



A-583-856
Administrative Review
POR: 07/01/2017 – 06/30/2018
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E&C/OIII: Team

September 5, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the 2017-
2018 Antidumping Duty Administrative Review: Certain
Corrosion-Resistant Steel Products from Taiwan

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain corrosion-resistant steel products (CORE) from Taiwan covering the period of review (POR) July 1, 2017 through June 30, 2018. This administrative review covers three producers/exporters of the subject merchandise: (1) Yieh Phui Enterprise Co., Ltd. (YP) and Synn Industrial Co., Ltd. (Synn) (collectively, YP/Synn),¹ (2) Prosperity Tieh Enterprise Co., Ltd. (Prosperity), and (3) Sheng Yu Steel Co., Ltd. (SYSCO). We preliminarily

¹ In the less-than-fair-value (LTFV) investigation of the AD order, we collapsed Prosperity, YP, and Synn and treated them as a single entity. See *Certain Corrosion-Resistant Steel Products from Taiwan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35313 (June 2, 2016) and accompanying Issues and Decision Memorandum (IDM) at Comment 3 (*Taiwan CORE LTFV Final*); unchanged in *Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders*, 82 FR 48390 (July 25, 2016) (*Order*). The determination to collapse Prosperity with Synn was challenged by respondent parties in the investigation and was subject to pending litigation in *Taiwan CORE LTFV Final*. In the first antidumping duty administrative review, we determined to no longer collapse Prosperity with YP and Synn but we continued to collapse YP and Synn and treat them as a single entity. Our treatment of YP and Synn remains unchanged in this instant review. See *Certain Corrosion-Resistant Steel Products From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2016- 2017*, 83 FR 39679 (August 10, 2018); unchanged in *Certain Corrosion-Resistant Steel Products From Taiwan: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 64527 (December 17, 2018); amended by *Certain Corrosion-Resistant Steel Products From Taiwan: Amended Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 5991 (February 25, 2019).

determine that companies subject to this review made sales of the subject merchandise at prices below normal value (NV) during the POR.

II. BACKGROUND

On July 3, 2018, Commerce published a notice of opportunity to request an administrative review of the *Order* for the 2017-2018 review period.² In July 2018, Commerce received timely requests to conduct an administrative review from YP,³ Prosperity,⁴ SYSCO,⁵ and the petitioners.⁶ On September 10, 2018, we published a notice initiating an AD administrative review of CORE from Taiwan covering YP/Synn, Prosperity, and SYSCO.⁷

On October 1, 2018, we issued the initial AD questionnaire to the respondents Prosperity, YP/Synn, and SYSCO. All respondents provided timely responses to the relevant sections of the initial AD questionnaire.⁸ Between April 2019 and August 2019, we issued supplemental

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 31121 (July 3, 2018).

³ See YP's Letter, "Corrosion-Resistant Steel Products from Taiwan; Administrative Review Request," dated July 31, 2018.

⁴ See Prosperity's Letter, "Corrosion-Resistant Steel Products from Taiwan, Case No. A-583-856: Request for Administrative Review," dated July 23, 2018.

⁵ See SYSCO's Letter, "Corrosion-Resistant Steel Products from Taiwan: Request for Administrative Review," dated July 18, 2018.

⁶ The petitioners are AK Steel Corporation (AK Steel), California Steel Industries, Inc. (California Steel), Steel Dynamics Inc., ArcelorMittal USA LLC, Nucor Corporation, and United States Steel Corporation, manufacturers of the domestic like product in the United States. The petitioners requested Commerce to conduct administrative reviews of the sales of subject merchandise of four producers and/or exporters: Prosperity Tieh Enterprise Co., Ltd., Sheng Yu Steel Co., Ltd., Synn Industrial Co., Ltd., and Yieh Phui Enterprise Co., Ltd. See Petitioners' Letter, "Corrosion-Resistant Steel from Taiwan / Request for Administrative Review," dated July 31, 2018.

⁷ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 45596 (September 10, 2018).

⁸ See Prosperity's Letters, "Certain Corrosion-Resistant Steel Products from Taiwan, 7/1/2017 – 6/30/2018 Administrative Review, Case No. A-583-856: Section A Initial Questionnaire Response," dated November 2, 2018 (Prosperity's AQR); and "Certain Corrosion-Resistant Steel Products from Taiwan, 7/1/2017 – 6/30/2018 Administrative Review, Case No. A-583-856: Sections B & C Initial Questionnaire Response," dated November 27, 2018 (Prosperity's BQR, Prosperity's CQR); and "Certain Corrosion-Resistant Steel Products from Taiwan, 7/1/2017 – 6/30/2018 Administrative Review, Case No. A-583-856: Section D Initial Questionnaire Response," dated December 4, 2018; see also YP/Synn's Letter, "Corrosion-Resistant Steel Products from Taiwan; Section A Response," dated November 2, 2018 (YP/Synn's AQR) and YP/Synn's Letter, "Corrosion-Resistant Steel Products from Taiwan; Sections B-D Response," dated December 4, 2018 (YP/Synn's BQR, YP/Synn's CQR); and SYSCO's Letters, "Corrosion-Resistant Steel Products from Taiwan: Section A Response," dated November 6, 2018 (SYSCO's AQR); "Corrosion-Resistant Steel Products from Taiwan: Section BC Response," dated December 4, 2018 (SYSCO's BQR and SYSCO's CQR); and "Corrosion-Resistant Steel Products from Taiwan: Section D Response," dated December 6, 2019.

questionnaires to Prosperity, YP/Synn, and SYSCO; Prosperity,⁹ YP/Synn,¹⁰ and SYSCO¹¹ provided timely responses, as requested. Synn reported that it had no U.S. sales during the POR.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through the resumption of operations on January 29, 2019.¹² If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. On April 25, 2019, we extended the preliminary results of this review to no later than September 6, 2019.¹³

On December 21, 2018, we received a particular market situation (PMS) allegation from AK Steel, a petitioner.¹⁴ We sent a deficiency questionnaire to AK Steel regarding the PMS Allegation on March 12, 2019.¹⁵ On March 26, 2019, AK Steel provided a response.¹⁶ On April 1, 2019, Prosperity provided comments on AK Steel's deficiency questionnaire response.¹⁷ In July 2019, we found AK Steel's allegation sufficient to warrant further analysis and set a deadline for interested parties to submit factual information to rebut, clarify, or correct the information in AK Steel's allegation, pursuant to 19 CFR 351.301(c)(2)(v).¹⁸ On July 16, 2019 YP submitted a response to the PMS allegation.¹⁹ On July 23, 2019, California Steel, a petitioner, submitted information to rebut, clarify, or correct the PMS allegation²⁰ and China

⁹ See Prosperity's Letters, "Certain Corrosion-Resistant Steel Products from Taiwan, 7/1/2017 – 6/30/2018 Administrative Review, Case No. A-583-856: 1st Supplemental Sections A-C Questionnaire Response," dated May 14, 2019 (Prosperity's ABC SQR); and "Certain Corrosion-Resistant Steel Products from Taiwan, 7/1/2017-6/30/2018 Administrative Review, Case No. A-583-856: First Supplemental Section D Questionnaire Response," dated August 19, 2019.

¹⁰ See YP/Synn's Letters, "Corrosion-Resistant Steel Products from Taiwan; First Supplemental Response," dated May 28, 2019 (YP/Synn's 1st SQR); and "Corrosion-Resistant Steel Products from Taiwan; Second Supplemental Response," dated August 7, 2019.

¹¹ See SYSCO's Letters, "Corrosion-Resistant Steel Products from Taiwan: Supplemental Section A Response," dated May 31, 2019; and "Corrosion-Resistant Steel Products from Taiwan: Supplemental Section BCD Response," dated August 23, 2019 (SYSCO's 2nd SQR).

¹² See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

¹³ See Memorandum, "Certain Corrosion-Resistant Steel Products from Taiwan: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review," dated April 25, 2019.

¹⁴ See AK Steel's Letter, "Certain Corrosion-Resistant Steel Products from Taiwan: Petitioner's Allegation of a Particular Market Situation," dated December 21, 2018 (PMS Allegation).

¹⁵ See Commerce's Letter, "2017-2018 Administrative Review of Certain Corrosion-Resistant Steel Products from Taiwan: Petitioner's Allegation of a Particular Market Situation (PMS)," dated March 12, 2019.

¹⁶ See AK Steel's Letter, "Certain Corrosion-Resistant Steel Products from Taiwan: Petitioner's Allegation of a Particular Market Situation Deficiency Questionnaire Response," dated March 26, 2019.

¹⁷ See AK Steel's Letter, "Corrosion-Resistant Steel Products from Taiwan, 7/1/2017–6/30/2018 Administrative Review, Case No. A-583-856: Comments Regarding Petitioner's Deficiency Questionnaire Response," dated April 1, 2019.

¹⁸ See Memorandum, "Allegation of a Particular Market Situation in the 2017-18 Antidumping Duty Administrative Review of Corrosion-Resistant Steel Products from Taiwan," dated July 9, 2019.

¹⁹ See YP's Letter, "Corrosion-Resistant Steel Products from Taiwan; Response to Particular Market Situation Allegation," dated July 16, 2019.

²⁰ See California Steel's Letter, "Corrosion-Resistant Steel Products from Taiwan: Submission of Information to Rebut, Clarify, or Correct Particular Market Situation Allegation," dated July 23, 2019.

Steel Corporation (CSC) commented on the PMS allegation.²¹ On July 23, 2019, Prosperity commented on the PMS allegation.²²

III. SCOPE OF THE ORDER

The products covered by this order are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of these orders are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

2.50 percent of manganese, or
3.30 percent of silicon, or
1.50 percent of copper, or
1.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or

²¹ See CSC’s Letter, “Administrative Review of the Antidumping Order of Corrosion-Resistant Steel Products from Taiwan – Response to the Department’s July 9 Request for Comments on “Particular Market Situation” Allegation,” dated July 23, 2019.

²² See Prosperity’s Letter, “Certain Corrosion-Resistant Steel Products from Taiwan, 6/2/2016–6/30/2017 Administrative Review, Case No. A-583-856: Particular Market Situation Allegation Comments,” dated July 23, 2019.

0.40 percent of lead, or
2.00 percent of nickel, or
0.30 percent of tungsten (also called wolfram), or
0.80 percent of molybdenum, or
0.10 percent of niobium (also called columbium), or
0.30 percent of vanadium, or
0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels and high strength low alloy (HSLA) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (AHSS) and Ultra High Strength Steels (UHSS), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the orders if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of these orders unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of these orders:

Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (terne plate), or both chromium and chromium oxides (tin free steel), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;

Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and

Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000. The products subject to the orders may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

IV. DISCUSSION OF THE METHODOLOGY

We are conducting this administrative review of the order in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213.

A. Collapsing of Affiliated Companies

As noted above, Prosperity, YP, and Synn were collapsed and treated as a single entity for the purposes of the LTFV investigation. In the first administrative review, Prosperity and YP/Synn were treated as separate entities. As a result, we examined the YP/Synn entity as a single combined respondent and treated it as such in the pre-preliminary phase of this review. We continue to find that the instant record supports a finding that YP should be collapsed with Synn. Specifically, as a result of YP's percentage of ownership in Synn until May 2018; the fact that YP's vice president served as the vice president of the financial division of Synn, an employee of YP served as assistant vice president of the commercial division of Synn, and an employee of YP served as the manager of the financial division of Synn;²³ and in light of a YP employee's service as a board member for Synn until May 2018,²⁴ we continue to find that YP and Synn should be treated as the collapsed YP/Synn entity for the purposes of this administrative review.

B. Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether the respondents' sales of the subject merchandise from Taiwan in the United States were made at less than NV, Commerce compared the export price (EP) and/or the constructed export price (CEP) to NV as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

²³ See YP/Synn's AQR at 15-16 and Exhibit 14.

²⁴ *Id.*

C. *Determination of the Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or CEPs (*i.e.*, the average-to-average (A-A) method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales (*i.e.*, the average-to-transaction (A-T) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.²⁵

In recent investigations, Commerce applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.²⁶ Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of export prices (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code, *i.e.*, zip code, and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of

²⁵ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012), and accompanying IDM at Comment 1; see also *JBF RAK LLC v. United States*, 790 F. 3d 1358, 1363-65 (Fed. Cir. 2015) ("the fact that the statute is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties.") (citations omitted); and *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

²⁶ See, *e.g.*, *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); see also *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014), or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean, *i.e.*, weighted-average price, of a test group and the mean, *i.e.*, weighted-average price, of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences 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.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test under the “mixed method.” If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage, *i.e.*, the Cohen’s *d* test and the ratio test, demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if (1) there is a 25 percent relative change in the weighted-

average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this segment of the proceeding.²⁷

D. *Results of the Differential Pricing Analysis*

Prosperity

For Prosperity, based on the results of the differential pricing analysis, we preliminarily find that 87.21 percent of the value of U.S. sales pass the Cohen's *d* test,²⁸ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the A-A method cannot account for such differences, because the weighted-average margin crosses the *de minimis* threshold when calculated using the A-A method and when calculated using an alternative comparison method based on applying the A-T method to all U.S. sales. Thus, for these preliminary results, Commerce is applying the A-T method to all U.S. sales to calculate the weighted-average dumping margin for Prosperity.

YP/Synn

For YP/Synn, based on the results of the differential pricing analysis, we preliminarily find that 58.89 percent of the value of U.S. sales pass the Cohen's *d* test,²⁹ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the A-A method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the A-A method and when calculated using an alternative comparison method based on applying the A-T method to those U.S. sales which passed the Cohen's *d* test and the A-A method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, we are applying the A-T method to those U.S. sales which passed the Cohen's *d* test and the A-A method to those sales which did not pass the Cohen's *d* test to calculate the weighted-average dumping margin for YP/Synn.

²⁷ The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 862 F. 3d 1322 (Fed. Cir. July 12, 2017) affirmed much of Commerce's differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

²⁸ See Memorandum, "Certain Corrosion-Resistant Steel Products from Taiwan: Prosperity Tieh Enterprise Co., Ltd – Analysis Memorandum for the Preliminary Results of the Administrative Review, 2017-2018," dated concurrently with this memorandum (Prosperity's Preliminary Analysis Memorandum).

²⁹ See Memorandum, "Certain Corrosion-Resistant Steel Products from Taiwan: Yieh Phui Enterprise Co., Ltd. and Synn Industrial Co., Ltd. – Analysis Memorandum for the Preliminary Results of the Administrative Review, 2017-2018," dated concurrently with this memorandum (YP/Synn's Preliminary Analysis Memorandum).

SYSCO

For SYSCO, based on the results of the differential pricing analysis, we preliminarily find that 73.19 percent of the value of U.S. sales pass the Cohen's *d* test,³⁰ confirming the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the A-A method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the A-T method to all U.S. sales. Thus, for these preliminary results, we are applying the A-A method to all U.S. sales to calculate the weighted-average dumping margin for SYSCO.

E. Treatment of Duties Under Section 232 of the Trade Expansion Act of 1962

In March 2018, the President exercised his authority under Section 232 of the Trade Expansion Act of 1962, as amended, and issued Proclamation 9705 that mandated, to address national security concerns, imposition of a global tariff of 25 percent on imports of steel articles in order to reduce imports to a level that the Secretary assessed would enable domestic steel producers to use approximately 80 percent of existing domestic production capacity and thereby achieve long-term economic viability through increased production. In considering whether U.S. price should be adjusted for section 232 duties, we look to section 772 of the Act. In particular, section 772(c)(2)(A) of the Act directs Commerce to adjust EP and CEP for “the amount, if any, included in such price, attributable to any additional cost, charges, or expenses, and United States import duties...” Therefore, we find that the analysis here depends on whether section 232 duties constitute “United States import duties,” and whether the duties are “included in such price.”

The CAFC has previously considered whether certain types of duties constitute “United States import duties” for purposes of section 772(c)(2)(A) of the Act. In *Wheatland*, the CAFC sustained Commerce's determination not to adjust U.S. price in antidumping proceedings for section 201 safeguard duties under that statutory provision.³¹ Having acknowledged Commerce's analysis of the legislative history to the Antidumping Act of 1921, which “referred to ‘United States import duties’ as normal customs duties and referred to antidumping duties as ‘special dumping duties’ and that ‘special dumping duties’ were distinguished and treated differently from normal customs duties,” the CAFC in *Wheatland* agreed that “Congress did not intend all duties to be considered ‘United States import duties.’”³²

The CAFC then found reasonable Commerce's analysis that section 201 duties were more akin to antidumping duties than “ordinary customs duties.”³³ In comparing section 201 duties with antidumping duties, the CAFC found that: (1) “{l}ike antidumping duties, {section}201 duties

³⁰ See Memorandum, “Certain Corrosion-Resistant Steel Products from Taiwan: Sheng Yu Steel Co., Ltd. – Analysis Memorandum for the Preliminary Results of the Administrative Review, 2017-2018,” dated concurrently with this Memorandum (SYSCO's Preliminary Analysis Memorandum).

³¹ See *Wheatland Tube Co. v. United States*, 495 F. 3d 1355, 1363 (Fed. Circ. 2007) (*Wheatland*).

³² *Id.* at 1361.

³³ *Id.* at 1362.

are remedial duties that provide relief from the adverse effects of imports,” (2) “normal customs duties, in contrast, have no remedial purpose,” (3) “antidumping and {section} 201 duties, unlike normal customs duties, are imposed based upon almost identical findings that the domestic industry is being injured or threatened with injury due to the imported merchandise;” and (4) “{section} 201 duties are like antidumping duties... because they provide only temporary relief from the injurious effects of imports,” whereas normal customs duties “have no termination provision, and are permanent unless modified by Congress.”³⁴ In sustaining Commerce’s decision regarding section 201 duties in *Wheatland*, the CAFC also held that “{t}o access both a safeguard duty and an antidumping duty on the same imports with regard to the safeguard duty, would be to remedy substantially overlapping injuries twice.”³⁵

Section 232 duties are not akin to antidumping or 201 duties. Proclamation 9705 states that it “is necessary and appropriate to adjust imports of steel articles so that such imports will not threaten to impair the *national security*...”³⁶ The text of section 232 of the Trade Expansion Act of 1962 also clearly concerns itself with “the effects on the *national security* of imports of the article.”³⁷ The particular national security risk spelled out in proclamation 9705 is that the “industry will continue to decline, leaving the United States at risk of becoming reliant on foreign producers of steel to meet our national security needs – a situation that is fundamentally inconsistent with the safety and security of the American people.”³⁸ In other words, section 232 duties are focused on addressing national security prerogatives, separate and apart from any function performed by antidumping and 201 safeguard duties to remedy injury to a domestic industry.

Even more critical to this point is that the Presidential Proclamation states that section 232 duties are to be imposed in addition to other duties unless expressly provided for in the proclamations.³⁹ The Annex to Proclamation 9740 refers to section 232 duties as “ordinary” customs duties, and it also states that “{a}ll anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein.” Notably, there is no express exception in the HTSUS revision in the Annex. In other

³⁴ *Id.* at 1362-63.

³⁵ *Id.* at 1365.

³⁶ See Proclamation 9705, 83 FR at 11627 (emphasis added); see also Proclamation 9711 of March 22, 2018, 83 FR 13361, 13363 (March 28, 2018) (Proclamation 9711) (“In proclaiming this tariff, I recognized that our Nation has important security relationships with some countries whose exports of steel articles to the United States weaken our national economy and thereby threaten to impair the national security”); Proclamation 9740 of April 30, 2018, 83 FR 20683 (May 7, 2018) (Proclamation 9740) (similar); Proclamation 9759 of May 31, 2018, 83 FR 25857 (June 5, 2018) (Proclamation 9759) (similar); Proclamation 9772 of August 10, 2018, 83 FR 40429 (August 15, 2018) (Proclamation 9772) (similar); and Proclamation 9777 of August 29, 2018, 83 FR 45025 (September 4, 2018) (Proclamation 9777) (similar).

³⁷ See section 232(b)(1)(A) of the Trade Expansion Act of 1962 (emphasis added); see also section 232(a) of the Trade Expansion Act of 1962 (explaining that “{n}o action shall be taken . . . to decrease or eliminate the duty or other import restrictions on any article if the President determines that such reduction or elimination would threaten to impair the national security”).

³⁸ See Proclamation 9705, 83 FR at 11627.

³⁹ See Proclamation 9705, 83 FR at 11627; see also Proclamation 9711, 83 FR at 13363; Proclamation 9740, 83 FR at 20685-87 (“All anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein.”); Proclamation 9759, 83 FR at 25857; Proclamation 9772, 83 FR at 40430-31; and Proclamation 9777, 83 FR at 45025. The proclamations do not expressly provide that 232 duties receive different treatment.

words, section 232 duties are intended to be treated as any other duties for purposes of the trade remedy laws. Had the President intended that AD duties would be reduced by the amount of section 232 duties imposed, the Presidential Proclamation would have expressed that intent.

For the reasons noted, and consistent with our treatment of 232 duties in *OCTG from Ukraine*⁴⁰ and *Circular Welded Pipe and Tube From Turkey*,⁴¹ we have determined that section 232 duties should be treated as “United States import duties” for purposes of section 772(c)(2)(A) of the Act – and thereby “U.S. Customs duties,” which are deducted from U.S. price.

V. DATE OF SALE

Section 351.401(i) of Commerce’s regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.

Prosperity

Prosperity reported the earlier of the date of invoice or the date of shipment as the date of sale for its home market and U.S. sales.⁴² Our examination of Prosperity’s home market sales database revealed that the invoice date always matched with the shipment date. Further, we found that the date of sale reported in Prosperity’s U.S. sales database comported with the reporting methodology provided in its narrative. Therefore, we preliminarily determine to use Prosperity’s reported date of sale as the date of sale for Prosperity’s home market and U.S. sale transactions.

YP/Synn

YP/Synn reported the government uniform invoice date as date of sale for home market sales.⁴³ For U.S. sales, YP/Synn reported the earlier of sale invoice date and shipment date if the subject merchandise did not enter the warehouse near the seaport or the earlier of sale invoice date and

⁴⁰ See Memorandum, “Issues and Decision Memorandum for the Final Normal Value Calculations to be Effective from the Release of the Final Normal Values through June 30, 2019, under the Agreement Suspending the Antidumping Duty Investigation on Certain Oil Country Tubular Goods from Ukraine,” dated February 15, 2019, at Comment 1 (*OCTG from Ukraine*); see also Memorandum, “2017-2018 Administrative Review of Certain Corrosion-Resistant Steel Products from Taiwan: Additional Information on Section 232 Duties,” dated concurrently with this Memorandum at Attachment.

⁴¹ See *Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 34345 (July 18, 2019), and accompanying IDM at 11-13.

⁴² See Prosperity’s BQR at 31; and CQR at 21-22.

⁴³ See YP/Synn’s BQR at 25; and YP/Synn’s 1st SQR at 24.

date merchandise left the seaport warehouse.⁴⁴ Therefore, consistent with our practice, we used the government uniform invoice date as the date of sale for HM sales and the earlier of sale invoice date and shipment date if the subject merchandise did not enter the warehouse near the seaport or the earlier of sale invoice date and the date merchandise left the seaport warehouse for the U.S. sales, as reported by YP/Synn.

SYSCO

SYSCO reported that price and quantities were fixed only when the commercial invoice or VAT invoice was issued for its sales.⁴⁵ For its home market sales, it reported the VAT invoice as the date of sale. In the U.S. market, SYSCO reported the commercial invoice date as the date of sale for EP sales, stating that it was issued after shipment.⁴⁶ For CEP sales, SYSCO stated that the earlier of shipment date and invoice date is the date of sale.⁴⁷ In an examination of the submitted U.S. sales database, all EP shipment dates occurred on the same day or before the invoice date, and all CEP invoice dates and shipment dates are identical.⁴⁸ Consistent with prior practice,⁴⁹ we preliminarily determine that the invoice date is the most appropriate date of sale in the home market, and the earlier of invoice date and shipment date is the appropriate date of sale in the U.S. market for both EP and CEP sales.

VI. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products that respondents produced and sold in Taiwan during the POR that fit the description in the “Scope of Order” section of this memorandum to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales.⁵⁰

In making product comparisons, we matched subject merchandise and foreign like product based on whether the products were prime or non-prime and the physical characteristics reported by Prosperity, YP/Synn, and SYSCO, in the following order of importance: type, reduction process, clad material/coating metal, metallic coating weight, metallic coating process, quality, yield strength, nominal thickness, nominal width, and form. For the respondents’ sales of CORE in the United States, the reported control number identifies the characteristics of CORE, as exported by Prosperity, YP/Synn, and SYSCO.

⁴⁴ See YP/Synn’s CQR at 79-81; and YP/Synn’s 1st SQR at 17-19 and 24.

⁴⁵ See SYSCO’s AQR at 20-21.

⁴⁶ *Id.* at 24-25.

⁴⁷ *Id.* at CEP attachment 17-18.

⁴⁸ See SYSCO’s CQR at Exhibit C-2; and SYSCO’s 2nd SQR at Exhibit SC-1.

⁴⁹ See *Narrow Woven Ribbons with Woven Selvedge from Taiwan; Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 60627 (October 7, 2015), and accompanying Preliminary Decision Memorandum at 9, unchanged in *Narrow Woven Ribbons with Woven Selvedge from Taiwan: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 22578 (April 18, 2016).

⁵⁰ For SYSCO, this includes its sales of non-prime merchandise it categorizes as inferior grades, which it reported in a separate database. See SYSCO’s BQR at 2-3 and Exhibit C-2; and SYSCO’s 2nd SQR at Exhibit SB-0.

SYSCO reported that home market and U.S. market sales graded as prime later received billing adjustments. SYSCO reported that it granted these billing adjustments only for minor quality issues detected in the product after production but prior to shipment.⁵¹ Commerce has stated that non-prime merchandise is defined as “steel that suffered some defect during the production process, or at any time before delivery to the customer.”⁵² Because the record demonstrates that SYSCO only grants billing adjustments due to defects after the production process but before delivery, we are treating all such sales as sales of non-prime merchandise.⁵³

VII. EXPORT PRICE AND CONSTRUCTED EXPORT PRICE

A. *Export Price*

Section 772(a) of the Act defines EP as “the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,” as adjusted under section 772(c) of the Act.

Prosperity

We calculated EP for Prosperity based on packed prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for billing adjustments, movement expenses, *i.e.*, inland freight to the port of exportation, brokerage and handling in country of manufacture, fees applicable to container and bulk shipments, brokerage and handling incurred in the United States, international freight, marine insurance, U.S. customs duties and section 232 duties, in accordance with section 772(c)(2)(A) of the Act.

With respect to section 232 duties, Prosperity provided record evidence indicating that certain sales of subject merchandise during the POR were invoiced and shipped before the effective date of the section 232 duties, *i.e.*, March 28, 2018. Specifically, for these sales, Prosperity explained that it contacted the customer, explained that the price would be increased as a result, and issued a revised contract and a debit note to the customer, and required payment prior to the release of the merchandise.⁵⁴ Prosperity explained that, as the merchandise had already been shipped and invoiced, it reported the amount covered by the debit notes in the BILLADJU field of the U.S. sales database.⁵⁵

⁵¹ See SYSCO’s BQR at 31-32; SYSCO’s CQR at 26-27; *see also* SYSCO’s 2nd SQR at 11-12.

⁵² See *Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 70 FR 12443 (March 14, 2005), and accompanying IDM at Comment 6 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip Coils from Italy*, 64 FR 30750 (June 8, 1999), and accompanying IDM at 8); *see also* *Final Results of the Antidumping Administrative Review of Granular Polytetrafluoroethylene Resin from Italy*, 68 FR 2007 (January 8, 2003), and accompanying IDM at Comment 4.

⁵³ See SYSCO’s Preliminary Analysis Memorandum.

⁵⁴ See Prosperity’s ABC SQR at 20-22 and Exhibit C-34.

⁵⁵ *Id.*

YP/Synn

We calculated EP for YP/Synn based on packed prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for movement expenses, *i.e.*, inland freight from plant to distribution warehouse; inland and on-board stevedoring fees; dock passage fees; merchandise storage fees; inland freight from plant/warehouse to port of exportation; freight from plant to processing service providers; brokerage and handling incurred in the country of manufacture; brokerage and handling incurred in the United States; international freight; and U.S. customs duties and section 232 duties in accordance with section 772(c)(2)(A) of the Act.

SYSCO

We calculated EP for certain of SYSCO's U.S. sales where the subject merchandise was first sold to an unaffiliated purchaser in the United States prior to importation and the CEP methodology was not otherwise warranted based on the facts of the record. We calculated EP for SYSCO based on packed prices to unaffiliated purchasers in the United States. Commerce made deductions, where appropriate, for movement expenses, *i.e.*, inland freight from plant/warehouse to port of exportation, domestic brokerage and handling, international freight, and marine insurance, in accordance with section 772(c)(2)(A) of the Act.

With respect to section 232 duties, SYSCO explained that it did not make any EP sales during the POR where it was importer of record.⁵⁶ Thus, SYSCO did not pay any section 232 duties on its EP sales during the POR, did not provide any refunds of any section 232 duties to its customers, nor does it record any section 232 duties in its general ledger.⁵⁷ As for SYSCO's CEP sales, SYSCO further explained that all entries related to the POR sales took place prior to the effective date of the duties.⁵⁸

B. Constructed Export Price

Pursuant to section 772(b) of the Act, the CEP is "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter," as adjusted under sections 772(c) and (d) of the Act. In accordance with section 772(b) of the Act, we used CEP for certain of YP/Synn's and SYSCO's U.S. sales of subject merchandise, because the sales were made on their behalf by their sales affiliates in the United States to unaffiliated purchasers in the United States.

YP/Synn

For reported CEP sales, we calculated CEP based on delivered prices to unaffiliated purchasers in the United States. We also made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2) of the Act. These adjustments included, where applicable,

⁵⁶ See SYSCO's 2nd SQR at 23-24.

⁵⁷ *Id.*

⁵⁸ *Id.* at Appendix I and Exhibit CEPSS-3.

inland freight from plant to port of exportation, brokerage and handling incurred in the country of manufacture, U.S. brokerage and handling, international freight, marine insurance, U.S. inland freight from port to warehouse, U.S. warehousing expense, U.S. inland freight from warehouse to the unaffiliated customer, U.S. customs duties, and section 232 duties.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted, where applicable, those selling expenses associated with economic activities occurring in the United States, including credit expenses, direct selling expenses, indirect selling expenses, inventory carrying costs, and commissions incurred in the U.S. In addition, we deducted CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act.

SYSCO

For reported CEP sales, we calculated CEP based on delivered prices to unaffiliated purchasers in the United States. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2) of the Act. These adjustments included, where applicable, inland freight from plant to port of exportation, brokerage and handling incurred in the country of manufacture, U.S. brokerage and handling, international freight, marine insurance, U.S. inland freight from port to warehouse, U.S. warehousing expense, U.S. inland freight from warehouse to the unaffiliated customer, and U.S. customs duties.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted, where applicable, those selling expenses associated with economic activities occurring in the United States, including direct selling expenses, indirect selling expenses, inventory carrying costs, commissions, bank charges, survey fees, and processing expenses incurred in the U.S. In addition, we deducted CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act.

VIII. NORMAL VALUE

A. *Home Market Viability*

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, *i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third-country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In order to determine whether there was a sufficient volume of sales in the home market or in the third country to serve as a viable basis for calculating NV, we compared each of Prosperity's, YP/Synn's, and SYSCO's volume of home-market sales of the foreign like product to the respective volume of U.S. sales of the subject merchandise in accordance with sections 773(a)(1)(B) and (C) of the Act. We found that Prosperity's, YP/Synn's, and SYSCO's

individual aggregate sales volume of foreign like product in the home market was greater than five percent of the respective company's sales of subject merchandise to the United States. Therefore, in accordance with section 773(a)(1)(C) of the Act, Taiwan constitutes a viable home market for Prosperity, YP/Synn, and SYSCO. Accordingly, Taiwan was selected for each respondent as the comparison market for purposes of analysis in this review.

B. *Affiliated-Party Transactions and Arm's-Length Test*

Commerce may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.⁵⁹ Under section 773(a)(5) of the Act, Commerce has considerable discretion in deciding whether to include affiliated party sales when calculating NV.⁶⁰ Commerce excludes home-market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because Commerce considers them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, "{Commerce} may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."⁶¹

During the POR, Prosperity, YP/Synn, and SYSCO each made sales of CORE in Taiwan to affiliated parties, as defined in section 771(33) of the Act. Consequently, we tested these sales to ensure that they made such sales at arm's-length prices in accordance with 19 CFR 351.403(c). To test whether the companies made sales to affiliated parties at arm's-length prices, we compared the unit prices of sales to affiliated and unaffiliated customers net of all direct selling expenses and packing. Pursuant to 19 CFR 351.403(c) and in accordance with Commerce's practice, where the price to an affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade (LOT), we determined that the sales made to the affiliated party were at arm's length.⁶² Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we consider these sales to be outside the ordinary course of trade.⁶³

C. *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, we will calculate NV based on sales of foreign like products at the same level of trade (LOT) as the U.S. sales. Sales

⁵⁹ See 19 CFR 351.403(c).

⁶⁰ See section 773(a)(5) of the Act; *see also NTN Corp. v. United States*, 306 F. Supp. 2d 1319, 1332 (CIT 2004) (affirming Commerce's discretion to apply the arm's-length test to determine whether to exclude certain home market sales to affiliated parties in the NV calculation).

⁶¹ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003) (affirmed on remand, 306 F. Supp. 2d 1291 (CIT 2004) (citing *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55355 (September 7, 2011)).

⁶² See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002).

⁶³ See section 771(15) of the Act; *see also* 19 CFR 351.102(b)(35).

are made at different LOTs if they are made at different marketing stages (or their equivalent).⁶⁴ Substantial differences in selling activities are necessary, but not a sufficient, condition for determining that there is a difference in the stages of marketing.⁶⁵ To determine whether the comparison-market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),⁶⁶ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁶⁷

When we are unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁶⁸

In this review, we obtained information from Prosperity, YP/Synn, and SYSCO regarding the marketing stages involved in making their reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution.⁶⁹ None of the respondents claim LOT adjustments in either the home market or the U.S. market. Consequently, we matched all EP sales to home market sales, and no LOT adjustment was warranted.

D. *Cost of Production Analysis*

Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires Commerce to request CV and

⁶⁴ See 19 CFR 351.412(c)(2).

⁶⁵ *Id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

⁶⁶ Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling, general, and administrative expenses and profit for CV, where possible. See 19 CFR 351.412(c)(1).

⁶⁷ See *Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

⁶⁸ See, e.g., *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying IDM at Comment 7.

⁶⁹ See YP/Synn's BQR at 40 and CQR at 88; see also Prosperity's AQR at Exhibit A-9; and SYSCO's AQR at Exhibit A-7 and CEP Attachment Exhibit ACEP-10.

cost of production (COP) information from respondent companies in all AD proceedings.⁷⁰ Accordingly, Commerce requested this information from each of the respondents.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses.

We examined Prosperity, YP/Synn, and SYSCO's cost data and determined that our quarterly cost methodology is not warranted. Therefore, we have applied our standard methodology of using annual average costs based on Prosperity, YP/Synn, and SYSCO's cost reported data.⁷¹

We made adjustments to YP's cost of manufacturing for affiliated purchases of inputs to reflect the highest of transfer price, market price, and supplier's cost of production.⁷² We calculated YP's G&A and financial ratios based on the 2017 financial statement.⁷³ We also excluded guaranteed income fees from the G&A ratio.⁷⁴ Because Prosperity purchased some of its hot-rolled coil from an affiliated supplier, we have made a major input adjustment to Prosperity's reported COP.⁷⁵

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, discounts and rebates, movement charges, actual direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and

⁷⁰ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46794-95 (August 6, 2015).

⁷¹ See Prosperity's Preliminary Analysis Memorandum; YP/Synn's Preliminary Analysis Memorandum; and SYSCO's Preliminary Analysis Memorandum.

⁷² See YP/Synn's Preliminary Analysis Memorandum.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ See Prosperity's Preliminary Analysis Memorandum.

in “substantial quantities.” Where 20 percent or more of a respondent’s sales of a given product are at prices less than the COP, we disregard the below-cost sales because: (1) they were made within an extended period of time in “substantial quantities,” in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Where we find that more than 20 percent of a company’s home market sales for a given product were made at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time, we excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

E. *Particular Market Situation*

AK Steel, one of the petitioners in this administrative review, submitted an allegation that a PMS exists in Taiwan such that the COPs of CORE in Taiwan are distorted, and thus warrants an adjustment to the respondents’ COP.

Section 504 of the TPEA amended section 771(15) of the Tariff Act of 1930, as amended (the Act) by adding an additional circumstance that Commerce will consider to be outside the ordinary course of trade: “{s}ituations in which the administering authority determines that the particular market situation prevents a proper comparison with the export price or constructed export price.” The TPEA also provided Commerce with discretion to “use another calculation methodology under this subtitle or any other calculation methodology” when a PMS exists “such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade.”⁷⁶ The statute does not define “particular market situation,” but the SAA explains that such a situation may exist for sales “where there is government control over pricing to such an extent that home market prices cannot be considered competitively set.”⁷⁷

For these preliminary results, Commerce finds that a PMS did not exist in Taiwan during the POR concerning the costs of primary inputs as a component of the COP.⁷⁸

F. *Calculation of NV Based on Comparison-Market Prices*

We based NV for Prosperity, YP/Synn, and SYSCO on comparison market prices where there was an appropriate number of sales at prices above the COP. We calculated NV based on delivered, ex-works, or ex-sales depot prices, as applicable, to unaffiliated and affiliated customers where the sale was made at arm’s length. We made deductions from the starting price for billing adjustments, early payment discounts, warranty discounts, early shipment discounts,

⁷⁶ See section 773(e) of the Act.

⁷⁷ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 822.

⁷⁸ For a complete discussion, see Memorandum, “2017-2018 Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Steel Products from Taiwan: Decisions on Particular Market Situation Allegations,” dated concurrently with this memorandum.

transportation fee discounts, non-trimmed discounts, movement expenses, including inland freight from the plant to the distribution warehouse and inland freight from the plant or distribution warehouse to the unaffiliated customer in the third country under section 773(a)(6)(B)(ii) of the Act as appropriate. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and in circumstances of sale (imputed credit expenses, inventory carrying costs and warranty expense) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We deducted comparison-market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act. We made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales, *i.e.*, credit expenses and warranty expenses, and added U.S. direct selling expenses, *i.e.*, credit expenses, commissions, trade promotion fees, cargo certification fees, and harbor construction fees, and bank charges where appropriate.

When comparing U.S. sales with comparison-market sales of similar, but not identical, merchandise, we also made adjustments for differences in merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and merchandise under consideration.⁷⁹

IX. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415(a), based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. The exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange>.

X. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree

Disagree

9/5/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler

Assistant Secretary

for Enforcement and Compliance

⁷⁹ See 19 CFR 351.411(b).