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Administrative Review  
12/01/2014 - 11/30/2015  
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May 15, 2017

MEMORANDUM TO: Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

FROM: James Maeder  
Senior Director  
Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the  
Antidumping Duty Administrative Review: Welded ASTM A-312  
Stainless Steel Pipe from the Republic of Korea; 2014-2015

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## Summary

We have analyzed the case and rebuttal briefs submitted by the interested parties. As result of our analysis, we made no changes to the margin calculation for SeAH Steel Corporation (SeAH), and continue to find that LS Metal Co., Ltd. (LS Metal) had no shipments during the period of review. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this review for which we received comments from interested parties:

1. Model-Match Characteristics
2. Home Market Inland Freights
3. U.S. Indirect Selling Expenses
4. Differential Pricing Analysis

## Background

On December 30, 2016, the Department of Commerce (Department) published in the *Federal Register* the preliminary results of this review.<sup>1</sup>

On January 6, 2017, the Department accepted SeAH’s submission of information regarding differential pricing analysis,<sup>2</sup> and placed reference sources for differential pricing analysis on the record.<sup>3</sup>

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<sup>1</sup> See *Preliminary Results*.

<sup>2</sup> See SeAH DPA Information and Accepting DPA Information.

<sup>3</sup> See DPA References.



On January 30, 2017 and March 9, 2017, SeAH timely filed and subsequently withdrew a hearing request.<sup>4</sup> On February 1 and 8, 2017, the petitioners<sup>5</sup> and SeAH each submitted case and rebuttal briefs, respectively.<sup>6</sup>

## Scope of the Order

The merchandise subject to the antidumping duty order is welded austenitic stainless steel pipe that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A-312. The merchandise covered by the scope of the orders also includes austenitic welded stainless steel pipes made according to the standards of other nations which are comparable to ASTM A-312.

Welded ASTM A-312 stainless steel pipe is produced by forming stainless steel flat rolled products into a tubular configuration and welding along the seam. Welded ASTM A-312 stainless steel pipe is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for steel pipe include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines, and paper process machines.

Imports of welded ASTM A-312 stainless steel pipe are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.40.5005, 7306.40.5015, 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085. Although these subheadings include both pipes and tubes, the scope of the antidumping duty order is limited to welded austenitic stainless steel pipes. The HTSUS subheadings are provided for convenience and customs purposes. However, the written description of the scope of the orders is dispositive.

## Discussion of The Issues

### Comment 1: Model-Match Characteristics

#### The petitioners' Case Brief

- The end finish characteristics should be treated the same in this review as it has been in all the recent investigations of same merchandise (*i.e.*, WSPP) from other countries (*i.e.*, India, Malaysia, Vietnam, and Thailand). The following reasons given by the Department for not combining plain-end and beveled-end as a single characteristic in the preliminary results are not in accordance with its practice:

*“the petitioners failed to provide any evidence that combining the characteristics leads to a more accurate result or the current model match characteristics have led to manipulations of the margin calculations.”*

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<sup>4</sup> See SeAH Hearing Request and SeAH Hearing Request Withdrawal.

<sup>5</sup> The petitioners are Bristol Metals LLC, Felker Brothers Corporation, and Outokumpu Stainless Pipe, Inc.

<sup>6</sup> See The petitioners Case Brief, SeAH Case Brief, The petitioners Rebuttal Brief, and SeAH Rebuttal Brief.

- The Department evidently made up the “more accurate margin calculation” as a criterion for this proceeding. the petitioners should not have the burden of demonstrating that the separate end finish characteristics defined more than two decades ago is less accurate.
  - The Department in recent WSPP proceedings regarded plain-end and beveled-end as a single product characteristic to be an accurate way to calculate margins, and did not evidence the slightest concern that having the same code for both end finishes resulted in an inaccurate margin calculation. This is both because the Department has not indicated that more accurate margin calculation is a valid criterion for determining such changes in any other proceeding, and because there is no reason to expect that such a distinction results in a “more accurate” calculation.
  - The Department’s statement of “{a}s a general matter, more specific product characteristics provide more accuracy in margin calculation” is such a gross generalization as to be nearly meaningless as a guide to devising model-match characteristics. The Department needs to make judgments as to whether a particular product characteristic is worthy of a distinction in CONNUM codes, and it makes the decision to consolidate characteristics into one code all the time. It is especially important when considering product characteristics to avoid situations in which a large quantity of U.S. sales would potentially be compared to a tiny minority of home market sales.
- the petitioners have no plausible way to demonstrate “manipulations of the margin calculation” other than by pointing out trends from an analysis of the sales and cost databases, since the petitioners cannot require SeAH to turn over all its emails and look for an email in which SeAH tells its customer about price. Although, the Department evidently made up this criterion only for this proceeding, the petitioners have demonstrated to the extent possible that SeAH has used this unnecessary product characteristic distinction to manipulate the calculation of dumping margin in its favor.

### **SeAH’s Rebuttal Brief**

- The Department, under its longstanding and consistent practice, will not modify its model matching characteristics absent a compelling reason to do so. the petitioners have not offered any compelling reasons that the beveled-end is not (or no longer) reflective of the subject merchandise, or that industry-wide changes to the product have occurred that necessitate a modification, or that any other compelling reason exists to change the current reporting requirements.
- The petitioners’ analysis is a review-period simple average of home market prices and costs by specification/grade by end-finish, which completely ignores any difference in outside diameter, wall thickness, and raw material costs.
- To make a *prima facie* case of manipulation, the petitioners would need to show that the difference between the home market prices for plain-end and beveled-end were aberrational when all other factors recognized in the Department’s calculation were held constant, *e.g.*, quantity, outside diameter, wall thickness, time period, customer, region, freights, credit terms, other circumstances of sales, and material cost.

- The petitioners have suggested that the Department’s preliminary results effectively required them to produce a “smoking gun” from SeAH’s correspondence with its customer to show that there was manipulation of prices. But nothing in the Department’s decision requires explicit proof of intentional manipulation.
- The model-match characteristics in this proceeding were supported by the evidence on the record when they were created 24 years ago. The difference between plain-end and beveled-end is an obvious physical difference – not something evidently made up for this proceeding. the petitioners have presented no basis in fact or law for the Department to deviate from its established model-match characteristics in this proceeding.

### **Department’s Position:**

Pursuant to section 773 of the Tariff Act of 1930, as amended (the Act), in this case, normal value is the adjusted home-market price of the foreign like products.<sup>7</sup> Section 771(16) of the Act defines “foreign like product” in descending order of preference, beginning with: “Subject merchandise and other merchandise which is identical in physical characteristics with and was produced in the same country by the same person as, that merchandise.”<sup>8</sup> Because the statute is silent with respect to the methodology that the Department must use to match subject merchandise with foreign like products, the Department has considerable discretion in developing an appropriate model-match methodology.<sup>9</sup> Notably, the Department has interpreted the word “identical” in the statute to mean the same with minor differences in physical characteristics which are commercially insignificant.<sup>10</sup>

The Department’s practice is not to alter a model-match methodology developed at an earlier stage of the proceeding unless a party provides compelling and convincing evidence demonstrating that: (1) the current model-match criteria are not reflective of the subject merchandise; (2) there have been industry-wide changes to the product that merit a modification; or (3) there is some other compelling reason to warrant a change.<sup>11</sup> Compelling reasons that warrant a change to the model-match methodology may include, for example, greater accuracy in comparing foreign like product to the single most similar U.S. model, in accordance with section 771(16)(B) of the Act, or a greater number of reasonable price-to-price comparisons in accordance with section 773(a)(1) of the Act.<sup>12</sup>

As discussed in the *Preliminary Results*, in accordance with section 771(16) of the Act, we considered all products produced and sold by SeAH in the home market during the POR that fit the description of the scope of the order to be foreign like products for the purpose of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to home market sales of the identical or most similar products that were made during the ordinary course

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<sup>7</sup> See also Initial AD Questionnaire at Appendix I.

<sup>8</sup> *Id.*

<sup>9</sup> See *Pesquera*, 266 F.3d at 1372, 1384.

<sup>10</sup> *Id.*

<sup>11</sup> See e.g., *Sawblades PRC Prelim PDM* at 4, unchanged in *Sawblades PRC Final*; *Pigment India Final IDM* at 2; *CORE Korea Final IDM* at 1; *CORE Canada Final IDM* at 1; *Fagersta*, 577 F. Supp. 2d at 1270, 1276-77.

<sup>12</sup> See *Stainless Wire Rod Sweden*.

of trade and passed the cost of production test, or to constructed value, where appropriate. In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent in the following order of importance: specification and grade, hot or cold finish, size, wall thickness schedule, and end finish.<sup>13</sup>

In the *Preliminary Results*, we considered the petitioners' request that the Department combine the model-match characteristics for plain-end and beveled-end finishes, and determined that the petitioners did not satisfy their burden of demonstrating that such a change was warranted.<sup>14</sup>

We continue to find that, for purposes of this final results, the petitioners have not established, with compelling and convincing evidence, that: (1) the current model-match criteria are not reflective of the subject merchandise; (2) there have been industry-wide changes to the product that merit a modification; or (3) there is some other compelling reason to warrant a change,<sup>15</sup> *i.e.*, any evidence that combining the characteristics leads to a more accurate result or the current model-match characteristics have led to manipulations of the margin calculations.

As an initial matter, we disagree with the petitioners that the Department has altered its stated three-part standard, *i.e.*, "moved the goalposts," for allowing modifications to the model-match criteria. For instance, the petitioners take issue with the Department's statements in this and the prior review regarding accuracy and manipulation concerns, claiming that the Department has "ma{de} up criteria."<sup>16</sup> Contrary to the petitioners' arguments, the Department has not made up additional criteria, nor altered its three-part standard stated above.<sup>17</sup> Likewise, the Department's discussion of accuracy and manipulation concerns in this and the prior review, which was *in response* to the petitioners' arguments, does not add additional criteria nor alter this standard.<sup>18</sup> Rather, this discussion recognizes that such concerns could provide a compelling reason to alter the existing model-match methodology, should a party provide such evidence. However, as discussed in further detail below, the petitioners have not satisfied this burden.

The petitioners' main argument seems to be that, because the model-match criteria in the recent WSPP investigations from Malaysia, Thailand, Vietnam, and India do not distinguish between plain-end and beveled-end finishes, this in and of itself demonstrates that the Department's

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<sup>13</sup> Preliminary Decision Memorandum at 7.

<sup>14</sup> *Id.*

<sup>15</sup> See *e.g.*, *Fagersta*, 577 F. Supp. 2d at 1276-77.

<sup>16</sup> The petitioners Case Brief at 3.

<sup>17</sup> See, *e.g.*, the petitioners Model-Match Questionnaire ("The Department's practice is to not modify an established model-match methodology unless there is compelling and convincing evidence demonstrating that (1) the current physical characteristics are not reflective of the subject merchandise, (2) there have been industry-wide changes to the product that merit a modification, or (3) there is some other compelling reason to change the current requirements for reporting physical characteristics.")

<sup>18</sup> See *Stainless Pipe Korea 13-14 Final* IDM at Comment 1 (the petitioners argued that the difference between plain-end and beveled-end finishes is an artificial distinction that the respondents subject to multiple reviews have learned to manipulate to mask dumping but we found no evidence of manipulation. We also stated that "more specific product characteristics provide more accuracy."); see also, Preliminary Determination Memorandum at 7. ("We did not revise the established model-match criteria for these preliminary results because the petitioners failed to provide any evidence that combining the characteristics leads to a more accurate result or the current model match characteristics have led to manipulations of the margin calculations.")

methodology in this proceeding should be changed.<sup>19</sup> We disagree. As an initial matter, we note that in the 1991 original investigation of this proceeding, in setting the model-match criteria, the Department determined that plain-end and beveled-end finished products were commercially significant variations in physical characteristics and no party objected at that time.<sup>20</sup> Prior to last year's review, the petitioners had not raised any issue with this determination for nearly 25 years. The petitioners have not put forth any evidence or explanation regarding its acquiescence to the long-standing methodology, for instance, by explaining that there has been some change to the products which warrants reconsideration of the Department's original determination, *i.e.*, some explanation that the products now, as compared to before, should be treated as identical.<sup>21</sup>

Thus, we disagree with the petitioners that the distinction between plain-end and beveled-end finishes in this proceeding, established in 1991, is "an artificial distinction {which} invites manipulation."<sup>22</sup> Although the Department has adopted alternative model-match criteria in the more recent investigations of this product, its determination must be made on a case-by-case basis, based on the record before it. Furthermore, the public record of those investigations contains no discussion of the adopted model-match methodology, nor have any parties raised the issue as no reviews of those orders been conducted.<sup>23</sup> Therefore we find that the model-match criteria established in later investigations does not demonstrate that the current model-match criteria in this proceeding are no longer reflective of subject merchandise, that there have been industry-wide changes warranting a modification, or that this is a "compelling" reason to warrant a change. In sum, we do not find, based on the record evidence before us, that the petitioners have satisfied their burden to demonstrate that such a change is warranted in this proceeding.

The petitioners' remaining arguments are equally without merit. For instance, we continue to find, as we did in the prior review and in the *Preliminary Results* of this review, that the petitioners have not demonstrated that there is some other compelling reason to warrant a change, *i.e.*, any evidence that combining the characteristics leads to a more accurate result or the current model-match characteristics have led to manipulations of the margin calculations.

The petitioners also argue that the Department "makes the decision to consolidate characteristics into one code all the time;"<sup>24</sup> however, as noted above, decisions regarding model-match must be made on a case-by-case basis, based on the record before the Department. Furthermore, we disagree with the petitioners' argument that the Department, at this time, must assess whether a particular product characteristic is worthy of distinction in CONNUM codes to avoid situations in which a large quantity of U.S. sales would potentially be compared to a tiny minority of home market sales. This ignores the Department's stated three-part practice, which has been found to be a reasonable interpretation of the statute,<sup>25</sup> that parties bear the burden to demonstrate that a

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<sup>19</sup> We note that the Department did not use the model-match methodology in the WSPP from Vietnam investigation.

<sup>20</sup> See *Investigation*.

<sup>21</sup> We note that SeAH has demonstrated that its "books and record do track plain-end and beveled-end pipe as distinct products{.}" See SeAH Model-Match Rebuttal at 5, SeAH AQR at Appendix A-4 (BPI), SeAH DQR at Appendix D-10-A (BPI).

<sup>22</sup> See Petitioners Case Brief at 1.

<sup>23</sup> See *Stainless Pipe Malaysia, Stainless Pipe Thailand, Stainless Pipe India*.

<sup>24</sup> See Petitioners Case Brief at 4.

<sup>25</sup> See *e.g., Fagersta*, 577 F. Supp. 2d at 1276-77.

change to established model-match criteria is warranted. Here, the petitioners did not point to any record evidence demonstrating that such a situation exists.

Finally, the petitioners argue that they have identified certain trends derived from their analysis of SeAH's sales and cost datasets which demonstrate manipulation of the margin calculation. However, we find that the petitioners' analysis did not weigh the prices by quantities, nor include outside diameter, wall thickness, and raw material costs, all of which are necessary in evaluating reliable trends in SeAH's sales and cost datasets.<sup>26</sup> Furthermore, the petitioners' analysis includes sales that are below cost and sales that failed the arm's-length test, all of which are excluded from the margin calculation.<sup>27</sup> We further disagree with the petitioners that they have no plausible way other than by pointing out these trends to demonstrate "manipulations of the margin calculation." The Department's margin calculation programs produce more than a hundred data sets (e.g., COMPANY.SEAH\_AR\_PRELIM\_CONCORD), which allows interested parties to analyze wide range of issues.<sup>28</sup>

Thus, as we found in the *Preliminary Results*, the petitioners have not put forth evidence on the record which indicates that SeAH has manipulated the differences between beveled-end and plain end pipe in its responses to mask dumping. Rather, SeAH has reported its sales and costs using the product characteristics established for this case 25 years ago. As discussed above, an interested party wishing to change the model-match criteria established by the Department bears the burden of demonstrating that a revision is warranted.<sup>29</sup> We continue to find that the petitioners failed to provide sufficient evidence that combining the end finishes are warranted, based on our three-part standard. Therefore, we continue to use the established model-match criteria for these final results.

## **Comment 2: Home Market Inland Freight Expenses**

### **SeAH's Case Brief**

- The Department's longstanding practice requires actual freight costs to be allocated over actual shipment quantities. There are invariably situations in which SeAH ships less than a full truckload in a truck in order to meet its customers' needs. In such cases, the entire cost of the shipment must be borne by the actual quantity shipped in the truck, even if that quantity is much less than the theoretical maximum quantity that could be shipped in each truck.
- In the preliminary results, the Department used the theoretical freight cost per ton, because it believed that those amounts corresponded to the fees set forth in the contract freight schedules, and failed to recognize that the actual costs also corresponded to the fees set forth in the contract freight schedules. The difference between the two sets of figures is not in the freight cost per truck, but in the quantity used to allocate the freight cost per truck in order to calculate a per-metric-ton amount.

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<sup>26</sup> See SeAH Rebuttal Brief at 5.

<sup>27</sup> See Preliminary Decision Memorandum at 8 and 11.

<sup>28</sup> See Final Calculation Memorandum for a complete list of output datasets from SeAH's preliminary margin calculation.

<sup>29</sup> See *Fagersta*, 577 F. Supp. 2d at 1276-77.

- The actual fees charged by SeAH's freight suppliers are set in accordance with the contract schedules. The freight charge for each shipment depends on the size of the truck used and the destination. The Department's request of converting contract freight rates from a "price per truck" to a "price per metric ton" required a logical impossibility. Because the contracts set the freight rates as a fixed amount per truck regardless of the actual quantity shipped in the truck, it is not possible to calculate a standard contract rate per metric ton for all shipments under the contracts.
- In *Non-Alloy Pipe Tube Mexico Final*, the Department applied adverse facts available (AFA) for failing to report actual unit cost, and it also rejected unit cost based solely on contract rates in *Steel Beams Spain Final*.

### **The petitioners' Rebuttal Brief**

- The Department's current instructions for inland freight ask respondents to "submit the specific freight charges incurred on each transaction...." We suggested the Department reconsider this policy in circumstances when a very small quantity was shipped.
- SeAH prices its products sold on a delivered basis depending on the typical per ton freight costs for delivery to a destination. If a tiny home market sale with enormous per ton costs is the sole or nearly the sole comparison to a CONNUM in the U.S. market, the calculation of dumping margin would be distorted.
- SeAH's characterization of theoretical freight cost is not accurate. The revised per-unit freight expense represents the typical freight expense that SeAH considered when it worked out delivered prices to customers. To determine whether SeAH was, overall, selling in the United States for a price lower than the price in Korea, it is more accurate to consider the basis on which SeAH sets its prices, rather than using unusual freight costs that may, because of the vagaries of model matching, have an outsized impact on the final margin calculation.

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

In these final results, we continue to rely on the revised unit freight cost reported by SeAH. Contrary to SeAH's arguments, we continue to find that the freight expense methodology initially reported by SeAH, which resulted in artificially high unit freight costs for the foreign like product, was unreasonable and unsupported by the record. In its initial questionnaire response, SeAH misallocated the cost of each truck used to deliver certain home market sales to its customers to only the foreign like product therein, even though the truck also contained other merchandise.<sup>30</sup> Despite SeAH's contention that the revised unit freight cost is a theoretical unit cost because it is based on truck capacity, we find the revised unit freight cost better represents SeAH's freight costs than those it initially reported. Thus, we continue to find that that SeAH's revised unit freight costs, which are based on the truck size and destination, are more reliable

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<sup>30</sup> See Preliminary Calculation Memorandum.



than those it initially reported. Therefore, we have continued to use SeAH's revised unit freight costs for the final results.<sup>31</sup>

We are not persuaded by SeAH's arguments that we should use the unit freight costs it initially reported. The record of this review shows that SeAH's freight costs were based on contract fees which varied due to truck size and destination, and did not differentiate among the products (*i.e.*, no differentiation between foreign like product and other products).<sup>32</sup> Therefore, it was improper for SeAH, in its initial response, to allocate a greater proportion of the freight cost to the foreign like product when the contract fees do not differentiate among products.

We also find SeAH's claim that the unreasonably high unit freight costs reported in its initial response were the result of instances in which small quantities were shipped to meet its customers' needs is unsupported by the record.<sup>33</sup> Our analysis of the shipping documents related to SeAH's 16 sales with the highest unit freight cost for delivery to its home market customers shows an improper allocation of freight costs.<sup>34</sup> Specifically, when multiple items were included in a shipment, SeAH allocated all freight costs to the foreign like product, even though its weight was a small fraction of the total weight of the shipment.<sup>35</sup> Furthermore, despite the fact that the contract fee did not differentiate among products, SeAH's affiliated freight provider charged a higher freight cost for the foreign like product than for other products shipped on the same day by the same truck, or on the same day by a different truck, to the same destination (based on the destination name in Korean on the shipping invoices, which SeAH did not translate).<sup>36</sup> Thus, the unreasonably high unit freight costs were the result of improper allocation.

Moreover, we note that SeAH incorrectly stated the Department's practice is to allocate actual freight costs over actual shipment quantities. The Department's standard questionnaire states:<sup>37</sup>

*Report the unit cost of home market inland freight from factory to warehouse (or from warehouse to customer, or from factory to port of exportation). Where it is necessary to allocate because multiple items were included in a shipment, freight cost should be allocated on the basis incurred (e.g., weight, volume).*

*If you shipped by common carrier, please submit the specific freight charges incurred on each transaction and the method of allocation, when more than one type or size of merchandise was shipped.*

SeAH misrepresented the Department's request to convert contracted fee schedules from "per truck" to "per ton" and to report the applicable contract rate for each sale,<sup>38</sup> as a request "to

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<sup>31</sup> See SeAH Fourth SQR at 4-8, and Preliminary Calculation Memorandum at 6.

<sup>32</sup> See SeAH BQR at 28-32 and Appendix B-7-B; SeAH CQR at 68-69 and Appendix B-7-C; SeAH First SQR at 5-6 and Appendices S-3, S-4; SeAH Forth SQR at 6 and Appendix S2B-6.

<sup>33</sup> See SeAH Case Brief at 3.

<sup>34</sup> See SeAH Third SQ.

<sup>35</sup> See Preliminary Calculation Memorandum at 3.

<sup>36</sup> See Preliminary Calculation Memorandum at 3; *see also* SeAH Third SQR at Appendix SB-3 Supporting Documents for Freight to Customer (INLFTCH).

<sup>37</sup> See Initial AD Questionnaire.

<sup>38</sup> See SeAH Forth SQ.

calculate a generic contract rate per metric ton for all shipments under contract.”<sup>39</sup> Our request was made for the purposes of examining whether the reported unit costs are consistent with contracted rates. We found that the revised unit costs are within the range of minimum and maximum of contracted rates, whereas the initially reported unit costs were not.<sup>40</sup>

Finally, SeAH’s reliance on the following two cases is misplaced. In *Non-Alloy Pipe Tube Mexico Final*, the Department applied AFA to the respondent for failing to report actual unit freight charges incurred.<sup>41</sup> Similarly, in *Steel Beams Spain Final*, the Department applied AFA instead of using the contract rate when the respondent failed to report accurately freight charges incurred.<sup>42</sup> In both cases, respondents failed to report unit freight costs, and the cases lack detail as to whether the actual fees charged were set in accordance with the contract schedule. In contrast, in this case, SeAH reported unit costs and stated that the actual fees charged are set in accordance with the contract schedule, which depends on the size of the truck used and destination and does not differentiate among the products.

The Department also disagrees with the petitioners’ characterization that, by requesting that SeAH revise its freight costs, the Department has reconsidered its policy that respondents should “submit the specific freight charges incurred on each transaction . . . .” Here, as noted above, we find that the unreasonably high unit cost is the result of improper allocation of the freight cost. The improper allocation, rather than any broader change in policy, was the basis for the Department’s use of the revised freight costs.

### **Comment 3: U.S. Indirect Selling Expenses**

#### **SeAH’s Case Brief**

- SeAH calculated separate indirect selling expense (ISE) and general and administrative (G&A) expense rates for its U.S. affiliate Pusan Pipe America (PPA). In the preliminary results, the Department wrongly included both ISE and G&A amounts as part of the adjustments for U.S. indirect selling expenses.
- The administrative expenses of a company that performs both sales and production activities are properly classified as G&A expenses, not selling expenses. Assigning any portion of those administrative expenses to indirect selling expense is inconsistent with the Department’s treatment of administrative expenses incurred by SeAH in Korea.
- In the past, the Department correctly concluded that the administrative expenses of a company that performs only selling functions should be classified as ISE. Also, until recently the Department’s practice has been to treat the administrative expenses incurred by affiliated U.S. importers that have both sales and production operations as G&A expenses that can only be deducted from U.S. price to the extent that they are included in an adjustment for U.S. further manufacturing costs.<sup>43</sup> In these circumstances, the Department’s

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<sup>39</sup> See SeAH Case Brief at 2.

<sup>40</sup> See Preliminary Calculation Memorandum at 3.

<sup>41</sup> See *Non-Alloy Pipe Tube Mexico Final* at Comment 15.

<sup>42</sup> See *Steel Beams Spain Final* IDM at Comment 7.

<sup>43</sup> See, e.g., *Cement France* and *Carbon PRC Final* IDM at Comment 5(b).

treatment of PPA's G&A expenses as part of indirect selling expenses is logically incorrect and contrary to the Department's practice. Therefore, the Department should exclude the G&A expenses from the adjustment to U.S. price.

### **The petitioners' Rebuttal Brief**

- This issue was discussed in the prior review, and for the preliminary results, the Department stated that it "used the methodology from the final results of immediately preceding administrative review to calculate the G&A ratio."
- In this review, SeAH has a different argument and seems to want all G&A expenses not to be considered. There is no support for such an adjustment. The decision in *Cement France* cited by SeAH, is a 1994 case where it is difficult to ascertain whether the G&A expenses were solely dedicated to further manufacturing. In the *Carbon PRC* it was concluded that all G&A expenses were associated with further manufacturing, which in the previous review here was not the case.

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

We continue to use both ISE and G&A expenses attributable to products resold by PPA as adjustments to U.S. price in the final results. This is consistent with our decision in the *Line Pipe*,<sup>44</sup> and in the immediately preceding review of this order.<sup>45</sup>

Pursuant to section 772(d)(2) of the Act, the Department is required to deduct the cost of any further manufacture or assembly from the price used to establish the CEP. The record shows that SeAH's affiliated U.S. reseller PPA also further manufactures certain products, such as non-subject line pipe.<sup>46</sup> When an affiliated reseller's employees are responsible for overseeing and coordinating both sales and further manufacturing activities, the Department segregates selling and G&A expenses into ISE and G&A expenses to calculate separate ISE and G&A expense ratios. Moreover, because PPA's G&A activities support general activity of the company as a whole, including its further manufacturing and products reselling functions, we attribute the G&A expenses not only to the cost of further manufactured products, but also to the cost of subject products purchased by PPA from SeAH and resold in the United States. The Department treats such G&A expenses attributable to the resold products similar to ISE (*i.e.*, as part of the CEP offset - an adjustment to U.S. price).<sup>47</sup>

We disagree with SeAH's contention that none of PPA's G&A expenses, to the extent that they are not included in further manufacturing cost, should be included in the adjustment to U.S. price, just as SeAH's G&A expenses are excluded from the home market price adjustment. Section 772(d)(1)(D) of the Act directs the Department to deduct from U.S. price "any selling expenses" not deducted elsewhere. We note that in calculating PPA's G&A expense ratio, G&A expenses were allocated over PPA's total cost of goods sold which includes subject products resold by PPA. Thus, the resold products bear a portion of the company's G&A expenses.

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<sup>44</sup> See *Line Pipe Korea Final IDM* at Comment 20.

<sup>45</sup> See *Stainless Pipe Korea 13-14 Final IDM* at Comment 3.

<sup>46</sup> See SeAH Third SQR at 13.

<sup>47</sup> See *Line Pipe Korea Final IDM* at Comment 20.

Because no further manufacturing is performed on resold products, these G&A expenses can reasonably be attributed to reselling activity, and as such, they need to be deducted from the U.S. price in arriving at CEP price.

The cases cited by SeAH in support of its contention that the Department treats the administrative expenses of U.S. importers that have both sales and production operations as G&A expenses and such expenses can only be deducted from U.S. price to the extent they are included in an adjustment for U.S. further manufacturing costs, are not conclusive. As pointed out by the petitioners, the 1994 *Cement France* case lacks the details as to whether the G&A expenses in that case were solely dedicated to further manufacturing.<sup>48</sup> Likewise, in the *Carbon PRC* case it was concluded that all G&A expenses as issue were associated with further manufacturing, which in the previous review here was not the case.<sup>49</sup> Thus, we find that these cases do not provide a basis for departing from the methodology used in the preliminary results, which, as noted above, is consistent with both *Line Pipe* and the prior review of this order.

#### **Comment 4: Differential Pricing Analysis**

##### **SeAH's Case Brief**

- A. The Department should have adopted a rule that establishes the numerical thresholds used in the differential pricing analysis, following the notice-and-comment requirements of the Administrative Procedure Act (APA). In *Carlisle Tire* and *Washington Raspberry*, the U.S. Court of International Trade (CIT) and Court of Appeals for the Federal Circuit (CAFC) require the Department to provide substantial evidence when applying the *de minimis* rule. Absent of that rule, The Department is required, but has not, to justify those thresholds based on substantial evidence on the record.
- B. The 0.8 cut-off used in the “Cohen’s *d* test” portion of the differential pricing analysis is not supported by substantial evidence on the record.
  - The Department incorrectly stated that the cut-off in the Cohen’s *d* test proposed by the Professor Cohen have been widely adopted. Professor Cohen made clear that those cut-offs could only appropriately be applied in specific circumstances, and that is confirmed by subsequent academic analysis. The specific circumstances are not satisfied in this case.
  - Neither mathematics nor substantial evidence supports the Department’s assertion that it can apply Professor Cohen’s proposed cut-offs when the underlying assumptions do not apply to record evidence, simply because the Department allegedly is analyzing an entire population, and not just a sample.
- C. The 33- and 66-percent cut-offs used in the “ratio test” portion of the differential pricing analysis are not supported by substantial evidence on the record. The Department never explained why the 33 and 66 should be used as the thresholds for this test, or why sales above this range call for the application of the transaction-to-average methodology. Without the justification, these thresholds are arbitrary and improper. The Department has provided no mathematical justifications for the cut-offs.

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<sup>48</sup> See *Cement France*.

<sup>49</sup> See *Carbon PRC*.

- D. The differential pricing analysis fails to explain why any patterns of prices difference were not, or could not be, taken into account using the average-to-average (A-to-A) comparison.
  - The statute allows the Department to depart from the A-to-A method for targeted dumping only if it “explains why such differences cannot be taken into account using” the A-to-A method or transaction-to-transaction (T-to-T) method.
  - The Department only showed that the weighted-average dumping margin developed using the alternate comparison is meaningfully different than that calculated with the standard comparison methodology. These differences are a result of zeroing or not zeroing
  - The existence of different results does not satisfy the statutory requirement.
- E. Under the relevant provisions of the statute, the Department is not permitted to utilize the average-to-transaction (A-to-T) comparison methodology for any of SeAH’s U.S. sales.
  - In general, the statute does not allow the Department to compare an average normal value to U.S. prices for individual transactions. The exception for this only applies if there is a pattern of prices that differ significantly, and the Department explains why such differences cannot be taken into account using the A-to-A method or the T-to-T method.
  - Neither the petitioners nor the Department satisfies the two criteria for application of the exceptional comparison methodology, such that the Department is required to use the A-to-A methodology.
  - If the Department utilizes the A-to-T method, its application should be limited to transactions within the pattern of prices that differ significantly.
  - The Department should not zero the comparison results of non-dumped sales found in its comparisons.
  - WTO panel decision concerning the Department’s imposition of antidumping duties on *US – Washing Machines (Korea)* has held that “zeroing” of negative dumping margins is not permitted even when the A-to-T methodology is justified.

### **The petitioners’ Rebuttal Brief**

- In *Apex II*, CIT affirmed the Department’s differential pricing analysis against a wide range of claims – including those advanced in this review.

### **Department’s Position:**

As an initial matter, the Department notes that there is nothing in section 777A(d) of the Act that mandates how the Department measures whether there is a pattern of prices that differs significantly or explains why the A-to-A method or the T-to-T method cannot account for such differences. On the contrary, carrying out the purpose of the statute<sup>50</sup> here is a gap filling

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<sup>50</sup> *Koyo Seiko*, 20 F. 3d at 1156, 1159 (“The purpose of the antidumping statute is to protect domestic manufacturing against foreign manufacturers who sell at less than fair market value. Averaging U.S. prices defeats this purpose by allowing foreign manufacturers to offset sales made at less-than-fair value with higher priced sales. Commerce refers to this practice as ‘masked dumping.’ By using individual U.S. prices in calculating dumping margins, Commerce is able to identify a merchant who dumps the product intermittently—sometimes selling below the foreign market value and sometimes selling above it. We cannot say that this is an unfair or unreasonable result.” (internal citations omitted)).

exercise properly conducted by the Department.<sup>51</sup> As explained in the *Preliminary Results*, as well as in various other proceedings,<sup>52</sup> the Department's differential pricing analysis is reasonable, including the use of the Cohen's *d* test as a component in this analysis, and it is in no way contrary to the law.

The Department disagrees with the arguments set forth by SeAH regarding the effect that the WTO panel and Appellate Body findings in *US – Washing Machines (Korea)* has on the Department's methodology utilized in AD proceedings.<sup>53</sup> As a general matter, the CAFC has held that WTO reports are without effect under U.S. law, “unless and until such a {report} has been adopted pursuant to the specified statutory scheme” established in the URAA.<sup>54</sup> In fact, Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.<sup>55</sup> Indeed, the SAA noted that “WTO dispute settlement panels will have no power to change U.S. law or order such a change. Only Congress and the Administration can decide whether to implement a WTO panel recommendation and, if so, how to implement it.”<sup>56</sup> As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute.<sup>57</sup> The Department has not revised or changed its use of the differential pricing methodology, nor has the United States adopted changes to its methodology pursuant to the URAA's implementation procedure.

To date, the United States has fully complied with all adverse panel and Appellate Body reports adopted by the Dispute Settlement Body with regards to Article 2.4.2 of the Antidumping Agreement. With regard to the A-to-T method, specifically, as an alternative comparison method and the use of zeroing under the second sentence of Article 2.4.2 of the WTO Antidumping Agreement, the Department has issued no new determination and the United States has adopted no change to its practice pursuant to the statutory requirements of sections 123 or 129 of the URAA.

#### A. APA Rulemaking Is Not Required

The Department disagrees with SeAH. The notice and comment requirements of the APA do not apply “to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.”<sup>58</sup> Further, the Department normally makes these types of changes in practice (*e.g.*, the change from the targeted dumping analysis to the current differential pricing analysis) in the context of our proceedings, on a case-by-case basis.<sup>59</sup> As the CAFC has

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<sup>51</sup> See *Chevron*, 467 U.S. at 837, 842-43 (recognizing deference where a statute is ambiguous and an agency's interpretation is reasonable); see also *Apex I* (applying *Chevron* deference in the context of the Department's interpretation of section 777A(d)(1) of the Act).

<sup>52</sup> See, *e.g.*, *Line Pipe Korea Final* IDM at Comment 1; *Non-Alloy Pipe Korea Final* IDM at Comments 1 and 2; and *Stainless Pipe Korea 13-14 Final* IDM at Comment 4.

<sup>53</sup> See *US – Washing Machines (Korea)*.

<sup>54</sup> See *Corus*, 395 F.3d at 1343, 1347-49, *cert. denied* 126 S. Ct. 1023 (2006); accord *Corus*, 502 F.3d at 1370, 1375.

<sup>55</sup> See, *e.g.*, 19 U.S.C. § 3533, 3538 (sections 123 and 129 of the URAA).

<sup>56</sup> See SAA at 659.

<sup>57</sup> See, *e.g.*, 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary).

<sup>58</sup> See 5 U.S.C. § 553(b)(3)(A).

<sup>59</sup> See *Differential Pricing Comment Request*.

recognized, the Department is entitled to make changes and adopt a new approach in the context of its proceedings, provided it explains the basis for the change, and the change is a reasonable interpretation of the statute.<sup>60</sup> Moreover, the CIT in *Apex II* recently held that the Department's change in practice (from targeted dumping to its differential pricing analysis) was exempt from the APA's rule making requirements, stating:

Commerce explained that it continues to develop its approach with respect to the use of {A-to-T} "as it gains greater experience with addressing potentially hidden or masked dumping that can occur when the Department determines weighted-average dumping margins using the {A-to-A} comparison method." Final I&D Memo at 18 (internal quotations omitted). Commerce additionally explained that the new approach is "a more precise characterization of the purpose and application of {19 U.S.C. § 1677f-1(d)(1)(B)}" and is the product of Commerce's "experience over the last several years, . . . further research, analysis and consideration of the numerous comments and suggestions on what guidelines, thresholds, and tests should be used in determining whether to apply an alternative comparison method based on the {A-to-T} method." Request for Comments, 79 Fed. Reg. at 26,722. Commerce developed its approach over time, while gaining experience and obtaining input. Under the standard described above, Commerce's explanation is sufficient. Therefore, Commerce's adoption of the differential pricing analysis was not arbitrary.<sup>61</sup>

Moreover, as we noted previously, as the Department "gains greater experience with addressing potentially hidden or masked dumping that can occur when the Department determines weighted-average dumping margins using the A-to-A comparison method, the Department expects to continue to develop its approach with respect to the use of an alternative comparison method."<sup>62</sup> Further developments and changes, along with further refinements, are expected in the context of our proceedings based upon an examination of the facts and the parties' comments in each case.

#### B. The Application of the Cohen's *d* Coefficient and the Threshold of 0.8 for the Cohen's *d* Coefficient Is Reasonable

As stated in the *Preliminary Results*, the purpose of the Cohen's *d* test is to evaluate "the extent to which the net prices to a particular purchaser, region, or time period differ significantly from the net prices of all other sales of comparable merchandise."<sup>63</sup> The Cohen's *d* coefficient is a recognized measure which gauges the extent (or "effect size") of the difference between the means of two groups and provides "a simple way of quantifying the difference between two groups and has many advantages over the use of tests of statistical significance alone."<sup>64</sup> "Effect

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<sup>60</sup> See *Saha*, 635 F.3d at 1335, 1341; and *Washington Raspberry*, 859 F. 2d at 902-03. See also *Carlisle Tire*, 634 F. Supp. at 423 (discussing exceptions to the notice and comment requirements of the APA).

<sup>61</sup> See *Apex II*.

<sup>62</sup> See *Differential Pricing Comment Request*.

<sup>63</sup> See Preliminary Decision Memorandum at 5.

<sup>64</sup> See Coe, Robert, "It's the Effect Size, Stupid: What effect size is and why it is important," Paper presented at the Annual Conference of British Educational Research Association (Sept. 2002) (Coe's Paper), included in SeAH DPA Information at Attachment II.

size quantifies the size of the difference between two groups, and may therefore be said to be a true measure of *the significance of the difference*.”<sup>65</sup> Coe’s Paper points out that the precise purpose for which the Department relies on the Cohen’s *d* test to satisfy the statutory language, to measure whether a difference is significant.

Further, in describing “effect size” and the distinction between effect size and statistical significance, the Department stated in *Shrimp Vietnam Final*:<sup>66</sup>

Dr. Paul Ellis, in his publication *The Essential Guide to Effect Sizes*, introduces effect size by asking a question: “So what? Why do this study? What does it mean for the man on the street?” Dr. Ellis continues:

A statistically significant result is one that is unlikely to be the result of chance. But a practically significant result is meaningful in the real world. It is quite possible, and unfortunately quite common, for a result to be statistically significant and trivial. It is also possible for a result to be statistically nonsignificant and important. Yet scholars, from PhD candidates to old professors, rarely distinguish between the statistical and the practical significance of their results.

In order to evaluate whether such a practically significant result is meaningful, Dr. Ellis states that this “implies an estimation of one or more effect sizes.”

An effect size refers to the magnitude of the result as it occurs, or would be found, in the population. Although effects can be observed in the artificial setting of a laboratory or sample, effect sizes exist in the real world.

The Department further stated in *Shrimp Vietnam Final*:<sup>67</sup>

As recognized by Dr. Ellis in the quotation above, the results of an analysis may have statistical and/or practical significance, and that these two distinct measures of significance are independent of one another. In its case brief, VASEP {the Vietnamese respondent} accedes to the distinction and meaning of “effect size” when it states “While application of the *t* test {a measure of statistical significance} in addition to Cohen’s *d* might at least provide the cover of statistical significance, it still would not ensure practical significance.” The Department agrees with this statement -- statistical significance is not relevant to the Department’s examination of an exporter’s U.S. prices when examining whether such prices differ significantly. The Department’s differential pricing analysis, including the Cohen’s *d* test, includes all U.S. sales which are used to calculate a respondent’s weighted-average dumping margin; therefore, statistical significance, as discussed above, is inapposite. The question is whether there is a practical significance in the differences found to exist in the exporter’s U.S. prices among

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<sup>65</sup> *Id.*

<sup>66</sup> See *Shrimp Vietnam Final* IDM at 16-17 (citations omitted), quoting Ellis, Paul D., *The Essential Guide to Effect Sizes*; Cambridge University Press (2010) (Ellis) at 3-5.

<sup>67</sup> *Id.*, quoting VASEP Case Brief at 22.



purchasers, regions or time periods. Such practical significance is quantified by the measure of “effect size.”

Lastly, in *Shrimp Vietnam Final*, the Department again pointed to Dr. Ellis, where he addresses populations of data:

Dr. Ellis also states in his publication that the “best way to measure an effect is to conduct a census of an entire population but this is seldom feasible in practice.”<sup>68</sup>

There two separate concepts and measurements when analyzing whether the means of two sets of data are different. The first measurement, when these two sets of data are samples of a larger population, is whether this difference is statistically significant, as measured by a t-test. This will determine whether this difference rises above the sampling error (or in other words, noise or randomness) in selecting the sample. This will answer the question of whether picking a second (or third or fourth) set of samples will result in a different outcome than the first set of samples. When the t-test results in determining that the difference is statistically significant (*i.e.*, the null hypothesis is false), then these results rise above the sampling error and are statistically significant.

The second measurement is whether there is a practical significance of the difference between the means of the two sets of data, as measured by an “effect size” such as Cohen’s *d* coefficient. As noted above, the measures the real-world relevance of this difference “and may therefore be said to be a true measure of the significance of the difference.”<sup>69</sup> This is the basis for the Department’s determination whether prices in a test group differ significantly from prices in a comparison group.

SeAH claims that the Department’s use of Cohen’s stated thresholds to determine whether Cohen’s measurement of effect size is significant is not appropriate. SeAH states that these thresholds, and consequently Cohen’s *d* coefficient

could only appropriately be applied in specific circumstances – where “samples, each of *n* cases, have been randomly and independently drawn from normal populations,”<sup>{sic}</sup> and where the two samples do not have “substantially unequal variances” or “substantially unequal sample sizes (whether small or large).”<sup>70</sup>

The Department finds SeAH’s claim misplaced. SeAH’s quotation is from section 2.1 of Dr. Cohen’s text, “Introduction and Use” of the “T Test for Means.” As described above, this concerns the statistical significance of the difference in the means for two sampled sets of data, and is not relevant when considering whether this difference has a practical difference. This is not to say that sample size and sample distribution have no impact on the description of “effect

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<sup>68</sup> See *Shrimp Vietnam Final* IDM at 17, quoting *Ellis*.

<sup>69</sup> See *Coe’s Paper*.

<sup>70</sup> See SeAH Case Brief at 16, quoting Cohen, Jacob, *Statistical Power Analysis for the Behavioral Sciences, Second Edition* (1988) (*Cohen*) at 19-20, included in SeAH DPA Information at Attachment I.

size” for sampled data,<sup>71</sup> but that is not the basis for the Department’s analysis of SeAH’s U.S. sale price data.

Further, the subject for Dr. Cohen’s book and the discussion therein is “statistical power analysis.” Power analysis involves the interrelationship between statistical and practical significance to attain a specified confidence or “power” in the results of one’s analysis. Indeed, the beginning of the “Introduction and Use” of the “T Test for Means,” including SeAH’s first quotation is:

The arithmetic mean is by far the most frequently used measure of location by behavioral scientists, and hypotheses about means the most frequently tested. The tables have been designed to render very simple the procedure for *power analysis* in the case where two samples, each of  $n$  cases, have been randomly and independently drawn from normal populations, and the investigator wishes to test the null hypothesis that their respective population means are equal....<sup>72</sup>

Again, the Department is not conducting a “power analysis” which guides researchers in their construction of a project in order to obtain a prescribed “power” (i.e., confidence level, certainty) in the researchers’ results and conclusions. This incorporates a balance between sampling technique, including sample size and potential sampling error, with the stipulated effect size. The Cohen’s  $d$  test and Dr. Cohen’s thresholds in these final results only measure the significance of the observed differences in the mean prices for the test and comparison groups with no need to draw statistical inferences regarding sampled price date or the “power” of the Department’s results and conclusions.

With respect to SeAH’s claim that the 0.8 threshold for the Cohen’s  $d$  coefficient, which establishes whether the price difference between the test and comparison groups is significant (i.e., the “large” effect size), is arbitrary, the Department addressed the same argument by the respondent Deosen in *Xanthan Gum*, stating:

Deosen’s claim that the Cohen’s  $d$  test’s thresholds of “small,” “medium,” and “large” are arbitrary is misplaced. In “Difference Between Two Means,” the author states that “there is no objective answer” to the question of what constitutes a large effect. Although Deosen focuses on this excerpt for the proposition that the “guidelines are somewhat arbitrary,” the author also notes that the guidelines suggested by Cohen as to what constitutes a small effect size, medium effect size, and large effect size “have been widely adopted.” The author further explains that Cohen’s  $d$  is a “commonly used measure{ }” to “consider the difference between means in standardized units.” At best, the article may indicate that although the Cohen’s  $d$  test is not perfect, it has been widely adopted. And certainly, the article does not support a finding, as Deosen contends, that the

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<sup>71</sup> See, for example, *Cohen* at 21-23, section 2.2.1, where Dr. Cohen quantifies the “nonoverlap” of sampled sets of data. The calculation of the overlap must rely on certain assumptions, such as normal distributions and equal variances in order to determine the common or non-common overlap of the two datasets.

<sup>72</sup> See *Cohen* at 19 (emphasis in italics, SeAH’s quotation underlined)

Cohen's *d* test is not a reasonable tool for use as part of an analysis to determine whether a pattern of prices differ significantly.<sup>73</sup>

As the Department explained in the Preliminary Decision Memorandum, the magnitude of the price differences as measured with the Cohen's *d* coefficient

can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.<sup>74</sup>

The Department has relied on the most conservative of these three thresholds to determine whether the difference in prices is significant. Dr. Cohen further provided examples which demonstrate "real world" understanding of the small, medium and large thresholds where a "large" difference "is represented by the mean IQ difference estimated between holders of the Ph.D. degree and typical college freshmen, or between college graduates and persons with only a 50-50 chance of passing an academic high school curriculum. These seem like grossly perceptible and therefore large differences, as does the mean difference in height between 13- and 18-year-old girls..."<sup>75</sup> In other words, Dr. Cohen was stating that it is obvious on its face that there are differences in intelligence between highly educated individuals and struggling high school students, and between the height of younger and older teenage girls. Likewise, the "large" threshold is a reasonable yardstick to determine whether price differ significantly.

Therefore, the Department disagrees with SeAH's arguments that its application of the Cohen's *d* test in this review is improper. As a general matter, the Department's finds, contrary to SeAH's claims,<sup>76</sup> that the U.S. sales data which SeAH has reported to the Department constitutes a population, unless SeAH has failed to report all of its U.S. sales during the POR, as requested. As such, sample size, sample distribution, and the statistical significance of the sample are not relevant to the Department's analysis. Furthermore, the Department finds that Dr. Cohen's thresholds are reasonable and the use of the "large" threshold is reasonable and consistent with the requirements of section 777A(d)(1)(B) of the Act.

Finally, the Department notes that, in the Preliminary Decision Memorandum, it requested that interested parties "present arguments and justifications in relation to the above-described

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<sup>73</sup> See *Xanthan Gum PRC Final IDM* at Comment 3 (quoting Dave Lane et al., "Effect Size," Section 2 "Difference Between Two Means"); see also *Carbon PRC Final IDM* at Comment 4 (same); *Nails PRC Final IDM* at Comment 7 (same).

<sup>74</sup> Nonetheless, these thresholds, as with the approach incorporated in the differential pricing analysis itself, may be modified given factual information and argument on the record of a proceeding. See Preliminary Decision Memorandum at 3-6.

<sup>75</sup> See *Cohen* at 27.

<sup>76</sup> See SeAH Case Brief at 18 ("SeAH's U.S. sales data is not 'drawn from normal populations.'").

differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.”<sup>77</sup> SeAH has submitted no factual evidence or argument that these thresholds should be modified or that any other aspects of the differential pricing analysis should be changed for SeAH in this review. Accordingly, SeAH’s arguments at this late stage of the review are unsupported by the record and appear to only convey SeAH’s disagreement with the results of the Department’s application of a differential pricing analysis in this review, rather than to truly identify some aspect of this approach which is unreasonable or inconsistent with the statute.

### C. The 33- and 66-Percent Thresholds for the Ratio Test Are Reasonable

The Department disagrees with SeAH’s contention that the Department has never explained the 33- and 66-percent thresholds used in the ratio test. Specifically, in *OCTG from India*, we addressed the establishment of the 33- and 66-percent thresholds as follows:

In the differential pricing analysis, the Department reasonably established a 33 percent threshold to establish whether there exists a pattern of prices that differ significantly. The Department finds that when a third or less of a respondent’s U.S. sales are not at prices that differ significantly, then these significantly different prices are not extensive enough to satisfy the first requirement of the statute...

Likewise, the Department finds reasonable, given its growing experience of applying section 777A(d)(1)(B) of the Act and the application of the A-to-T method as an alternative to the A-to-A method, that when two thirds or more of a respondent’s sales are at prices that differ significantly, then the extent of these sales is so pervasive that it would not permit the Department to separate the effect of the sales where prices differ significantly from those where prices do not differ significantly. Accordingly, the Department considered whether, as an appropriate alternative comparison method, the A-to-T method should be applied to all U.S. sales. Finally, when the Department finds that between one third and two thirds of U.S. sales are at prices that differ significantly, then there exists a pattern of prices that differ significantly, and that the effect of this pattern can reasonably be separated from the sales whose prices do not differ significantly. Accordingly, in this situation, the Department finds that it is appropriate to address the concern of masked dumping by considering the application of the A-to-T method as an alternative to the A-to-A method for only those sales which constitute the pattern of prices that differ significantly.<sup>78</sup>

Although the selection of these thresholds is subjective, the Department’s stated reasons behind the 33- and 66-percent thresholds does not render them arbitrary. In its case brief, SeAH throws out several pairs of other possible thresholds but without reasoning or support to argue that these values are more appropriate than those used by the Department in this review.<sup>79</sup> Likewise during

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<sup>77</sup> See Preliminary Decision Memorandum at 6.

<sup>78</sup> See *OCTG India Final IDM* at Comment 1.

<sup>79</sup> See SeAH Case Brief at 15.

the course of this review, SeAH has submitted no factual evidence or argument that these thresholds should be modified. Accordingly, SeAH's arguments at this late stage of the review are unsupported by the record and appear only to convey SeAH disagreement with the results of the Department's application of a differential pricing analysis in this review rather than to truly identify some aspect of this approach which is unreasonable or inconsistent with the statute.

D. The Differential Pricing Analysis Appropriately Explains Whether the Average-to-Average Method Can Account for Significant Price Differences

The Department disagrees, in part, with SeAH that "the mere existence of different results is plainly insufficient, by itself, to satisfy the statutory requirements"<sup>80</sup> regarding whether the A-to-A method can account for significant price differences imbedded in SeAH's pricing behavior in the U.S. market. The Department does agree with SeAH that this difference is due to zeroing, because weighted-average dumping margins calculated using the A-to-A method without zeroing and the A-to-T method without zeroing will always yield the identical results. This is evidenced above with the calculation results for SeAH in the preliminary results, unchanged in the final results.<sup>81</sup>

The difference in the calculated results specifically reveals the extent of the masked, or "targeted," dumping which is being concealed when applying the A-to-A method.<sup>82</sup> The difference in these two results is caused by higher U.S. prices offsetting lower U.S. prices where the dumping, which may be found on lower priced U.S. sales, is hidden or masked by higher U.S. prices,<sup>83</sup> such that the A-to-A method would be unable to account for such differences.<sup>84</sup> Such masking or offsetting of lower prices with higher prices may occur implicitly within the averaging groups or explicitly when aggregating the A-to-A comparison results. Therefore, in order to understand the impact of the unmasked "targeted dumping," the Department finds that the comparison of each of the calculated weighted-average dumping margins using the standard and alternative comparison methodologies exactly quantifies the extent of the unmasked "targeted dumping."

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<sup>80</sup> *Id.* at 17.

<sup>81</sup> See Preliminary Calculation Memorandum at Attachment VI, SeAH Margin Prelim (SAS program, log and result), where the calculation results of the A-to-A method, the A-to-T method and the "mixed" method are summarized. The sum of the "Positive Comparison Results" and the "Negative Comparison Results" for each of the three comparison methods are identical, *i.e.*, with offsets for all non-dumped sales (*i.e.*, negative comparison results), the amount of dumping is identical. As such, the difference between the calculated results of these comparison methods is whether negative comparison results are used as offsets or set to zero (*i.e.*, zeroing).

<sup>82</sup> See *Koyo Seiko*, 20 F.3d at 1156, 1159 (Fed. Cir. 1994) ("The purpose of the antidumping statute is to protect domestic manufacturing against foreign manufacturers who sell at less than fair market value. Averaging U.S. prices defeats this purpose by allowing foreign manufacturers to offset sales made at less-than-fair value with higher priced sales. Commerce refers to this practice as 'masked dumping.' By using individual U.S. prices in calculating dumping margins, Commerce is able to identify a merchant who dumps the product intermittently—sometimes selling below the foreign market value and sometimes selling above it. We cannot say that this is an unfair or unreasonable result." (internal citations omitted)).

<sup>83</sup> See SAA, at 842.

<sup>84</sup> See *Union Steel*, 713 F.3d at 1101, 1108 ("{the A-to-A} comparison methodology masks individual transaction prices below normal value with other above normal value prices within the same averaging group.").

The simple comparison of the two calculated results belies the complexities in calculating and aggregating individual dumping margins (*i.e.*, individual results from comparing export prices, or constructed export prices, with normal values). It is the interaction of these many comparisons of export prices or constructed export prices with normal values, and the aggregation of these comparison results, which determine whether there is a meaningful difference in these two calculated weighted-average dumping margins. When using the A-to-A method, lower-priced U.S. sales (*i.e.*, sales which may be dumped) are offset by higher-priced U.S. sales. Congress was concerned about offsetting and that concern is reflected in the SAA which states that “targeted dumping” is a situation where “an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions.”<sup>85</sup> The comparison of a weighted-average dumping margin based on comparisons of weighted-average U.S. prices that also reflects offsets for non-dumped sales, with a weighted-average dumping margin based on comparisons of individual U.S. prices without such offsets (*i.e.*, with zeroing) precisely examines the impact on the amount of dumping which is hidden or masked by the A-to-A method. Both the weighted-average U.S. price and the individual U.S. prices are compared to a normal value that is independent from the type of U.S. price used for comparison, and the basis for normal value will be constant because the characteristics of the individual U.S. sales<sup>86</sup> remain constant whether weighted-average U.S. prices or individual U.S. prices are used in the analysis.

Consider the simple situation where there is a single, weighted-average U.S. price, and this average is made up of a number of individual U.S. sales which exhibit different prices, and the two comparison methods under consideration are the A-to-A method with offsets (*i.e.*, without zeroing) and the A-to-T method with zeroing.<sup>87</sup> The normal value used to calculate a weighted-average dumping margin for these sales will fall into one of five scenarios with respect to the range of these different, individual U.S. sale prices:

- 1) the normal value is less than all U.S. prices and there is no dumping;
- 2) the normal value is greater than all U.S. prices and all sales are dumped;
- 3) the normal value is nominally greater than the lowest U.S. prices such that there is a minimal amount of dumping and a significant amount of offsets from non-dumped sales;<sup>88</sup>

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<sup>85</sup> See SAA at 842.

<sup>86</sup> These characteristics include may include such items as product, level-of-trade, time period, and whether the product is considered as prime- or second-quality merchandise.

<sup>87</sup> The calculated results using the A-to-A method with offsets (*i.e.*, no zeroing) and the calculated results using the A-to-T method with offsets (*i.e.*, no zeroing) will be identical. Accordingly, this discussion is effectively between the A-to-T method with offsets and the A-to-T method with zeroing. See footnote 71 above which identifies the specific calculation results for SeAH in these final results.

<sup>88</sup> As discussed further below, please note that scenarios 3, 4 and 5 imply that there is a wide enough spread between the lowest and highest U.S. prices so that the differences between the U.S. prices and normal value can result in a significant amount of dumping and/or offsets, both of which are measured relative to the U.S. prices.

- 4) the normal value is nominally less than the highest U.S. prices such that there is a significant amount of dumping and a minimal amount of offsets generated from non-dumped sales;
- 5) the normal value is in the middle of the range of individual U.S. prices such that there is both a significant amount dumping and a significant amount of offsets generated from non-dumped sales.

Under scenarios (1) and (2), either there is no dumping or all U.S. sales are dumped such that there is no difference between the weighted-average dumping margins calculated using offsets or zeroing and there is no meaningful difference in the calculated results and the A-to-A method will be used. Under scenario (3), there is a minimal (*i.e.*, *de minimis*) amount of dumping, such that the application of offsets will result in a zero or *de minimis* amount of dumping (*i.e.*, the A-to-A method with offsets and the A-to-T method with zeroing both result in a weighted-average dumping margin which is either zero or *de minimis*) and which also does not constitute a meaningful difference and the A-to-A method will be used. Under scenario (4), there is a significant (*i.e.*, non-*de minimis*) amount of dumping with only a minimal amount of non-dumped sales, such that the application of the offsets for non-dumped sales does not change the calculated results by more than 25 percent or cause the weighted-average dumping margin to be *de minimis*, and again there is not a meaningful difference in the weighted-average dumping margins calculated using offsets or zeroing and the A-to-A method will be used. Lastly, under scenario (5), there is a significant, non-*de minimis* amount of dumping and a significant amount of offsets generated from non-dumped sales such that there is a meaningful difference in the weighted-average dumping margins calculated using offsets or zeroing. Only under the fifth scenario can the Department consider the use of an alternative comparison method.

Only under scenarios (3), (4) and (5) are the granting or denial of offsets relevant to whether dumping is being masked, as there are both dumped and non-dumped sales. Under scenario (3), there is only a *de minimis* amount of dumping such that the extent of available offsets will only make this *de minimis* amount of dumping even smaller and have no impact on the outcome. Under scenario (4), there exists an above-*de minimis* amount of dumping, and the offsets are not sufficient to meaningfully change the results. Only with scenario (5) is there an above-*de minimis* amount of dumping with a sufficient amount of offsets such that the weighted-average dumping margin will be meaningfully different under the A-to-T method with zeroing as compared to the A-to-A / A-to-T method with offsets. This difference in the calculated results is meaningful in that a non-*de minimis* amount of dumping is now masked or hidden to the extent where the dumping is found to be zero or *de minimis* or to have decreased by 25 percent of the amount of the dumping with the applied offsets.

This example demonstrates that there must be a significant and meaningful difference in U.S. prices in order to resort to an alternative comparison method. These differences in U.S. prices must be large enough, relative to the absolute price level in the U.S. market, where not only is there a non-*de minimis* amount of dumping, but there also is a meaningful amount of offsets to impact the identified amount of dumping under the A-to-A method with offsets. Furthermore, the normal value must fall within an even narrower range of values (*i.e.*, narrower than the price differences exhibited in the U.S. market) such that these limited circumstances are present (*i.e.*,

scenario (5) above). This required fact pattern, as represented in this simple situation, must then be repeated across multiple averaging groups in the calculation of a weighted-average dumping margin in order to result in an overall weighted-average dumping margin which changes to a meaningful extent.

Further, for each A-to-A comparison result which does not result in the set of circumstances in scenario (5), the “meaningfulness” of the difference in the weighted-average dumping margins between the two comparison methods will be diminished. This is because for these A-to-A comparisons which do not exhibit a meaningful difference with the A-to-T comparisons, there will be little or no change in the amount of dumping (*i.e.*, the numerator of the weighted-average dumping margin) but the U.S. sales value of these transactions will nonetheless be included in the total U.S. sales value (*i.e.*, the denominator of the weighted-average dumping margin). The aggregation of these intermediate A-to-A comparison results where there is no “meaningful” difference will thus dilute the significance of other A-to-A comparison results where there is a “meaningful” difference, which the A-to-T method avoids.

Therefore, the Department finds that the meaningful difference test reasonably fills the gap in the statute to consider why, or why not, the A-to-A method (or T-to-T method) cannot account for the significant price differences in SeAH’s pricing behavior in the U.S. market. Congress’s intent of addressing “targeted dumping,” when the requirements of section 777A(d)(1)(B) of the Act are satisfied,<sup>89</sup> would be thwarted if the A-to-T method without zeroing were applied since this will always produce the identical results when the standard A-to-A method without zeroing is applied. Under that scenario, both methods would inherently mask dumping. It is for this reason that the Department finds that the A-to-A method cannot take into account the pattern of prices that differ significantly for SeAH, *i.e.*, the Department identified conditions where “targeted” or masked dumping “may be occurring” in satisfying the pattern requirement, and the Department demonstrated that the A-to-A method could not account for the significant price differences, as exemplified by the pattern of prices that differ significantly. Thus, the Department continues to find that application of the A-to-T method, with zeroing, is an appropriate tool to address masked “targeted dumping,”<sup>90</sup> and has applied an alternative comparison methodology based on the A-to-T method to calculate the weighted-average dumping margin for SeAH in these final results.

#### E. Application of the Average-to-Transaction Method Is Supported by Record Evidence and the Department’s Analysis

The Department disagrees with SeAH that it has failed to satisfy the statutory requirements of section 777A(d)(1)(B) of the Act and failed to consider the application of an alternative comparison method based on the A-to-T method. As set forth in the *Preliminary Results*<sup>91</sup> and as further discussed in these final results, the Department’s differential pricing analysis for SeAH in this administrative review is both lawful, reasonable, and completely within the Department’s discretion in executing the trade statute.

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<sup>89</sup> See SAA at 842-843.

<sup>90</sup> See *Apex I*.

<sup>91</sup> See Preliminary Decision Memorandum at 8-10.



## Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions.

☒

\_\_\_\_\_  
Agree

☐

\_\_\_\_\_  
Disagree

5/15/2017

X *Ronald K. Lorentzen*

Signed by: RONALD LORENTZEN

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Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

## Table of Authorities

### A. Case Record

|                                      |                                                                                                                                                                                                                                                                                |
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| <b>Preliminary Results</b>           |                                                                                                                                                                                                                                                                                |
| <i>Preliminary Results</i>           | <i>Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015</i> , 81 FR 96435 (December 30, 2016) ( <i>Preliminary Results</i> ).                                                           |
| Preliminary Decision Memorandum      | Memorandum, “Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review: Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea; 2014-2015,” dated December 20, 2016 (Preliminary Decision Memorandum).                          |
| Preliminary Calculation Memorandum   | Memorandum, “2014-2015 Administrative Review of Antidumping Duty Order on Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Preliminary Dumping Margin Calculation for SeAH Steel Corporation,” dated December 20, 2016 (Preliminary Calculation Memorandum). |
| <b>Case and Rebuttal Briefs</b>      |                                                                                                                                                                                                                                                                                |
| The petitioners Case Brief           | The petitioners’ Case Brief, “Welded Stainless Steel Pipe from the Republic of Korea: Case Brief,” dated February 1, 2017 (The petitioners Case Brief)                                                                                                                         |
| SeAH Case Brief                      | SeAH’s Case Brief, “Administrative Review of the Antidumping Order on Welded ASTM A-312 Stainless Steel Pipe from Korea – Case Brief of SeAH Steel Corporation,” dated February 1, 2017 (SeAH Case Brief).                                                                     |
| The petitioners Rebuttal Brief       | The petitioners’ Rebuttal Brief, “Welded Stainless Steel Pipe from the Republic of Korea: Rebuttal Brief,” dated February 8, 2017 (The petitioners Rebuttal Brief).                                                                                                            |
| SeAH Rebuttal Brief                  | SeAH’s Rebuttal Brief, “Welded ASTM A-312 Stainless Steel Pipe from Korea – Response to Domestic Producers’ Case Brief,” dated February 8, 2017 (SeAH Rebuttal Brief).                                                                                                         |
| <b>Hearing Request</b>               |                                                                                                                                                                                                                                                                                |
| SeAH Hearing Request                 | SeAH Letter re: Hearing Request, dated January 30, 2017 (SeAH Hearing Request).                                                                                                                                                                                                |
| SeAH Hearing Request Withdrawal      | SeAH Letter re: Withdrawal of Hearing Request, dated March 9, 2017 (SeAH Hearing Request Withdrawal).                                                                                                                                                                          |
| <b>Model-Match Characteristics</b>   |                                                                                                                                                                                                                                                                                |
| The petitioners Model- Match Request | The petitioners Letter re: Modifying Model-Match, dated February 10, 2016 (The petitioners Model-Match Request).                                                                                                                                                               |

|                                                              |                                                                                                                                        |
|--------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|
| SeAH Model-Match Rebuttal                                    | SeAH Letter re: Response to Modifying Model-Match, dated February 22, 2016 (SeAH Model-Match Rebuttal).                                |
| The petitioners Model-Match Questionnaire                    | Department Letter re: Model-Match Questionnaire for the petitioners, dated August 8, 2016 (The petitioners Model-Match Questionnaire). |
| The petitioners Model-Match QR                               | The petitioners' August 15, 2016 Model-Match Questionnaire Response (The petitioners Model-Match QR).                                  |
| <b>Questionnaires, Questionnaire Responses, and Comments</b> |                                                                                                                                        |
| Initial AD Questionnaire                                     | Department Letter re: Antidumping Duty Questionnaire, dated May 16, 2016 (Initial AD Questionnaire).                                   |
| SeAH First SQ                                                | Department Letter re: Supplemental Questionnaire for SeAH, dated October 6, 2016 (SeAH First SQ)                                       |
| SeAH Second SQ                                               | Department Letter re: Quarterly Cost Supplemental Questionnaire for SeAH, dated November 3, 2016 (SeAH Second SQ)                      |
| SeAH Third SQ                                                | Department Letter re: Supplemental Questionnaire for SeAH, dated November 8, 2016 (SeAH Third SQ)                                      |
| SeAH Forth SQ                                                | Department Letter re: Supplemental Questionnaire for SeAH, dated December 2, 2016 (SeAH Forth SQ)                                      |
| The petitioners QR Comments                                  | The petitioners Letter re, SeAH Questionnaire Responses, dated November 1, 2016 (The petitioners QR Comment).                          |
| SeAH AQR                                                     | SeAH's June 13, 2016 Section A Questionnaire Response (SeAH AQR).                                                                      |
| SeAH BQR                                                     | SeAH's September 7, 2016 Sections B Questionnaire Response (SeAH BQR).                                                                 |
| SeAH CQR                                                     | SeAH's September 7, 2016 Sections B Questionnaire Response (SeAH CQR).                                                                 |
| SeAH DQR                                                     | SeAH's September 7, 2016 Sections B Questionnaire Response (SeAH DQR).                                                                 |
| SeAH First SQR                                               | SeAH's October 13, 2016 Supplemental Questionnaire Response (SeAH First SQR).                                                          |
| SeAH Second SQR                                              | SeAH's November 14, 2016 Supplemental Questionnaire Response (SeAH Second SQR).                                                        |
| SeAH Third SQR                                               | SeAH's November 21, 2016 Supplemental Questionnaire Response (SeAH Third SQR).                                                         |
| SeAH Fourth SQR                                              | SeAH's December 12, 2016 Supplemental Questionnaire Response (SeAH Fourth SQR).                                                        |

| <b>Differential Pricing Analysis</b> |                                                                                                                                                                 |
|--------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SeAH DPA Information                 | SeAH's November 14, 2016 Differential Pricing Analysis submission (SeAH DPA Information).                                                                       |
| Accepting DPA Information            | Memorandum, "Acceptance of SeAH's Differential Pricing Analysis Information submitted on November 14, 2016," dated January 6, 2017 (Accepting DPA Information). |
| DPA References                       | Memorandum, "Reference Sources for Differential Pricing Analysis," dated January 6, 2017 (DPA References)                                                       |

## **B. Statutes, Regulations, and Policies**

|                                             |                                                                                                                                                                                                                                                                                                                                                                                                               |
|---------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The Act                                     | Tariff Act of 1930, as amended                                                                                                                                                                                                                                                                                                                                                                                |
| TPEA                                        | <i>Trade Preferences Extension Act of 2015</i> , Public Law No. 114-27, 129 Stat. 362 (2015)                                                                                                                                                                                                                                                                                                                  |
| <i>Applicability Notice</i>                 | <i>Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015</i> , 80 FR 46793 (August 6, 2015).                                                                                                                                                                                                                                 |
| SAA                                         | <i>Statement of Administrative Action accompanying the Uruguay Round Agreements Act</i> , H.R. Rep. 103-316, Vol. 1, 103d Cong. at 870 (1994).                                                                                                                                                                                                                                                                |
| <i>Affiliated Sales</i>                     | <i>Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade</i> , 67 FR 69186 (November 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 and 102 percent, inclusive, of prices to unaffiliated customers in order for sales to that affiliate to be considered in the ordinary course of trade and used in the normal value calculation). |
| <i>Assessment Policy Notice</i>             | <i>Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties</i> , 68 FR 23954 (May 6, 2003)                                                                                                                                                                                                                                                                                          |
| <i>AD and CVD Duties</i>                    | <i>Antidumping Duties, Countervailing Duties</i> , 62 FR 27296, 27340 (May 19, 1997)                                                                                                                                                                                                                                                                                                                          |
| <i>Differential Pricing Comment Request</i> | <i>Differential Pricing Analysis; Request for Comments</i> , 79 FR 26720, 26722 (May 9, 2014) ( <i>Differential Pricing Comment Request</i> )                                                                                                                                                                                                                                                                 |

## **C. Litigation**

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| <i>Pesquera</i> , 266 F.3d at 1372, 1384           | <i>Pesquera Mares Australes Ltda. v. United States</i> , 266 F.3d at 1372, 1384 (Fed. Cir. 2001) ( <i>Pesquera</i> ).                          |
| <i>Fagersta</i> , 577 F. Supp. 2d at 1270, 1276-77 | <i>Fagersta Stainless AB, v. United States</i> , 577 F. Supp. 2d at 1270, 1276-77 (CIT 2008).                                                  |
| <i>Apex I</i>                                      | <i>Apex Frozen Foods Private Ltd. v. United States</i> , 37 F. Supp. 3d 1286, 1302 (Ct. Int'l Trade 2014) ( <i>Apex I</i> )                    |
| <i>Apex II</i>                                     | <i>Apex Frozen Foods Private Ltd. v. United States</i> , 144 F. Supp. 3d 1308, 1322 (Ct. Int'l Trade 2016), appeal pending ( <i>Apex II</i> ). |

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|--------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Koyo Seiko</i> , 20 F.3d at 1156, 1159        | <i>Koyo Seiko Co., Ltd. v. United States</i> , 20 F. 3d at 1156, 1159 (Fed. Cir. 1994) ( <i>Koyo Siko</i> )                                                                             |
| <i>Chevron</i> , 467 U.S. at 837, 842-43         | <i>Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.</i> , 467 U.S. at 837, 842-43 (1984) ( <i>Chevron</i> )                                                                      |
| <i>Corus</i> , 395 F.3d. at 1343, 1347-49        | <i>Corus Staal BV v. U.S. Dep’t of Commerce</i> , 395 F 3d. at 1343, 1347-49 (Fed. Cir. 2005) ( <i>Corus</i> )                                                                          |
| <i>Corus</i> , 502 F.3d at 1370, 1375            | <i>Corus Staal BV v. United States</i> , 502 F.3d at 1370, 1375 (Fed. Cir. 2007) ( <i>Corus</i> )                                                                                       |
| <i>Saha</i> , 635 F.3d at 1335, 1341             | <i>Saha Thai Steel Pipe Company v. United States</i> , 635 F.3d at 1335, 1341 (Fed. Cir. 2011) ( <i>Saha</i> )                                                                          |
| <i>Washington Raspberry</i> , 859 F.2d at 902-03 | <i>Washington Red Raspberry Commission. v. United States</i> , 859 F. 2d at 902-03 ( <i>Washington Raspberry</i> )                                                                      |
| <i>Carlisle Tire</i> , 634 F. Supp. at 423       | <i>Carlisle Tire v. United States</i> , 634 F. Supp. at 423 ( <i>Carlisle Tire</i> )                                                                                                    |
| <i>Union Steel</i> , 713 F.3d at 1101, 1108      | <i>Union Steel v. United States</i> , 713 F.3d 1101, 1108 (Fed. Cir. 2013) ( <i>Union Steel</i> )                                                                                       |
| <i>US – Washing Machines (Korea)</i>             | <i>United States – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea</i> , WT/DS464/AB/R (September 26, 2016) ( <i>U.S. -Washing Machines (Korea)</i> ). |

#### **D. Administrative Notices and Determinations**

|                                         |                                                                                                                                                                                                                                                                                                                                                                                                             |
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| <i>Investigation</i>                    | <i>Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination: Certain Welded Stainless Steel Pipes From the Republic of Korea</i> , 57 FR 27731 (June 22, 1992); <i>Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe From the Republic of Korea</i> , 57 FR 53693 (November 12, 1992). ( <i>Investigation</i> ) |
| <i>Order</i>                            | <i>Antidumping Duty Order and Clarification of Final Determination: Certain Welded Stainless Steel Pipes from Korea</i> , 57 FR 62301 (December 30, 1992). The final determination was subsequently amended. <i>See Notice of Amended Final Determination and Antidumping Duty Order: Certain Welded Stainless Steel Pipe from the Republic of Korea</i> , 60 FR 10064 (February 23, 1995).                 |
| <i>Stainless Pipe Korea 13-14 Final</i> | <i>Welded ASTM A–312 Stainless Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013–2014</i> , 81 FR 46648 (July 18, 2016) ( <i>Stainless Pipe Korea 13-14 Final</i> ), and accompanying Issues and Decision Memorandum (IDM).                                                                                                                              |
| <i>Stainless Pipe Malaysia</i>          | <i>Welded Stainless Pressure Pipe From Malaysia: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination</i> , 79 FR 808 (January 7, 2014); <i>Welded Stainless Pressure Pipe From Malaysia: Final Determination of Sales at Less Than</i>                                            |

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|                                                               | <i>Fair Value and Final Affirmative Determination of Critical Circumstances, in Part; 2012–2013, 79 FR 31090 (May 30, 2014), and accompanying Issues and Decision Memorandum. (Stainless Pipe Malaysia)</i>                                                                                                                                                                                                                                                                                                                                         |
| <i>Stainless Pipe Thailand</i>                                | <i>Welded Stainless Pressure Pipe From Thailand: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 79 FR 812 (January 7, 2014); Welded Stainless Pressure Pipe From Thailand: Amended Preliminary Determination of Sales at Less Than Fair Value, 79 FR 10772 (February 26, 2014); Welded Stainless Pressure Pipe From Thailand: Final Determination of Sales at Less Than Fair Value, 79 FR 31093 (May 30, 2014), and accompanying Issues and Decision Memorandum. (Stainless Pipe Thailand)</i> |
| <i>Stainless Pipe India</i>                                   | <i>Welded Stainless Pressure Pipe From India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 81 FR 28824 (May 10, 2016), and accompanying Decision Memorandum; Welded Stainless Pressure Pipe From India: Final Determination of Sales at Less Than Fair Value, 81 FR 66921 (September 29, 2016), and accompanying Issues and Decision Memorandum. (Stainless Pipe India).</i>                                                                                                     |
| <i>Sawblades PRC Prelim</i><br><br><i>Sawblades PRC Final</i> | <i>Diamond Sawblades and Parts Thereof from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012– 2013, 79 FR 71980 (December 4, 2014) (Sawblades PRC Prelim), and accompanying Decision Memorandum (PDM) at 4, unchanged in Diamond Sawblades and Parts Thereof from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review; 2012– 2013, 80 FR 32344 (June 8, 2015) (Sawblades PRC Final).</i>                                                                     |
| <i>Pigment India Final</i>                                    | <i>Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review, 75 FR 38076 (July 1, 2010) (Pigment India Final), and accompanying Issues and Decision Memorandum (IDM).</i>                                                                                                                                                                                                                                                                                                                                    |
| <i>CORE Korea Final</i>                                       | <i>Notice of Final Results of the Twelfth Administrative Review of the Antidumping Duty Order on Certain Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea (CORE Korea Final), 72 FR 13086 (March 20, 2007), and accompanying Issues and Decision Memorandum (IDM).</i>                                                                                                                                                                                                                                                     |
| <i>CORE Canada Final</i>                                      | <i>Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Results of Antidumping Duty Administrative Review (CORE Canada Final), 70 FR 13458 (March 21, 2005), and accompanying Issues and Decision Memorandum (IDM).</i>                                                                                                                                                                                                                                                                                                        |
| <i>Stainless Wire Rod Sweden</i>                              | <i>Stainless Steel Wire Rod from Sweden: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 59082 (October 6, 2006); Stainless Steel Wire Rod from Sweden: Final Results of Antidumping Duty Administrative Review, 72 FR 17834 (April 10, 2007). (Stainless Wire Rod Sweden)</i>                                                                                                                                                                                                                                                 |

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| <i>Non-Alloy Pipe Tube Mexico Final</i> | <i>Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review (Non-Alloy Pipe Tube Mexico Final)</i> , 62 FR 37014 (July 10, 1997).                                                                                            |
| <i>Steel Beams Spain Final</i>          | <i>Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Spain (Steel Beams Spain Final)</i> , 67 FR 35482 (May 20, 2002), and accompanying Issues and Decision Memorandum (IDM).                                                                |
| <i>Cement France</i>                    | <i>Calcium Aluminate Cement, Cement Clinker, and Flux from France</i> , 59 FR 14136, 14146-47 (March 25, 1994).                                                                                                                                                                        |
| <i>Carbon PRC Final</i>                 | <i>First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review</i> , 74 FR 57995 (November 10, 2009), and accompanying Issues and Decision Memorandum (IDM).                                  |
| <i>Line Pipe Korea Final</i>            | <i>Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value (Line Pipe Korea Final)</i> , 80 FR 61366 (October 13, 2015), and accompanying Issues and Decision Memorandum (IDM).                                                              |
| <i>Non-Alloy Pipe Korea Final</i>       | <i>Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013</i> , 80 FR 32937 (June 10, 2015) ( <i>Non-Alloy Pipe Korea Final</i> ), and the accompanying Issues and Decision Memorandum (IDM).             |
| <i>Shrimp Vietnam Final</i>             | <i>Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2014-2015</i> , 81 FR 62717 (September 12, 2016) ( <i>Shrimp Vietnam Final</i> ) and the accompanying Issues and Decision Memorandum (IDM).        |
| <i>Xanthan Gum PRC Final</i>            | <i>Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value</i> , 78 FR 33351 (June 4, 2013) ( <i>Xanthan Gum PRC Final</i> ), and accompanying Issues and Decision Memorandum (IDM).                                                     |
| <i>Carbon PRC Final</i>                 | <i>Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012</i> , 78 FR 70533 (November 26, 2013) ( <i>Carbon PRC Final</i> ), and accompanying Issues and Decision Memorandum (IDM) at Comment 4.             |
| <i>Nails PRC Final</i>                  | <i>Certain Steel Nails From the People's Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review</i> , 79 FR 19316 (April 8, 2014) ( <i>Nails PRC Final</i> ), and accompanying Issues and Decision Memorandum (IDM).                                    |
| <i>OCTG India Final</i>                 | <i>Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods From India</i> , 79 FR 41981 (July 18, 2014) ( <i>OCTG India Final</i> ), and accompanying Issues and Decision Memorandum (IDM). |