea, 69 FR at 19153.

Saha Thai maintains that the sound reasons underlying the Department’s decision not to deduct Section 201 duties are based upon an analysis of the statute and its legislative history and are not dependent

upon any specific factual finding. The Department's decision, therefore, applies equally as a matter of law in this case and does not depend upon an analysis of whether or not Saha Thai "passed through" the Section 201 duties in the form of price increases. Moreover, the company states petitioners' argument that Section 201 duties should be deducted because the foreign producer raised its price, would have the perverse effect of penalizing companies that respond to the imposition of Section 201 duties in the way intended by that provision while presumably not affecting those companies that fail to raise their prices.

Department's Position: Petitioners' arguments in the instant case mirror those made in SWR Korea, SWR Korea, 69 FR at 19154 (*Section 201 Duties*) and 19157 (*Comments in Support of Deducting Section 201 Duties*). As respondent notes, the Department determined not to deduct Section 201 duties in SWR Korea. In that case's summary we stated:

In conclusion, Commerce will not deduct 201 duties from U.S. prices in calculating dumping margins because 201 duties are not "United States import duties" within the meaning of the statute, and to make such a deduction effectively would collect the 201 duties a second time. Our examination of the safeguards and antidumping statutes and their legislative histories indicates that Congress plainly considered the two remedies to be complementary and, to some extent, interchangeable. Accordingly, to the extent that 201 duties may reduce dumping margins, this is not a distortion of any margin to be eliminated, but a legitimate reduction in the level of dumping.

SWR Korea, 69 FR at 19161. Beforehand, the Department explained its reasons, in part, by stating:

Congress has long recognized that at least some duties implementing trade remedies - - including at least antidumping duties - - are special duties that should be distinguished from ordinary customs duties... Like AD duties, 201 duties are special remedial duties.... Although they are not identical to AD duties, they are more like them in purpose and function than they are like ordinary customs duties.... The Senate Report to the Trade Act of 1974 recognized not only that 201 duties and AD duties were similar, but the two remedial duties were, in fact, complementary... To some extent, 201 duties are interchangeable with special AD duties... Even to the extent that 201 duties may reduce dumping margins, this is not a distortion to the margin that must be eliminated, but a partial elimination of dumping... Congress has stated that the remedies provided by the two statutes complement one another and may, in fact, be substituted for one another. Consequently, to the extent that 201 duties may lower the dumping margin, this is a legitimate remedy for dumping.

SWR Korea, 69 FR at 19159. No new material arguments have been put forward that would lead us

to change our policy with respect to the appropriateness of deducting Section 201 duties from U.S. price. Therefore, consistent with our determination in SWR Korea, we have not deducted Section 201 duties from U.S. price.

Comment 2: Section 201 Duty Billing Adjustments

Saha Thai argues that the Department should increase EP to account for U.S. billing adjustments. Saha Thai maintains that it reported such adjustments in its questionnaire responses and that at verification the Department verified that these U.S. billing adjustments were post-sale price increases. The company states that, as explained in its responses, it had post-sale billing adjustments on certain U.S. sales that were reported in fields 19.1 and 19.2 (BILLADJ1U and BILLADJ2U) in its U.S. sales listing. Saha Thai explains that these billing adjustments were negotiated with its U.S. customers to increase price as a result of the Section 201 duties imposed on Thai pipe. Furthermore, the company argues, the Department found no discrepancies with the reported billing adjustments at verification.

Petitioners argue that the Department should not grant these billing adjustments. Further, petitioners ask that we deduct from all other U.S. sales the average amount of the billing adjustments to account for the increase in price that is already reflected in these sales resulting from Saha Thai passing along the cost of the Section 201 duty to the unaffiliated U.S. purchasers. Petitioners maintain that Section 201 duties, like all other costs or expenses to the foreign producer or exporter in bringing the subject merchandise from the foreign country to the unaffiliated buyer in the United States, are presumed to be “included in the price” charged to the unaffiliated U.S. buyer. Petitioners hold that for most sales reported by Saha Thai, this increase occurred pre-sale, with Saha Thai passing along the Section 201 duty in the form of a higher asking price to the unaffiliated U.S. purchaser, instead of post-sale, as with the sales for which billing adjustments are sought.

According to petitioners, by including only the increase in the starting price resulting from the Section 201 duty in the EP and not also reducing the price by deducting the duty, the Department allows Saha Thai to offset its antidumping margin by the amount of the Section 201 duty it paid. This, petitioners argue, impermissibly eviscerates the relief provided by the Section 201 safeguard measures.

Department’s Position: Petitioners cite SWR Korea with respect to their argument that Section 201 duties are presumed to be “included in the price” charged to the unaffiliated U.S. buyer, and, thus, should not be added as a billing adjustment. See SWR Korea, 69 FR at 19159, footnote 18. However, the Department, in its narrative, was simply providing a background on the issue of whether to deduct Section 201 duties:

This issue concerns sales of imported goods at prices that normally are considered to cover the applicable import duties. Generally speaking, this means sales of goods on which the seller, rather than the buyer, must pay the import duties. This normally occurs where the sales examined by Commerce are by sellers in the United States who are affiliated with the foreign producer or exporter (“constructed export price” or “CEP” sales). Because these sales

normally occur after importation, the seller has already paid any import duties at the time of the sale. In contrast, sales from foreign producers or exporters to unrelated customers in the United States (“export price,” or “EP” sales) normally occur before importation. Because the buyer must pay any import duties after these sales are completed, it is generally presumed that the prices do not include any import duties.

SWR Korea, 69 FR at 19159, footnote 18. As the Department explained, many EP transactions are made on a duty exclusive basis, e.g., FOB, CIF. However, the terms of sale for an EP transaction may be made on a duty inclusive basis, e.g., DDP (Delivered Duty Paid). In the instant case, the sales contracts for which the billing adjustments are claimed were executed before the 201 duties became effective. When the 201 duties became effective, they had not been included in the original contract price as they did not exist at the time the contracts were issued. When the sales finally entered the United States, Saha Thai paid for the 201 duties and subsequently invoiced its U.S. customers for the amount of the duties. We verified that Saha Thai paid for these Section 201 duties and subsequently invoiced its U.S. customers for the amounts incurred, and did not note any discrepancies with respect to these adjustments. See Memorandum to the File, from Javier Barrientos, AD/CVD Financial Analyst, and Jaqueline Arrowsmith, Case Analyst, through Sally Gannon, Program Manager; Verification of Questionnaire Responses submitted by Saha Thai Steel Pipe Company, Ltd. (“Saha Thai”), April 27, 2004 (“Sales Verification Report”) at 17 and 23. Therefore, for the final results we have added these billing adjustments to U.S. Price. The issue of whether Section 201 duties should be deducted from U.S. price has already been discussed. See Department’s Position on Comment 1.

Comment 3: Standard Customs Duty Exemptions

Petitioners argue that the statutory phrase “imposed by the country of exportation” establishes that no adjustment for duty drawback is permitted for any type of exemption because, in the present case, no import duties were “imposed by the country of exportation” on the inputs used to produce the subject merchandise sold in the home market. Specifically, petitioners contend that because Saha Thai never paid or incurred any obligation to pay any import duties on inputs used to produce the subject merchandise sold in either the home market (or to the United States), no duty was imposed by the country of exportation. According to petitioners, the Department adopted this position in Silicomanganese from Venezuela as illustrated in HEVENSA. See Silicomanganese from Venezuela, Final Determination of Sales at Less Than Fair Value, 67 FR 15533 (April 2, 2002) (“Silicomanganese from Venezuela”) and Hornos Electricos de Venezuela, S.A. v. United States, 285 F. Supp. 2d 1353, 1360 (CIT 2003) (“HEVENSA”).

Saha Thai argues that the Department has not required that the respondent use imported inputs to produce domestic merchandise or demonstrate that it has paid import duties on such inputs. The company maintains that Department practice has consistently applied the two-prong test as the only requirement for the duty drawback adjustment and that even petitioners concede that Saha Thai has met the Department’s two-prong test. Saha Thai states that they met the first prong of the test by

showing that under the Thai bonded warehouse regime, the standard customs duties were uncollected by reason of the exportation of the subject merchandise and that the exemption from payment of the duties and exportation are dependent on each other. With respect to the second prong, the company argues that the Thai Customs quarterly reports it submitted establish that Saha Thai imported sufficient raw material to account for the duty exemptions received on exported pipe. Given the evidence on the record, Saha Thai argues that it has met the Department's two-prong test, as confirmed in the Department's preliminary results of this review. See Certain Welded Carbon Steel Pipes and Tubes From Thailand: Preliminary Results of Antidumping Duty Administrative Review, 69 FR 18539 (April 8, 2004) (“Preliminary Results”).

Department’s Position: Section 772(c)(1)(B) of the Act states that “the price used to establish EP and constructed export price (CEP) shall be increased by ... (B) the amount of any import duties imposed by the country of exportation which have been rebated, or *which have not been collected*, by reason of the exportation of the subject merchandise to the United States.” (Emphasis added.)

In determining whether a duty drawback adjustment is appropriate, the Department applies a two-prong test establishing that: (1) the import duty paid and rebate payment are directly linked to, and dependent upon, one another; and (2) the company claiming the adjustment can demonstrate that there were sufficient imports of the imported raw material to account for the drawback received on the exports of the manufactured product. The Court of International Trade (CIT) has consistently found this test to be reasonable. See, e.g., Far East Machinery II (October 24, 1988).

As stated in the Preliminary Results, Saha Thai provided evidence demonstrating that it satisfied both prongs of the Department’s test. The Department verified this information and found no discrepancies with the reported information. See Memorandum to the File from Javier Barrientos, AD/CVD Financial Analyst, through Sally Gannon, Program Manager: Cost Verification of Saha Thai Steel Pipe Co., Ltd., dated March 26, 2004, at 14 - 16. Moreover, the petitioners do not dispute that Saha Thai met both prongs of the test. Instead, the petitioners argue that the Department should deny the duty drawback adjustment because Saha Thai did not pay any import duties on imports of inputs used to produce the finished products sold in the home market.

Petitioners’ arguments in the instant case mirror those made in Light-Walled Rectangular Pipe and Tube From Turkey: Notice of Final Determination of Sales at Less Than Fair Value, 69 FR 53675 (September 2, 2004) (“Turkish Pipe”). In Turkish Pipe the Department explained:

Contrary to the petitioners’ assertion, the Department does not require a respondent to demonstrate that it paid import duties on raw materials used in the production of merchandise sold in the home market as a prerequisite for being granted the duty drawback adjustment.

The statute provides for the adjustment without reference to whether products sold in the home

market are made with imported raw materials. The only limitation placed on the duty drawback adjustment is that the adjustment to the U.S. price may not exceed the amount of import duty actually paid. See Laclede Steel Co. v. United States, slip op. 94-160 (1994) (citing Far East Machinery II at 311-12). Therefore, we disagree with the petitioners that the Department should add a third prong to the test for drawback adjustments requiring that a respondent demonstrate that it paid import duties on raw materials used in the production of merchandise sold in the home market.

Nothing in petitioners' argument is novel or warrants a departure from our decision in Turkish Pipe. See also Chang Tieh Industry Co., Ltd. v. United States, 840 F.Supp. 141, 147 (CIT 1993); Avesta Sheffield, Inc. v. United States, 838 F.Supp. 608, 611 (CIT 1993); Stainless Steel Sheet Strip in Coils from Mexico: Final Results of Antidumping Administrative Review, 68 FR 6889 (February 11, 2003); Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe From the Republic of Korea, 57 FR 53693 (November 12, 1992); Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes From Taiwan, 57 FR 53705 (November 12, 1992); Final Determination of Sales at Less than Fair Value: Steel Wire Rope from India, 56 FR 46285 (September 11, 1991). Therefore, we will continue to grant Saha Thai a duty drawback adjustment for standard customs duties as it has satisfied the requirements under Section 772(c)(1)(B) of the Act and our two-prong test.

Comment 4: Antidumping Duty Exemptions

Saha Thai argues that the Department should increase EP for the amount of antidumping duties that were uncollected by reason of the exportation of the subject merchandise to the United States. The company maintains that the statute provides for an adjustment to export price for *any* "import duties" that are rebated or exempted by reason of exportation of the subject merchandise. Saha Thai argues that the Department has interpreted the statutory requirement for an adjustment for duty drawback, as argued in Comment 3, as requiring the satisfaction of a two-prong test: 1) the import duty and rebate are directly linked and dependent on one another; and 2) that there are sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product.

Saha Thai notes that while the statute does not explicitly specify antidumping duties, antidumping duties are duties assessed upon importation, and, thus, are clearly included under the definition of *any* import duties. The company further contends that this interpretation of the statutory language is supported by recent Department precedent where the Department allegedly acknowledged that different types of duties, specifically Section 201 duties, can fall within the definition of "import duties." See Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 69 FR 19153, Appendix I (April 12, 2004). Saha Thai further argues that one purpose of the statute is to ensure that the antidumping law is administered in a tax-neutral way. Respondent maintains that in Federal Mogul Corp. v. United States, 63 F.3d 1572 (Fed. Cir. 1995) ("Federal Mogul"), the Federal Circuit noted that the Department had recognized that determining dumping margins required

careful treatment of taxes in order to avoid creating an apparent dumping margin solely due to differences in levels of taxation. Thus, the company argues, a failure to increase EP for exempted antidumping duties would result in the creation of a dumping margin due to tax policy, not due to the pricing decisions of the exporter.

Petitioners argue, as in Comment 3, that the statutory phrase “imposed by the country of exportation” establishes that no adjustment to duty drawback is permitted for any type of exemption because, in the present case, no import duties were “imposed by the country of exportation” on the inputs used to produce the subject merchandise sold in the home market. In response to Saha Thai’s argument, petitioners argue that the absence of payment of antidumping duties on inputs included in home market sales requires that import duties not be added to EP in order to ensure neutrality. Petitioners further argue that, since no antidumping duties were paid, proper balance is achieved by not making any adjustments for these exempted duties. According to petitioners, this is fair and accurate in the present case because Saha Thai never paid any import duties, antidumping or otherwise, on inputs used to produce the subject merchandise sold in either the United States or in the home market.

Petitioners argue that if no antidumping duties were included on home market merchandise, tax-neutrality would be achieved by not making any adjustment to EP. Further, petitioners maintain that there are also profound policy reasons for not accepting respondent’s argument. Petitioners argue that Saha Thai and the Thai government want to shift the economic injury caused by dumping from Thailand to the United States. Petitioners explain that having found that hot-rolled sheet is dumped and injuring the Thai hot-rolled industry, Thailand requires the payment of antidumping duties when imports are entered into Thailand, but not when the dumped goods are re-exported to the United States. According to petitioners, this forces the U.S. industry to compete with imports Thailand has already determined to be dumped, and policy dictates that the Department not encourage countries to shift the harm caused by dumping to third countries by failing to impose dumping duties on re-exported products. Finally, according to petitioners, Federal Mogul, which Saha Thai cites, allegedly involved value added taxes (VAT), and does not apply to the import duties at issue in the present case. Petitioners argue that import duties differ from VAT taxes in that, unlike taxes, import duties are applied only to imports.

Department’s Position:

Like Section 201 duties, discussed above, we differentiate antidumping duties from regular United States import duties. In fact, the Department has a long-standing policy and practice of not treating antidumping (or countervailing) duties as U.S. import duties, costs or expenses. See, e.g., Hoogovens Staal v. United States, 4 F.Supp. 2d 1213, 1220 (Ct. Int’l Trade 1998) (Commerce need not deduct antidumping duties from the initial price in the United States as either U.S. import duties or as costs); Bethlehem Steel v. United States, 27 F.Supp. 2d 201, 208 (Commerce need not deduct antidumping duties from the initial price in the United States as either U.S. import duties or as costs); AK Steel Corp. v. United States, 988 F.Supp. 594 (Ct. Int’l Trade 1997) (actual antidumping and countervailing

duties need not be deducted from the initial price in the United States).

Moreover, in SWR Korea, we chose not to deduct section 201 duties from U.S. export or constructed export prices in calculating dumping margins, either as “United States import duties” or as selling expenses. In so doing, we stated that it was Congress’ intent to include only normal import duties, but not other import duties, in construing section 772(c)(2)(A) of the Act. Furthermore, in SWR Korea we noted:

Congress has long recognized that at least some duties implementing trade remedies—including at least antidumping duties—are special duties that should be distinguished from ordinary customs duties. Accordingly, Commerce consistently has treated AD duties as special duties not subject to the requirement to deduct “United States import duties” (normal customs duties) from U.S. prices in calculating dumping margins.

SWR Korea, 69 FR at 19159.

The Department does not make an adjustment to U.S. price by deducting special U.S. import duties (including antidumping duties). Consistent with our long-standing policy and practice of not treating antidumping duties as U.S. import duties, costs or expenses, we find that antidumping duties imposed by the country of exportation are special duties that should be distinguished from ordinary customs duties imposed by such countries. Thus, we will not make an adjustment for exempted or rebated foreign antidumping duties by adding such duties to U.S. export or constructed export price for purposes of duty drawback under section 772(c)(1)(B) of the Act.

With respect to Federal Mogul, 63 F.3d at 1576, that case involved Commerce’s interpretation of section 772(d) of the Act, not section 772(c). Accordingly, in Federal Mogul, the Court examined Commerce’s treatment of taxes, not special duties, and thus did not address the rationale for distinguishing “normal” or “standard” import duties from “special” import duties, like the Thai antidumping duties. Federal Mogul, 63 F.3d at 1582.

Comment 5: Yield Loss Constant for Duty Drawback

Saha Thai maintains that the amount of the duty exemption to which Saha Thai is entitled under Thai law does not depend on the yield loss from Saha Thai’s own production experience. Rather, Saha Thai states the exemption is calculated by the yield loss factor approved by the Thai government. According to Saha Thai, its own yield loss factor may vary in different production periods, but, for the purposes of calculating the duty exemption, the Thai government has reasonably determined that a constant yield loss factor must be used for administrative efficiency and simplicity. In other production periods, the company explains, the yield loss actually experienced by Saha Thai may be closer to or even higher than the Thailand government’s factor. Therefore, Saha Thai argues that the antidumping duty margin calculation must be based upon the actual exemption received, rather than upon its actual yield loss.

Petitioners argue that a drawback adjustment should not be given for more merchandise than was actually exported. Petitioners concur with the Department's practice of adjusting the yield on exports that qualify for drawback to reflect the producer's own experience, rather than basing the drawback amount on a yield factor set by the exporting country's government.

Department's Position: In the Preliminary Results, we stated that, at verification, we compared the government-determined yield loss constant to the actual production loss rate the company experienced for its major input, and found the Thai government-set yield loss constant was not a reasonable reflection of the company's experience because it overstates the actual yield loss experienced by the company, thus not balancing yielded raw material imports to finished product exports. Preliminary Results, 69 FR at 18541. Therefore, we adjusted Saha Thai's claimed addition to EP to reflect the company's actual usage/yield experience during the period, based on the information found at verification. This is consistent with our practice in Turkish Pipe.

Comment 6: Duty Exemptions on Imported Inputs in the Cost of Production

Saha Thai argues that the Department should not include any uncollected standard Thai customs duties in Saha Thai's coil cost because these duties were uncollected by reason of the export of the finished pipe product made from imported coil. As such, the company maintains, they did not form part of Saha Thai's hot-rolled coil cost and should not be added to Saha Thai's reported cost of production. Saha Thai states that the coil cost verified by the Department did not include uncollected import duties on hot-rolled coil because Saha Thai was exempt from paying these duties under the bonded warehouse program. As an example, the company argues that in the 1998-99 review, petitioners argued that the Department should have added unpaid antidumping duties to Saha Thai's cost of production. See Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 65 FR 60910 (October 13, 2000) ("1998-99 Review"). However, Saha Thai alleges that the Department found that an adjustment to Saha Thai's cost was not necessary, since Saha Thai did not pay antidumping duties on its hot-rolled coil purchases. Therefore, the company argues, the same reasoning should apply to uncollected standard Thai customs duties.

Petitioners argue that the Department's duty drawback adjustment effectively increased the cost and price of merchandise sold to the United States, by adding the value of the exempted standard import duties on inputs used to produce the subject merchandise to the EP. According to petitioners, by also adding the exempted standard import duties to hot-rolled coil costs the Department mitigates what they see as a distortion that results from adding import duties only to U.S. price. Petitioners state that this would be consistent with the Department's finding in Silicon Metal from Brazil. See Silicon Metal from Brazil: Final Results of Antidumping Duty Administrative Review and Determination, 62 FR 1954 (January 14, 1997) ("Silicon Metal from Brazil").

Department's Position: To make a fair comparison of U.S. price to normal value, we increased

Saha Thai's total cost to offset the increase to U.S. price from the value of the standard duty exemptions. See Silicon Metal from Brazil at Comment 10. In that case, the Department explained:

The Brazilian duty drawback law applicable to Minasligas suspends the payment of ICMS and IPI taxes that would ordinarily be due upon importation of electrodes. Therefore, because the ICMS and IPI taxes are suspended, we cannot conclude that they are already included in the COM or reported tax payments that Minasligas reported. Thus, we need to add to CV the full amount of the duty drawback that we added to USP in accordance with section 772(c)(1)(B) of the Act.

Saha Thai's argument that the Department did not adjust cost for duties in the 1998-99 Review dealt with antidumping duties, and not standard import duties. As discussed under the Department's Position on Comment 4 above, the Department does not add foreign antidumping duties to U.S. price. Thus, there is no need for an offsetting of costs for exempted antidumping duties. Therefore, we are being consistent in not making an adjustment to the cost of production for antidumping duties.

Comment 7: Treatment of Non-Dumped Sales

Saha Thai argues that by not providing an offset for non-dumped sales, the Department gives less than full weight to sales above normal value, but full weight to sales below normal value, thereby impermissibly skewing the dumping margin. According to Saha Thai, this methodology violates the plain language of the statute in that it was Congress' intent for the Department only to impose antidumping duties when a class or kind of merchandise is sold below fair value, and not to disregard those sales made above fair value. In addition, the company claims that the World Trade Organization (WTO) Appellate Body ruling in the bed linen from India case renders the U.S. interpretation of its statute as inconsistent with its international obligations. See European Communities - Anti Dumping duties on Imports of Cotton-Type Bed Linen from India, WT/DS141/AB/R, ¶¶ 46-68 (Mar. 1, 2001) ("Bed Linen from India"). Saha Thai also argues that in a recent WTO decision, the WTO Panel investigated the United States' methodology in antidumping proceedings and found it to be inconsistent with Article 2.4.2 of the Antidumping Agreement. See United States, Final Dumping Determination on Softwood Lumber from Canada, WT/DS264/R, ¶ 7.212 (April 13, 2004) ("Lumber from Canada").

Petitioners argue that the courts have repeatedly upheld the Department's methodology in calculating antidumping margins, and that respondent's arguments have been addressed in several cases. Petitioners hold that the Department's methodology does not violate the plain language of the statute and that the CIT described the Department's explanation of the statutory basis for its methodology as aggregating all individual dumping margins and dividing this amount by the value of all sales per the statute. See PAM S.p.A. v. United States, 265 F.Supp. 2d 1362 (CIT 2003) ("PAM S.p.A. v. United States") at 1370. According to petitioners, the plaintiff in PAM S.p.A. v. United States, like Saha Thai in the present case, argued that if positive margins were offset with non-dumped comparisons, the result would have been a lower overall dumping margin and a more accurate result.

Id. Further, petitioners maintain, the CIT indicated in Serampore Indus. Pvt. Ltd. V. United States, 675 F.Supp. 1354, 1360-61 (CIT 1987), that the underlying purpose for not offsetting positive margins with non-dumped comparisons was to prevent a foreign producer from masking its dumping with more profitable sales.

Department’s Position: The CIT has consistently upheld the Department's treatment of non-dumped sales. See, e.g., Timken Co. v. United States, 240 F.Supp. 1228 (2002); Bowe Passat Reinigungs- und Waschereittechnik GmbH v. United States, 240 F.Supp. 2 d 1228 (CIT 2002); see also Corus Engineering Steels, Ltd. v. United States, Slip Op. 03-110 at 18 (CIT Aug. 27, 2003). Furthermore, the Federal Circuit has affirmed the Department's methodology as a reasonable interpretation of the statute. See Timken Co. v. United States, 354 F.2d 1334 (Fed. Cir. 2004) (“Timken”).

Saha Thai asserts that the WTO Appellate Body rulings in Bed Linen from India and Lumber from Canada render the Department’s interpretation of the statute inconsistent with its international obligations and, therefore, unreasonable. However, the Court of Appeals in Timken specifically found Bed Linen from India was not only distinguishable but, more importantly, not binding. With regard to Lumber from Canada, in implementing the Uruguay Round Agreements Act, Congress made clear that reports issued by WTO panels or the Appellate Body “will not have any power to change U.S. law or order such a change.” SAA at 660. The SAA emphasizes that “panel reports do not provide legal authority for federal agencies to change their regulations or procedures” Id. To the contrary, Congress has adopted an explicit statutory scheme for addressing the implementation of WTO dispute settlement reports. See 19 U.S.C. 3538. As is clear from the discretionary nature of that scheme, Congress did not intend for WTO dispute settlement reports to automatically trump the exercise of the Department’s discretion in applying the statute. See 19 U.S.C. 3538(b)(4) (implementation of WTO reports is discretionary); see also SAA at 354 (“After considering the views of the Committees and the agencies, the Trade Representative **may** require the agencies to make a new determination that is “not inconsistent” with the panel or Appellate Body recommendations...” (Emphasis added)).

Comment 8: Minor Corrections

Petitioners argue that the Department should reject information provided by Saha Thai for the first time at verification and apply facts available because it constitutes an untimely and major modification of its questionnaire response. Petitioners maintain that the nature and extent of the errors which Saha Thai identified at verification constitute too significant a modification of its questionnaire responses to qualify as a “minor correction,” and that certain of these errors are systemic, affecting nearly all sales in a dataset. For example, petitioners explain, Saha Thai states “the invoice and corresponding ship dates were incorrect for several invoices. A corrected list is attached.” See Saha Thai Error Disclosure Letter, December 11, 2003, at 7. Petitioners maintain that in Pipe Fittings From Thailand, the Department rejected similar revisions proffered at verification. See Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand: Final Results of Antidumping Duty Administrative Review, 68 FR 6409, and accompanying Issues and Decision Memorandum, Comment 1 (February 7, 2003) (“Pipe Fittings

From Thailand”). In the present case, petitioners argue that the Department should neither consider nor accept the pervasive revisions to shipment date (as used for credit expense purposes) and invoice date (as used for matching purposes) as minor corrections. In addition, petitioners state that Saha Thai provided a worksheet that appears to have recalculated, for nearly all U.S. sales, several other U.S. adjustments.

Saha Thai argues that the corrections presented by Saha Thai on the first day of verification consisted of minor changes to information already on the record, were accepted by the Department for the preliminary results, and should be accepted for the final results. The company states that, on the first day of verification, it presented minor corrections found while preparing for verification and that the Department’s verifiers spent a significant amount of time reviewing these corrections and determined that they were minor in nature. See Sales Verification Report at 2-3.

In response to petitioners’ argument, Saha Thai argues that the revised data rejected in Pipe Fittings From Thailand were both more voluminous and more critical to the dumping calculation than the minor corrections presented by Saha Thai in this review. According to Saha Thai, the rejection of the corrections in that case, *i.e.*, dates of sale, shipment and payment, was incidental to the overall inability to verify the respondent’s data in that case. Rather, Saha Thai notes that the main reasons why the Department rejected the corrected information were: the respondent was not able to reconcile the total quantity and the resulting total value to its financial statements because of these errors and the corrections offered by the respondent, in fact, were to an original database that was so fatally flawed that the corrections essentially comprised a completely new sales response. Pipe Fittings From Thailand, 68 FR 6409, Issues and Decision Memorandum, Comment 1.

As opposed to Pipe Fittings From Thailand, Saha Thai argues that the minor corrections it presented at verification did not affect the integrity of the data it submitted, and invoice date and shipment date are not relevant to the Department’s margin calculation in this review. The company explains that the corrections to invoice dates were minor, with differences between the originally reported invoice dates and the corrected invoice dates ranging between four and eighteen days, as opposed to months in Pipe Fittings From Thailand. Moreover, the company maintains the U.S. date of sale used by the Department in this review is the contract date; thus, these minor corrections to the invoice date have absolutely no effect on the margin calculation. With respect to U.S. shipment date, Saha Thai argues that the reported shipment dates were correct, the Department verified that the reported shipment dates were accurate, and the list of minor corrections erroneously included shipment date. Thus, the company argues, since U.S. shipment dates did not change, U.S. credit expenses also did not change. With respect to the revised export expense worksheet submitted with the list of minor corrections, the company explains that, although the worksheet contains the information on all U.S. invoices, very few sales observations contain changed values and that not all of the corrections were to Saha Thai’s benefit.

Department's Position: During verification, we analyzed Saha Thai's minor corrections submission and found the corrections to be minor in nature and, thus, did not reject it. Subsequently, as respondent notes, we asked for revised datasets based on those minor corrections in a later request and used them for our preliminary results. See Letter from Sally Gannon, Program Manager, to Saha Thai: Request for Revised Databases, dated March 11, 2004. In addition, not all of the minor corrections the company submitted were beneficial to the company.

Petitioners cite Pipe Fittings From Thailand in support of their argument for application of adverse facts available, but, as respondent points out, the findings by the verification team in that case were that the changes were much more substantial and material:

TBC revealed, for the first time, that it noticed significant discrepancies between quantities reported to the Department and the quantities that were actually shipped in the home market...the company was not able to reconcile the total quantity, and the resulting total value, to its financial statements...The verification team randomly selected ten transactions from the reported home market data set, and traced their respective quantities to the source documents (i.e., purchase orders and sales invoices). We noted that in 50 percent of the sample, the actual quantities sold were significantly different than those reported to the Department....Additionally, our examination of dates of sale, shipment and payment indicates that in over 50 percent of the randomly selected transactions, reported dates frequently differed from the actual dates by a number of months...the facts of this case indicate that TBC's home market sales data is so fundamentally flawed as to render it unusable.....Additionally, the Department was unable to verify this information, as required by subsection (e)(2).

See Pipe Fittings From Thailand, 68 FR 6409, Issues and Decision Memorandum, at Comment 1. In contrast, Saha Thai's corrections were not significant and were not of the magnitude that prevented the Department from verifying them. Moreover, we were able to reconcile individual sales, and the totals reported for home market and U.S. sales, to the audited financial statements. See Sales Verification Report at 9 - 12.

The Department also stated in its verification outline that new information will be accepted at verification only when: (1) the information makes minor corrections to information already on the record; (2) the information corroborates, supports, or clarifies information already on the record; and, (3) the new information or revisions to previously submitted information would not substantially alter some or all of the questionnaire responses. See Letter from Sally Gannon, Program Manager, to Saha Thai Steel Pipe Co., Ltd.: Verification of the Questionnaire Responses of Saha Thai Steel Pipe Co., Ltd., dated December 2, 2003. Saha Thai met these requirements, and, thus, we accepted its minor correction submission. Therefore, for the final results, we will continue to rely on the company's revised datasets incorporating the minor corrections from verification.

IV. Changes in the Margin Calculation Since the Preliminary Results

Based on our analysis of comments received, we have changed our results from the preliminary results of review. For the final results of review, U.S. price has been increased by the amount of billing adjustments. In addition, we made minor corrections to the margin program. These changes are discussed in the relevant sections of this Decision Memorandum (at Comment 2) and Memorandum to the File from Javier Barrientos, AD/CVD Financial Analyst, through Mark E. Hoadley, Acting Program Manager: Analysis of Saha Thai Steel Pipe Co., Ltd. for the Final

Results, dated October 5, 2004, respectively. As a result, the margin for Saha Thai has changed to 0.17 percent *ad valorem*.

Recommendation

Based on our analysis of the comments received, we recommend adopting the positions described above. If these recommendations are accepted, we will publish the final results and the final weighted-average dumping margin in the Federal Register.

Agree _____ Disagree _____

James J. Jochum
Assistant Secretary
for Import Administration

(Date)