

A-549-502
Remand Redetermination
Slip Op. 20-181
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Saha Thai Steel Pipe Co., Ltd. v. United States, Consol. Court No. 18-00214, Slip Op. 20-181
(CIT December 21, 2020)

**FINAL RESULTS OF REDETERMINATION
PURSUANT TO CIT ORDER**

I. SUMMARY

The U.S. Department of Commerce (Commerce) prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (CIT) in *Saha Thai II*.¹ This litigation pertains to the 2016-2017 antidumping duty administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes (pipes and tubes) from Thailand and the *First Redetermination*.²

In *Saha Thai II*, the CIT ordered Commerce to “remove the particular market situation determination under {sections 771(15)(C) and 773(e) of the Tariff Act of 1930, as amended (the Act)} as to the cost of production ... and recalculate the respondents’ weighted-average dumping margins without disregarding home market sales from the calculation of normal value on that basis.”³ The respondents and plaintiffs are Pacific Pipe Company Limited, Saha Thai Pipe (Public) Company, Ltd., and Thai Premium Pipe Company, Ltd. Commerce continues to find that a particular market situation existed in Thailand during the period of review that distorted the price of hot rolled coil, the principle material input for the production of the subject

¹ See *Saha Thai Steel Pipe Co., Ltd. v. United States*, Consol. Court No. 18-00214, Slip Op. 20-181 (CIT December 21, 2020) (*Saha Thai II*).

² See *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 51927 (October 15, 2018) (*Final Results*), and accompanying Issues and Decision Memorandum; see also “Final Results of Redetermination Pursuant to Remand, *Saha Thai Steel Pipe Co., Ltd., et al. v. United States*, Court No. 18-00214, Slip Op. 19-165,” dated March 10, 2020 (*First Redetermination*).

³ See *Saha Thai II* at 19.

merchandise and significant component of the cost of production of the subject merchandise. Nevertheless, because the CIT has directed Commerce not to make an adjustment, under respectful protest,⁴ we have recalculated the relevant weighted-average dumping margins without an adjustment for the particular market situation that has been found to have existed during the period of review.⁵

II. DRAFT RESULTS OF REDETERMINATION

In accordance with the CIT's remand order, Commerce has recalculated the weighted-average dumping margin for each of the respondents without making an adjustment to account for the particular market situation concerning the input costs for hot-rolled steel. We are filing this redetermination under protest because, consistent with section 771(15)(C) of the Act, Commerce found that a cost-based particular market situation existed during the period of review, which distorted the cost of hot rolled coil in the production of the merchandise sold in Thailand.

Under section 504 of the Trade Preferences Extension Act of 2015, Congress provided that, when Commerce determines that a cost-based particular market situation exists, Commerce may, in accordance with section 773(e), remedy the cost-based particular market situation through "any other calculation methodology." Here, Commerce found the existence of a particular market situation in Thailand that resulted in distortions in the Thai market for hot-rolled coil. Yet, despite the clear intent of Congress for Commerce to remedy a particular market situation which may distort the costs of particular inputs used to produce the foreign like product

⁴ See *Viraj Group, Ltd. v. United States*, 343 F.3d 1371 (Fed. Cir. 2003).

⁵ See *Saha Thai II* at 19; see also Memoranda, "Draft Results of Redetermination Pursuant to Second Remand of Circular Welded Steel Pipes and Tubes from Thailand: Pacific Pipe Public Company Ltd. Calculation Memorandum," dated concurrently with the instant draft remand results; "Draft Results of Redetermination Pursuant to Second Remand of Circular Welded Steel Pipes and Tubes from Thailand: Saha Thai Steel Pipe (Public) Company, Ltd. Calculation Memorandum," dated concurrently with the instant draft remand results; and "Draft Results of Redetermination Pursuant to Second Remand of Circular Welded Steel Pipes and Tubes from Thailand: Thai Premium Pipe Company Ltd. Calculation Memorandum," dated concurrently with the instant draft remand results.

and subject merchandise, including when certain U.S. sale prices are compared with a normal value based on constructed value, the CIT, in its opinion, has ordered Commerce to “recalculate the relevant {weighted-average dumping} margins without a particular market situation adjustment.”⁶ Commerce, thus, in accordance with the Court’s directed order, is unable on remand to provide a remedy to address the particular market situation found in this administrative review, contrary to the statutory intent of Congress.⁷ This includes making an adjustment to the cost of production for the sales-below-cost test, as well as an adjustment to constructed value for normal value. For this reason, we are filing this remand with the Court under respectful protest.

III. COMMENTS ON DRAFT RESULTS OF REDETERMINATION

*Wheatland Tube Company’s Comments*⁸

- Commerce was correct in finding that a particular market situation existed in Thailand during the period of review (POR) and for adjusting the mandatory respondents’ costs of production accordingly.⁹
- The Court did not address the merits of Commerce’s affirmative particular market situation finding; however, the Court did rule that the statute did not permit Commerce to adjust respondents’ costs of production for the purposes of the sales-below-cost test to account for the particular market situation that was found to have existed.¹⁰
- In accordance with sections 771(15)(C), 773(a)(1)(B)(i), 773(b)(1), and 773(e) of the Act:
 1. Comparison market prices used as the basis of normal value must be in the ordinary course of trade;

⁶ See *Saha Thai II* at 19.

⁷ See *Altx, Inc. v. United States*, 370 F.3d 1108, 1111 n.2 (Fed. Cir. 2004).

⁸ See Wheatland Tube Company’s Letter, “Circular Welded Steel Pipes and Tubes from Thailand: Comments on Draft Remand Redetermination,” dated March 1, 2021 (Wheatland’s Draft Remand comments).

⁹ Wheatland’s Draft Remand comments at 1-2.

¹⁰ *Id.* at 2.

2. Commerce is directed to consider that sales and transactions occurring in situations in which a particular market situation prevents a proper comparison with export price to be outside the ordinary course of trade; and
 3. Comparing home market sales to a cost of production that does not accurately reflect production costs in the ordinary course of trade fails to accomplish the intent of the sales-below-cost test, which is to determine which home market sales were made in the ordinary course of trade.¹¹
- Section 773(b)(1) of the Act directs that whenever home market sales are disregarded as the result of the sales-below-cost test, normal value shall be based on the remaining home market sales made in the ordinary course of trade, or, if no such sales remain, constructed value. Thus, if Commerce cannot use the sales-below-cost test to determine which home market sales were made in the ordinary course of trade as a result of the Court's order, it must rely on constructed value.¹²
 - Section 773(e) of the Act permits Commerce to use "any other calculation methodology" to calculate constructed value if the agency determines that a particular market situation existed such that the cost of materials does not accurately reflect the cost of production in the ordinary course of trade.¹³
 - Commerce correctly determined that a particular market situation distorted the costs of the primary input, hot-rolled coil, into the production of pipes and tubes such that the costs of producing pipes and tubes in Thailand during the POR did not accurately reflect the cost of production in the ordinary course of trade and thus correctly used another calculation methodology to calculate constructed value in the First Remand Results.¹⁴

¹¹ *Id.* at 3-4.

¹² *Id.* at 4.

¹³ *Id.*

¹⁴ *Id.* at 4.

- For these reasons, Wheatland continues to respectfully disagree with the Court’s conclusion that Commerce may not adjust costs to account for a particular market situation for the purposes of the sales-below-cost test.¹⁵

*Pacific Pipe’s Comments*¹⁶ and *Saha Thai’s Comments*¹⁷

- Commerce’s draft results of redetermination stated that it recalculated the weighted-average dumping margin for each respondent without finding that all of the home market sales for each respondent are outside of the ordinary course of trade and did not make any adjustments to constructed value.¹⁸
- Thus, Commerce’s draft results of redetermination complies with the Court’s Order.¹⁹

Commerce’s Position: Commerce found that a cost-based particular market situation existed during the POR that distorted the cost of hot rolled coil in the production of the merchandise in Thailand. As noted by Wheatland Tube, the Court did not address the merits of Commerce’s affirmative particular market situation finding. Instead, the Court ordered Commerce not to make an adjustment to account for a particular market situation that existed in Thailand during the POR. Accordingly, Commerce is obligated to implement the Court’s order to “recalculate the relevant {weighted-average dumping} margins without a particular market situation adjustment.”²⁰

Without recourse to address the particular market situation, which existed in Thailand during the POR, we, under respectful protest, have made no adjustments to the calculation of each respondent’s weighted-average dumping margin to account for a particular market situation,

¹⁵ *Id.* at 1.

¹⁶ See Pacific Pipe’s Letter, “Circular Welded Carbon Steel Pipe and Tubes from Thailand: Comments on Draft Remand Redetermination,” dated March 1, 2021 (Pacific Pipe’s Draft Remand Comments).

¹⁷ See Saha Thai’s Letter, “Saha Thai’s Comments on Commerce’s Draft Remand Results Circular Welded Carbon Steel Pipe and Tubes from Thailand (AR 16-17),” dated March 1, 2021 (Saha Thai’s Draft Remand Comments).

¹⁸ See Pacific Pipe’s Draft Remand Comments at 2; and Saha Thai’s Draft Remand Comments at 2.

¹⁹ *Id.*

²⁰ See *Saha Thai II* at 19.

despite clear statutory language permitting Commerce to remedy a cost-based particular market situation which has distorted the costs of particular inputs used to produce the foreign like product and the subject merchandise. Therefore, under respectful protest, Commerce has not made an adjustment to the costs of production for the merchandise under review.

IV. FINAL RESULTS OF REMAND REDETERMINATION

Pursuant to the Court's remand order, for *Saha Thai II*, Commerce recalculated Pacific Pipe's, Saha Thai's, and Thai Premium's weighted-average dumping margins without finding that all of the home market sales for each respondent are outside of the ordinary course of trade and without making an adjustment to constructed value. Accordingly, the revised weight-averaged dumping margin for each respondent is listed in the chart below:

Exporter or Producer	Final Results of Review Weighted-Average Dumping Margin ²¹ (percent)	Second Final Results of Redetermination Weighted-Average Dumping Margin (percent)
Pacific Pipe Company Limited	30.61	7.38 ²²
Saha Thai Pipe (Public) Company, Ltd.	28.00	0.00 ²³
Thai Premium Pipe Company, Ltd.	30.98	5.23 ²⁴

3/14/2021

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Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

²¹ See *Final Results*.

²² See Pacific Pipe Second Final Results Analysis Memorandum.

²³ See Saha Thai Second Final Results Analysis Memorandum.

²⁴ See Thai Premium Second Final Results Analysis Memorandum.