



U.S. Customs and  
Border Protection

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**PUBLIC VERSION**

EAPA Case Number: 7401

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**Re: Notice of Final Determination as to Evasion**

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To the Counsel and Representatives of the above-referenced Entities:

Pursuant to an examination of the record in Enforce and Protect Act (“EAPA”) Investigation Number 7401, U.S. Customs and Border Protection (“CBP”) has determined that there is substantial evidence that Blue Pipe Steel Center Company Limited (“Blue Pipe”) entered

merchandise covered by antidumping duty (AD) order A-549-502<sup>1</sup> into the customs territory of the United States through evasion. Substantial evidence demonstrates that Blue Pipe imported into the United States certain circular welded carbon steel pipes and tubes (“standard pipe”) from Thailand by misrepresenting dual stenciled pipe, meeting both standard pipe American Society for Testing and Materials (ASTM) A53 specifications and line pipe American Petroleum Institute (API) 5L specifications, as Type 01 rather than Type 03. Blue Pipe did not declare that the merchandise was subject to an AD order upon entry and, as a result, no cash deposits were collected on the merchandise.

## **Background**

### *Allegation*

On October 4, 2019, domestic producers of circular welded carbon steel pipes and tubes,<sup>2</sup> Independence Tube Corporation, Southland Tube, Incorporated, and Wheatland Tube Company (collectively, “the allegers”), filed an EAPA allegation through counsel. The allegation claimed that importer of record, Blue Pipe Steel Center Company Limited (“Blue Pipe”), was evading duties on the antidumping (AD) order A-549-502 on Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand (“AD Order”).<sup>3</sup> The allegers asserted that reasonably available information suggested that Blue Pipe evaded the Thailand AD Order by importing standard pipe from Thailand (which is subject to the AD Order), and misclassified it as “line pipe” which is not subject to the AD Order.<sup>4</sup> On October 18, 2019, CBP received a properly filed EAPA allegation against Blue Pipe.<sup>5</sup>

The allegers claimed that Blue Pipe acted as the importer of standard pipe produced by Saha Thai Steel Pipe (Public) Company Ltd. (“Saha Thai”) from Thailand.<sup>6</sup> The allegers also stated that Blue Pipe was affiliated with Saha Thai. Prior to Blue Pipe, Saha Thai acted as its own importer of record and previously imported standard pipe, which is covered by the AD Order and Saha Thai paid applicable AD duties.<sup>7</sup> Once Blue Pipe started acting as an importer and shipper of Saha Thai’s product,<sup>8</sup> the trade data provided in the allegation indicates that the imported product was now dual stenciled indicating it met the requirements of both ASTM A53, “standard pipe,” and API 5L (a type of “line pipe”).

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<sup>1</sup> See Circular Welded Carbon Steel Pipes and Tubes From Thailand, 51 Fed. Reg. 8341 (Dep’t Commerce Mar. 11, 1986) (“AD Order”).

<sup>2</sup> As U.S. producers, the allegers meet the definition of an interested party that may file an EAPA allegation, pursuant to 19 C.F.R. 165.1(2).

<sup>3</sup> See Circular Welded Carbon Steel Pipes and Tubes From Thailand, 51 Fed. Reg. 8341 (Dep’t Commerce Mar. 11, 1986) (“AD Order”).

<sup>4</sup> See Letter from the allegers, “Circular Welded Carbon Steel Pipes and Tubes From Thailand: Request for an Investigation under the Enforce and Protect Act” (October 4, 2019) (allegation).

<sup>5</sup> See October 18, 2019 email entitled, “Receipt of EAPA 7401: Misclassifying Standard Pipe as Line Pipe.”

<sup>6</sup> See allegation at 1.

<sup>7</sup> *Id.* at 3.

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

The allegation noted that Saha Thai had been subject to several U.S. Department of Commerce (“Commerce”) AD proceedings (*i.e.*, administrative reviews) pertaining to the covered merchandise.<sup>9</sup> Per the trade data submitted in the allegation, Blue Pipe began importing from Saha Thai after a particular market situation allegation<sup>10</sup> in the 2016-2017 administrative review of standard pipe from Thailand at Commerce.<sup>11</sup> The allegers maintained that the timing of Blue Pipes’ imports suggested an avoidance to pay antidumping duties.<sup>12</sup>

The allegation further claimed that Saha Thai was an established producer of standard pipe.<sup>13</sup> There was no reference on its website for line pipe production nor did its product descriptions describe line pipe applications.<sup>14</sup> None of Saha Thai’s pipe product descriptions mentioned oil and gas distribution requirements, which is a key component of line pipe usage.<sup>15</sup> Additionally, evidence on the record of Commerce’s administrative review shows that Saha Thai does not have the capability of producing line pipe.<sup>16</sup>

Furthermore, the allegation claimed that the line pipe shipments increased in April 2018 apparently in anticipation of Saha Thai’s antidumping rate increase in October 2018.<sup>17</sup> Trade data showed that Blue Pipe shipments of line pipe commenced in November 2018. The increase in imports of Blue Pipe from Thailand occurred after Saha Thai’s AD rates increased in April 2018. Furthermore, Saha Thai’s standard pipe shipments from Thailand dropped also after the rise in the Saha Thai’s antidumping rate.<sup>18</sup>

### *Initiation of Investigation*

Consequently, on November 08, 2019, CBP initiated an EAPA investigation on the importer pursuant to Title IV, section 421 of the Trade Facilitation and Trade Enforcement Act of 2015.<sup>19</sup> After the initiation of the investigation, on December 12, 2019, CBP issued a Customs Form 28 (“CF-28”) to request information for entry [ ]9505.<sup>20</sup> Blue Pipe did not respond to CBP’s

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<sup>9</sup> *Id.* at 7-11 and Exhibits at 3, 5 and 6. The subject merchandise is pipe between 0.375 and 16 inches in diameter which is categories as standard pipe or structural tubing otherwise known as “pipes and tubes.”

<sup>10</sup> *Id.* at 8. Commerce can apply the concept of a “particular market situation” and decide not to use the foreign producers’ home market production costs in calculating the producers’ AD margins.

<sup>11</sup> *Id.* at 7.

<sup>12</sup> *Id.* at 11.

<sup>13</sup> *Id.* at Exhibit 8.

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

<sup>15</sup> *Id.* at 12-13 and at Exhibit 9, 10 and 11.

<sup>16</sup> *Id.* at 14-16 and at Exhibit 12 and 13.

<sup>17</sup> See EAPA allegation at 7, 9 and Exhibit 3. The AD duty rate rose from [ ] percent to [ ] percent between October 15, 2018 and November 19, 2019.

<sup>18</sup> See *id.*

<sup>19</sup> See also 19 USC 1517(b)(1); see also 19 CFR 165.15; see also CBP Memorandum, “Initiation of Investigation for EAPA Case Number 7401 – Blue Pipe,” dated November 08, 2019.

<sup>20</sup> See CF28 Request to Blue Pipe (December 12, 2019) (“CF28”).

requests for production of sales records and documentation for proof of API 5L certification.<sup>21</sup> On January 6, 2020, CBP conducted cargo examinations for entries [ ]2107 and [ ]7277.<sup>22</sup> While awaiting the results of laboratory testing of some sample pipes, CBP issued its Notice of Initiation.<sup>23</sup> In the NOI, CBP noted that the allegation details, the lack of CF-28 responses, and the fact that Blue Pipe entered products classified as line pipe manufactured by [ ] obtaining API 5L certification reasonably suggested that the merchandise imported by Blue Pipe into the United States was misclassified, and thus should have been subject to AD duties. CBP noted that if it determined that substantial evidence of evasion exists, CBP would take appropriate measures to protect the revenue.<sup>24</sup>

### *Laboratory Exams*

CBP chose six pipes identified as manufactured by Saha Thai for laboratory testing.<sup>25</sup> The testing conducted did not indicate any inconsistencies with the requirements of ASTM A53 Grade A and API 5L PSL 1 Pipe Grade A.<sup>26</sup> Pipes marked or stenciled with the ASTM monogram are standard pipes primarily used for conveyance of air, gas, water, *etc.* at low pressures for mechanical applications such irrigation systems. API marking requirements apply to line pipes used for transportation of gas, oil or water in a pipeline distribution system. Blue Pipe's samples<sup>27</sup> were in fact dual stenciled as per the requirements of both standard pipe and line pipe as declared on the entry documents.

### *Request for Information*

On February 26 and 27, 2020, respectively, CBP issued RFI questionnaires to Blue Pipe and Saha Thai and sent additional supplemental questions on May 29, 2020.<sup>28</sup> Blue Pipe submitted its responses on April 24, 2020 and June 3, 2020. Saha Thai's responses were received on May 4, 2020 and June 3, 2020.<sup>29</sup> Blue Pipe and Saha Thai maintained that Blue Pipe exported line pipe manufactured by Saha Thai into the United States.<sup>30</sup> Both entities denied claims that they were affiliated.<sup>31</sup> Saha Thai reported having no direct contact with Blue Pipe's US Customers.<sup>32</sup> Blue Pipe contended that Saha Thai was used to export line pipe because of their long-standing relationship, coupled with Saha Thai's ability to produce the ASTM A53 and API 5L products

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<sup>21</sup> *Id.*

<sup>22</sup> See Cargo Exam Documents, "CEE-BM- Entry Number [ ]7277 ((A), (B), (C)) Blue Pipe" and "CEE-BM- Entry Number [ ]2107 ((A), (B), (C)) Blue Pipe (Cargo Exams)."

<sup>23</sup> See Memorandum "Notice of Initiation of Investigation for EAPA Case Number 7401 – Blue Pipe" ("NOI").

<sup>24</sup> *Id.*

<sup>25</sup> See Laboratory Reports, "CEE-BM- Entry Number [ ]7277 ([ ], [ ], [ ]) Blue Pipe" and "CEE-BM- Entry Number [ ]2107 ([ ], [ ], [ ]) Blue Pipe (Lab Reports)."

<sup>26</sup> See Lab reports.

<sup>27</sup> *Id.*

<sup>28</sup> See Blue Pipe RFI; Saha Thai RFI.

<sup>29</sup> See Blue Pipe RFI Response Supplement Saha Thai Response and Supplement.

<sup>30</sup> See Saha Thai RFI Response at 2-4; Blue Pipe RFI Response at 19.

<sup>31</sup> See Blue Pipe RFI Response at 13.

<sup>32</sup> See Saha Thai RFI Response at 6.

per Blue Pipe’s customer specification.<sup>33</sup> Moreover, in its RFI response, Saha Thai indicated it had been a manufacturer of API 5L pipes since 2011.

In calendar year 2018, Saha Thai’s exports of Saha Thai produced pipe subject to AD duties accounted for [ ] percent of their total import value of [ ].<sup>34</sup> The vast majority of the imported merchandise, over [ ] percent, was intended for [ ] U.S. customers, [ ].<sup>35</sup> At the point that Blue Pipe emerged as the importer of record for merchandise manufactured by Saha Thai, shipments subject to antidumping duties or Type 03 entries significantly decreased. Consumption Type 01 entries increased from [ ] percent to [ ] percent of the total import value of [ ] while AD entries decreased from [ ] percent to less than one percent.<sup>36</sup> Instead of Saha Thai, Blue Pipe served as an importer of record for pipe manufactured by Saha Thai and over [ ] percent of the imported merchandise was intended for the same [ ] U.S. customers, [ ].<sup>37</sup>

In the first two quarters of 2020, Saha Thai resumed direct importation for its manufactured merchandise. Consequently entries requiring AD cash deposits increased from less than [ ] percent to [ ] percent their total imports value of [ ].<sup>38</sup> Additionally, Type 01 entries decreased from [ ] percent to [ ] percent of the total import value.<sup>39</sup> Blue Pipe’s Type 03 imports from manufacturer Saha Thai declined in the beginning of 2020.<sup>40</sup>

Based on the information provided in Blue Pipe’s RFI response<sup>41</sup> and Saha Thai’s supplemental response,<sup>42</sup> regarding entries declared as “01,” the purchase orders from [ ] issued to Blue Pipe described products as ASTM A53 / API 5L.<sup>43</sup> The purchase orders from Blue Pipe issued to Saha Thai described products as ASTM A53 / API 5L.<sup>44</sup> Invoices from Blue Pipe issued to U.S. customers, [ ] described products as ASTM A53 / API 5L.<sup>45</sup> Invoices<sup>46</sup> and mill certificates<sup>47</sup> from Saha Thai issued to Blue Pipe described products as ASTM A53 / API 5L. Saha Thai had been importing its own ASTM A53, a type of “standard pipe”, which is covered by the AD Order to the same US customers as Blue Pipe. With the change to Blue Pipe as importer of Saha Thai’s merchandise, Blue Pipe began declaring

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<sup>33</sup> See Blue Pipe Response at 5.

<sup>34</sup> See Saha Thai RFI Response at Exhibit 18.

<sup>35</sup> See Blue Pipe RFI Response at Attachments 2, 3 and 5; see also Saha Thai RFI Response at 19.

<sup>36</sup> See Blue Pipe RFI Response at Attachment 5.

<sup>37</sup> See Blue Pipe RFI Response at Exhibit 5.

<sup>38</sup> See various Blue Pipe RFI Responses and Saha Thai Responses.

<sup>39</sup> See *id.*

<sup>40</sup> See various Blue Pipe RFI Responses and Saha Thai Responses.

<sup>41</sup> See Blue Pipe RFI Response.

<sup>42</sup> See Saha Thai Supplemental Response.

<sup>43</sup> See Blue Pipe RFI Response and Saha Thai Supplemental Response.

<sup>44</sup> See *id.*

<sup>45</sup> *Id.*

<sup>46</sup> See Saha Thai RFI Response.

<sup>47</sup> *Id.*

the merchandise as dual stenciled meeting the requirements of both ASTM A53, a type of “standard pipe” and API 5L, a type of “line pipe.” Blue Pipe apparently believed the dual stenciled product was outside the scope of the AD Order.

Additionally entry documents received during Blue Pipe’s imports cargo exam, both entries [ ]2107 and [ ]7277<sup>48</sup> were declared as Type 01 under HTSUS 7306.19.1010 / free. Laboratory analysis of samples retrieved from the shipment indicated that their properties were consistent with the requirements for the ASTM A53 Grade A and API 5L Grade A pipes.<sup>49</sup>

### *Commerce’s Scope Ruling*

According to the June 30, 2020, final scope ruling issued by Commerce regarding the order on circular welded pipes and tubes from Thailand,<sup>50</sup> dual-stenciled pipe<sup>51</sup> compliant with both standard pipe and line pipe specifications, such as ASTM A53 and API 5L, respectively, is within the scope of the order.<sup>52</sup> Commerce’s ruling distinguishes between “line pipe” and the dual specification product. Line pipe was deemed not subject to the AD Order. On July 11, 2020, the allegers submitted written arguments.<sup>53</sup> The Importer submitted a response to the written arguments which was inclusive of comments on Commerce’s final ruling on July 26, 2020.<sup>54</sup>

### **Final Determination as to Evasion**

Under 19 U.S.C. 1517(c)(1)(A), to reach a final determination as to evasion, CBP must “make a determination, based on substantial evidence, with respect to whether such covered merchandise entered into the customs territory of the United States through evasion.” Evasion is defined as “the entry of covered merchandise into the customs territory of the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the merchandise. As discussed below, the record of this investigation indicates that covered merchandise entered the United States through evasion, and that there is a basis for concluding that substantial evidence indicates Blue Pipe’s imports, were merchandise entered through evasion, resulting in the avoidance of applicable AD/CVD deposits or other security.

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<sup>48</sup> See Cargo Exam.

<sup>49</sup> See Lab Reports.

<sup>50</sup> See 06-30-2020- DOC Final Scope Ruling Re\_Line Pipe (7401) (“Scope Ruling”).

<sup>51</sup> Standard pipe and line pipe often require physical and mechanical characteristics that overlap. Specifically, a pipe may be dual-stenciled, *i.e.*, certified that the product complies with two different industry specifications, such as ASTM A53 and API 5L, which are applicable for standard pipe and line pipe, respectively.

<sup>52</sup> See Scope Ruling.

<sup>53</sup> See Letter from the allegers, “07-26-2020- Blue Pipe Response to Written Arguments and Comments to Scope Ruling” (7401) (“Written Arguments”).

<sup>54</sup> See Letter from the Importer, “07-26-2020- Blue Pipe Response to Written Arguments and Comments to Scope Ruling (7401),” (“Written Argument Response”).

## Analysis

Substantial evidence on the record demonstrates that Blue Pipe entered covered merchandise by means of false statements or omissions. Because EAPA does not have a knowledge requirement for evasion as defined under 19 CFR 165.1, there is no requirement that the importer know of the material or false statement, and thus, CBP does not need to determine any level of culpability only that evasion occurred with entry. Blue Pipe made false statements to CBP when it claimed its entries as Type 01 entries. Commerce's scope ruling confirms that dual stenciled line pipe from Thailand falls under the scope of the order. Pipes may be dual-stenciled as both "standard pipe" and "line pipe" and conform to industry standards for both standard pipe and line pipe, such as ASTM A53 and API 5L. Blue Pipe evaded the AD Order by not entering dual stenciled pipe from Thailand as Type 03 entries and posting the appropriate cash deposits.

CBP discovered during the course of its EAPA investigation that when acting as its own importer of record for imports of ASTM A53 quality standard pipe into the United States, Saha Thai paid the applicable AD cash deposits. However, when the AD rates increased for standard pipe, Blue Pipe became the importer of record for Saha Thai's produced pipe classified as both ASTM A53 standard pipe and API 5L line pipe. Furthermore, Commerce determined that pipe with dual stenciling (ASTM A53 and API 5L) are within the scope of the AD Order, and consequently, merchandise produced by Saha Thai for Blue Pipe to import into the United States required AD cash deposits. Blue Pipe did not declare that the merchandise was subject to an AD Order upon entry, and as a result, the requisite cash deposits were not collected on the merchandise.

In calendar year 2019, Commerce's administrative review of Saha Thai raised the antidumping cash deposit rates for Saha Thai's entries of subject merchandise to the United States. Saha Thai's intention to avoid the increased cash deposit rate, shifted the importer of record from Saha Thai to Blue Pipe and indicated an alteration of the channel of trade. Blue Pipe started to sell merchandise that still met the ASTM A53 specification for standard pipe to the same U.S. customers previously served by the importer Saha Thai, but under dual-stenciling.

Commerce's June 30, 2020, scope ruling confirmed that the dual stenciled pipe that Blue Pipe importing into the United States was subject to the AD Order. In 2020, Saha Thai resumed serving as importer of record for its merchandise. While entries by Saha Thai were Type 03, Blue Pipe's entries of the same merchandise Type 01. The shift to and from Blue Pipe as importer coincided with the classification of the merchandise imported by Blue Pipe as meeting both ASTM A53 and API 5L specifications. Blue Pipe indicated it believed merchandise meeting both specifications were not covered by the scope of the AD Order, as noted for example in its written argument, but Blue Pipe was mistaken, and as such, Blue Pipe should have filed its entries as Type 03.

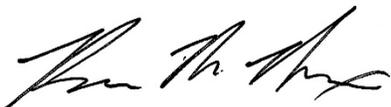
Consequently, we find that Blue Pipe failed to identify the merchandise as Type 03 merchandise, and that its classification of the merchandise as Type 01 rather than Type 03 was not based on a clerical or inadvertent error. Therefore, we find that Blue Pipe evaded the AD Order.

Because substantial evidence on the record demonstrates that Blue Pipe entered covered merchandise into the customs territory of the United States through evasion, Blue Pipe consequently avoided the payment of the applicable AD/CVD case deposits or security. On the basis of the aforementioned analysis, CBP determines that substantial evidence exists demonstrating that Blue Pipe imported into the United States certain circular welded carbon steel pipes and tubes from Thailand by misrepresenting pipe identified as meeting both ASTM A53 and API 5L specifications as Type 01 rather than Type 03.

### **Actions Taken Pursuant to the Affirmative Determination of Evasion**

In light of CBP's determination that Blue Pipe entered merchandise into the customs territory of the United States through evasion, and pursuant to 19 USC 1517(d) and 19 CFR 165.28, CBP will suspend the liquidation for all entries imported by Blue Pipe that are subject to EAPA investigation 7401 for the period of investigation, October 18, 2018, through September 11, 2020, and continue suspension until instructed to liquidate these entries. For future entries of certain circular welded carbon steel pipes and tubes from Thailand, CBP will rate adjust and change to Entry Type 03 all extended and unliquidated entries of subject merchandise under this investigation, using "all others" AD rates for Thailand if DOC has not determined a separate rate that would apply to that entry. Finally, CBP will require single transaction bonds, as appropriate, and evaluate the sufficiency of the importer's continuous bonds. None of the above actions preclude CBP or other agencies from pursuing additional enforcement actions or penalties.

Sincerely,



Brian M. Hoxie  
Director, Enforcement Operations Division  
Trade Remedy & Law Enforcement Directorate  
Office of Trade