F A-583-856
POR: 07/01/2017 - 06/30/2018
Public Document
E&C/OIII: Team

March 10, 2020

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

FROM: Scot Fullerton
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

I. SUMMARY

We analyzed the comments filed in the administrative review of the antidumping duty (AD) order on certain corrosion-resistant steel products (CORE) from Taiwan for the period of review (POR) July 1, 2017 through June 30, 2018. As a result of our analysis, we made changes to the margin calculations. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of issues in this administrative review for which we received comments from the interested parties.

Comment 1: Treatment of Section 232 Duties Paid by Prosperity
Comment 2: Application of Differential Pricing Methodology to Prosperity's U.S. Sales
Comment 3: Universe of Constructed Export Price (CEP) Sales for SYSCO
Comment 4: SYSCO's Categorization of Sales as U.S. or Home Market
Comment 5: SYSCO's Costs on Arm's-Length Basis
Comment 6: SYSCO'S Prime and Non-Prime Sales
Comment 7: Interest Revenue Cap - SYSCO
Comment 8: Yieh Phui's U.S. Date of Sale and Shipment Dates
Comment 9: Ministerial Errors and Other Issues

II. BACKGROUND

On September 12, 2019, the Department of Commerce (Commerce) published its *Preliminary Results*.[1] This review covers three producers/exporters: Prosperity Tieh Enterprise Co., Ltd.

[1] *See Certain Corrosion-Resistant Steel Products from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 48120 (September 12, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

(Prosperity); Sheng Yu Steel Co., Ltd. (SYSCO); and Yieh Phui Enterprise Co., Ltd. (Yieh Phui) and Synn Industrial Co., Ltd. (Synn) (collectively, Yieh Phui/Synn).[2]

We invited interested parties to comment on the *Preliminary Results*. We received case briefs from California Steel Industries (California Steel) and Steel Dynamics Inc. (Steel Dynamics), Prosperity, Toyota Tsusho America, Inc. (TAI), and Yieh Phui/Synn.[3] We received rebuttal briefs from AK Steel Corporation (AK Steel) and SYSCO.[4] We refer to California Steel, Steel Dynamics, and AK Steel collectively as the petitioners. After analyzing the comments received, we changed the weighted-average margins from those found in the *Preliminary Results*.

On December 10, 2019, Commerce postponed the final results of this administrative review by 60 days, to March 10, 2020.[5]

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.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:

---

[2] *See 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) (*Final Results 2016-2017*). In the *Final Results 2016-2017*, we collapsed Yieh Phui and Synn and treated them as a single entity.

[3] *See* Petitioners' Letter, "Certain Corrosion-Resistant Steel Products from Taiwan: Case Brief," dated October 15, 2019 (Petitioners' Case Brief); *see also* Prosperity's Letter, "Certain Corrosion-Resistant Steel Products from Taiwan, 7/1/2017 – 6/30/2018 Administrative Review, Case No. A-583-856: Case Brief," dated October 15, 2019 (Prosperity's Case Brief); TAI's Letter, "Certain Corrosion-Resistant Steel Products from Taiwan: Case Brief for Toyota Tsusho America, Inc.," dated October 15, 2019 (TAI's Case Brief); and Yieh Phui/Synn's Letter, "Corrosion-Resistant Steel Products from Taiwan; Case Brief," dated October 15, 2019 (Yieh Phui/Synn's Case Brief).

[4] *See* Petitioners' Letter, "Certain Corrosion-Resistant Steel Products from Taiwan: AK Steel's Rebuttal Brief," dated October 21, 2019 (Petitioners' Rebuttal Brief); *see also* SYSCO's Letter, "Corrosion-Resistant Steel Products from Taiwan: Rebuttal Case Brief," dated October 21, 2019 (SYSCO's Rebuttal Brief).

[5] *See* Memorandum, "Certain Corrosion-Resistant Steel Products from Taiwan: Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review," dated December 10, 2019.

(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
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. CHANGES SINCE THE *PRELIMINARY RESULTS*

Based on our analysis of the comments submitted by interested parties, we made certain changes to the margin calculations since the *Preliminary Results*.

Prosperity

- As discussed in Comment 1 below, we continue to treat section 232 duties as U.S. import duties, but have corrected an error by making a downward adjustment to Prosperity's export price (EP) by the amount of section 232 duties reported.[6]

[6] *See* Memorandum, "Certain Corrosion-Resistant Steel Products from Taiwan: Prosperity Tieh Enterprise Co., Ltd. – Analysis Memorandum for the Final Results of the Administrative Review, 2017-2018," dated concurrently with this memorandum (Prosperity's Final Analysis Memorandum) at Attachment 3.

SYSCO

- As discussed in Comment 5, *infra*, we are making an adjustment to SYSCO's costs to account for transactions with an affiliated party.
- As discussed in Comment 6, *infra*, we are removing sales graded as inferior from SYSCO's home market database. We are also applying an adjustment to SYSCO's costs to account for differences in costs between prime and non-prime merchandise.
- As mentioned in Comment 9, we are ensuring an importer assessment rate is properly assigned to a company.

Yieh Phui/Synn

- As discussed in Comment 8 below, we determine that the date of U.S. sale should continue to be earlier of invoice date or date of shipment from the factory.
- As mentioned in Comment 9 below, we corrected a ministerial error Yieh Phui/Synn identified regarding the earliest reported date of sale.[7]

V. DISCUSSION OF THE ISSUES

Comment 1: Treatment of Section 232 Duties Paid by Prosperity

Background: In the *Preliminary Results*, Commerce treated section 232 duties, imposed under section 232 of the Trade Expansion Act of 1962, as amended,[8] as U.S. customs duties and deducted section 232 duties from U.S. prices.[9]

Prosperity's Case Brief

- Commerce should not deduct section 232 taxes paid by Prosperity through its wholly-owned U.S. affiliate, Prosperity Tieh USA (PTUSA).[10] By virtue of deducting section 232 taxes, Commerce determined that section 232 taxes are analogous to "United States import duties" which are properly deducted from EP and constructed export price (CEP) pursuant to the statute, rather than analogous to antidumping duties or duties under section 201 of the Trade Act of 1974.
- Commerce addressed "normal customs duties" in *Stainless Steel Wire Rod from Korea* and that decision was affirmed by the Court of Appeals for the Federal Circuit (CAFC) in *Wheatland Tube*.[11] The analysis of section 201 duties upheld by the CAFC in *Wheatland Tube* demonstrates that section 232 duties are very similar to section 201 duties, and

[7] *See* Memorandum, "Certain Corrosion-Resistant Steel Products from Taiwan: Yieh Phui Enterprise Co., Ltd./Synn Industrial Co., Ltd. – Analysis Memorandum for the Final Results of the Administrative Review, 2017-2018," dated concurrently with this memorandum (Yieh Phui/Synn's Final Analysis Memorandum).
[8] *See Preliminary Results* PDM at 10.
[9] *See Preliminary Results* PDM at 14, and accompanying Memorandum, "2017-2018 Administrative Review of Certain Corrosion-Resistant Steel Products from Taiwan: Additional Information on Section 232 Duties," dated concurrently with the *Preliminary Results* PDM at Attachment (Section 232 Duties Memorandum).
[10] *See* Prosperity's Case Brief at 1-2.
[11] *Id*. at 3, citing *Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 19153 (April 12, 2004) (*Stainless Steel Wire Rod from Korea*), upheld in *Wheatland Tube Co. v. United States*, 495 F. 3d 1355 (Fed. Cir. 2007) (*Wheatland Tube*).

Commerce should again conclude that these are special duties which should not be deducted from U.S. price.[12]

- Commerce has relied on the fact that section 201 safeguard duties did not exist at the time the Antidumping Statute was enacted in 1921, and therefore, Congress could not have intended to include safeguard duties specifically as normal customs duties.[13] The same logic should follow for section 232 duties, the statutory authority for which was enacted, in its current form, in 1962.
- Congress has delegated to the President the limited authority to apply special duties in certain circumstances such as safeguard duties, antidumping and countervailing duties, section 232 duties, and section 301 duties for the specific remedial purposes specified in each of those statutes;[14] Congress' delegation of authority to the President to impose duties under section 232 and the President's subsequent modification to Chapter 99 of the HTSUS demonstrate that section 232 duties are "special duties" as opposed to "ordinary" customs duties.[15]
- The history of usage of section 232 demonstrates that usage is only utilized in special situations.[16] By treating section 232 duties as "ordinary" duties, Commerce wholly ignores the fact that it is only Congress who has the authority to set such duties. Any duties set by the President via authority that is delegated by Congress are "special" in the sense that they are out of the ordinary.[17]
- The placement of the modification to the HTSUS in Chapter 99 to impose the section 232 duties demonstrates that the duties are "special" rather than "ordinary" customs duties since Chapter 99 is reserved for special duties imposed by legislation.[18] The language of the modification in Chapter 99 also indicates that the covered duties are "special" rather than "ordinary."[19]
- Commerce also stated in *Stainless Steel Wire Rod from Korea* that Chapter 99 "is reserved for special or temporary duties."[20]
- The CAFC agreed in *Wheatland Tube* that section 201 duties were more similar to antidumping duties because they too provided relief from the adverse effects of imports.[21] Section 232 duties are similar to section 201 duties and serve a remedial purpose as they remedy the alleged threat to national security that the purportedly high level of steel imports represents.[22]

---

[12] *Id.*
[13] *Id*. at 4.
[14] *Id*. at 5, citing 19 U.S.C. § 2251; 19 U.S.C. § 1671; 19 U.S.C. § 1673; 19 U.S.C. § 1862; and 19 U.S.C. § 2411.
[15] *See* Prosperity's Case Brief at 4-5, citing S. Rep. No. 90-1385, pt.2, at 13 (1968); *see also* 19 U.S.C. § 3004 (1994) and 19 U.S.C. § 3521 (1994).
[16] *See* Prosperity's Case Brief at 6.
[17] *Id*.
[18] *Id.*, citing *Harmonized Tariff Schedule of the United States (2019) Revision 11*, USITC Pub. 4948, Aug. 2019 (*HTSUS (2019) Revision 11*), at ch. 99.
[19] *Id*. at 8, citing *HTSUS (2019) Revision 11* at ch. 99.
[20] *Id*., citing *Stainless Steel Wire Rod from Korea*, 69 FR at 19160.
[21] *Id*. at 9, citing *Apex Exps. v. United States*, 777 F. 3d 1373,1379 (Fed. Cir. 2015).
[22] *Id*., citing *Proclamation 9705 of March 8, 2018: Adjusting Imports of Steel into the United States*, 83 FR 11625 (March 15, 2018) (Proclamation 9705).

- Commerce's decision that section 232 duties are not akin to antidumping or section 201 duties is disingenuous because section 232 duties are imposed to remedy alleged harm to domestic industries.[23]
- In *Wheatland Tube,* the CAFC also agreed with Commerce and held that section 201 duties were more similar to antidumping duties because they were temporary in nature.[24] Likewise, section 232 duties are temporary in nature because, implicitly, improved capacity utilization rates by the U.S. industry could lead to the removal of the 232 duties.[25]
- Deducting section 232 duties risks imposing a double remedy; the CAFC agreed with Commerce and ruled that deducting section 201 duties from export price would run the risk of imposing a double remedy.[26] Commerce argues that imposing a double remedy is not a concern in this instant review because section 232 duties address national security concerns and are differentiated from remedying injuries to domestic injury.[27]
- The Foreign Trade Zones Board often posts notifications of proposed production activity in certain foreign trade zones around the country in the *Federal Register*; in many of these notices, the Foreign Trade Zone Board refers to "special duties" under section 232.[28]

Petitioners' Rebuttal Brief

- Prosperity could have raised its arguments against section 232 duties much earlier in the review, such as in pre-preliminary comments, but it chose instead to raise them for the first time in its case brief. Consequently, the petitioner is unable to fully rebut the legislative history and arguments.[29]
- Many of Prosperity's case brief arguments are taken verbatim from a respondent's case brief in *Circular Welded Pipe and Tube from Turkey*;[30] the reiterated arguments lack merit and

[23] *Id*. at 10, citing *Preliminary Results* PDM at 11.
[24] *Id*., citing *Wheatland Tube*, 495 F. 3d at 1362.
[25] *Id*., citing *Section 232 March 8th Proclamation*, 83 FR at 11626.
[26] *Id*. at 11, citing *Wheatland Tube*, 495 F. 3d at 1363 and *Stainless Steel Wire Rod from Korea*, 69 FR at 19160.
[27] *Id*., citing *Preliminary Results* PDM at 11.
[28] *Id*. at 12, citing *Foreign-Trade Zone (FTZ) 203—Moses Lake, Washington; Notification of Proposed Production Activity; Framatome, Inc. (Fuel Rod Subassemblies); Richland, Washington*, 84 FR 11503 (March 27, 2019) (*FTZ 203*) and *Foreign-Trade Zone (FTZ) 158—Jackson, Mississippi; Notification of Proposed Production Activity; Calsonic Kansei North America (Automotive Parts), Canton, Mississippi*, 83 FR 55142 (November 2, 2018) (*FTZ 158*).
[29] *See* Petitioners' Rebuttal Brief at 7.
[30] *Id*., citing *e.g*., Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret's (collectively, Borusan) Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Re-submission of Borusan Case Brief," dated September 24, 2019 (Barcode 389357); *see also* Memoranda, "Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Light-Walled Rectangular Pipe and Tube from Mexico; 2017-2018," dated October 10, 2019; and "Issues and Decision Memorandum for the Final Normal Value Calculations to be Effective from 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 (*OCTG from Ukraine*); *see also Certain Welded Carbon Steel Standard Pipe and Tube from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 3616 (January 22, 2020) (*Circular Welded Pipe and Tube from Turkey*) and accompanying Issues and Decision Memorandum (IDM).

should be rejected because Commerce has found that section 232 duties are to be treated as "United States import duties."[31]

- Prosperity does not argue that section 232 duties are "included in" reported export prices; Prosperity acknowledges that it increased export prices issued to the customer to account for additional duties by issuing a revised contract and debit note to the customer and requiring payment prior to the release of merchandise.[32]
- Commerce accepted the adjustment in the *Preliminary Results*, which had the effect of increasing export price by the amount of the section 232 duties. If Commerce were to not deduct section 232 taxes paid by Prosperity, the export price would be increased by the amount of the section 232 duties, without a corresponding reduction for the related section 232 expenses incurred.[33]

Commerce's Position: We disagree with Prosperity that section 232 duties are special duties similar to section 201 safeguard or antidumping duties. As such, we find in these final results that section 232 duties, which were included in the sales price offered to Prosperity's unaffiliated customers in the United States, are analogous to U.S. import duties that are properly deducted from EP pursuant to the statute.[34] In the *Preliminary Results*, we described that "section 232 duties are not akin to antidumping or 201 duties."[35] We also explained that in keeping with our decisions in *OCTG from Ukraine*[36] and *Circular Welded Pipe and Tube from Turkey*,[37] 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.[38]

Commerce considered section 201 duties in *Stainless Steel Wire Rod from Korea* and determined not to deduct 201 duties from U.S. prices in calculating dumping margins,[39] and this decision was sustained by the CAFC in *Wheatland Tube*. While Prosperity cites these decisions to support its arguments that 232 duties should not be deducted, the issues are different as treatment of 201 duties differs from treatment of 232 duties.

Prosperity inaccurately argues that, in *Wheatland Tube*, Commerce "demonstrate{d} that {s}ection 232 duties are clearly analogous to 'special' duties and not 'United States import duties'" and that decision was affirmed by the CAFC in *Wheatland Tube*.[40] Rather, the

---

[31] *See* Petitioners' Rebuttal Brief at 8, citing, *e.g.*, *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017–2018*, 84 FR 55555 (October 17, 2019), and accompanying PDM at 11-13; and *OCTG from Ukraine* at 3-11.
[32] *Id*., citing Prosperity's Letter, "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 1st SQR) at 21-22; *see also Preliminary Results* PDM at 14.
[33] *Id*. at 9.
[34] *See* section 772(c)(2)(A) of the Act (instructs Commerce to adjust EP and CEP "for the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties…").
[35] *See Preliminary Results* PDM at 11.
[36] *See Preliminary Results* PDM at 12, citing *OCTG from Ukraine* at Comment 1.
[37] *See Circular Welded Pipe and Tube from Turkey* IDM at Comment 3.
[38] *See Preliminary Results* PDM at 12.
[39] *See Stainless Steel Wire Rod from Korea*, 69 FR at 19154-19156.
[40] *See* Prosperity's Case Brief at 2.

circumstances and assessments in *Wheatland Tube* are reflective of a close examination of 201 duties and not 232 duties which Prosperity advocates for in this case. In other words, *Wheatland Tube* assesses Commerce's interpretation of "United States import duties" and "special dumping duties" in consideration of the function and treatment of section 201 safeguard duties.

Specifically, as explained in the *Preliminary Results*, in comparing section 201 duties with antidumping duties, the CAFC found that: (1)"{l}ike antidumping duties, {section} 201 duties are remedial duties that provide relief from the adverse effects of imports," (2) "{n}ormal 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 determination provision, and are permanent unless modified by Congress."[41] In sustaining Commerce's decision regarding section 201 duties in *Wheatland Tube*, the CAFC also held that "{t}o assess both a safeguard duty and an antidumping duty on the same imports without regard to the safeguard duty, would be to remedy substantially overlapping injuries twice."[42]

First, Prosperity attempts to argue that the section 232 duties are not "normal customs duties." Commerce previously acknowledged in *OCTG from Ukraine* the "extraordinary nature" of 232 duties. Thus, no ground is gained by arguing that 232 duties are duties that fall outside the realm of "normal customs duties"—we have acceded that section 232 duties are extraordinary. In *OCTG from Ukraine*, we explained that 201 duties were more akin to antidumping duties than "ordinary customs duties" and that the CAFC found that conclusion reasonable.[43] We further explained in *OCTG from Ukraine* that 232 duties are not akin to antidumping or 201 duties and that the "Annex to Proclamation 9740 refers to 232 duties as "ordinary" customs duties."[44] Therefore, Prosperity's argument that section 232 duties are not "normal customs duties" has already been addressed in *OCTG from Ukraine*.

As further explained in *Circular Welded Pipe and Tube from Turkey*, we find that section 232 duties are not akin to antidumping or section 201 duties. In contrast to Prosperity's contention that section 232 duties are remedial in nature, we find that section 232 duties are not focused on remedying injury to a domestic injury. The objective of antidumping duties is to "remedy sales by a foreign exporter in the U.S. market at less than fair value" and section 201 duties aim to "remedy the injurious effect on the U.S. industry of significant surge in imports."[45] Moreover, "{c}ountervailing duties remedy unfair competitive advantage that foreign exporters have over domestic producers as a result of foreign countervailable subsidies."[46] As such, these types of duties "are all directed at the same overarching purposes – protecting the bottom line of domestic

[41] *See Wheatland Tube*, 495 F. 3d at 1362-63.
[42] *Id*. at 1365.
[43] *See OCTG from Ukraine* at 8.
[44] *See OCTG from Ukraine* at 10.
[45] *See Wheatland Tube*, 495 F. 3d at 1362; *see also* section 201 of the Trade Act of 1974; section 731(1) of the Act; and Section 232 Duties Memorandum at 8.
[46] *See Wheatland Tube*, 495 F. 3d at 1363.

producers."[47] By contrast, we find that section 232 duties are not focused on remedying injury to a domestic industry. As noted in the *Preliminary Results*, the text of the President's proclamations highlights the intent of establishing such duties clearly.[48] Proclamation 9705, for example, 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*…."[49] Commerce noted that the text of section 232 duties of the Trade Expansion Act of 1962 also clearly concerns itself with "the effects on the national security of imports of the article."[50]

Prosperity references the Constitution to highlight Congress' sole authority to levy and collect taxes and duties, and its exclusive authority to modify the HTSUS.[51] Prosperity also contends that similar to section 201 duties, the primary purpose of section 232 duties is to remedy the alleged threat to national security and the alleged harm to the domestic steel industry from imports.[52] This, however, is not our understanding of the law or purpose behind the section 232 duties. We find that the President's powers regarding section 232 duties arise from a statute, and that the statute authorizes preventative and national security powers.[53] The statute, for example, allows the President to impose section 232 duties if the President concurs with the Secretary that an article is being imported under circumstances "as to threaten to impair the national security."[54] Unlike antidumping and countervailing duty (CVD) measures, the section 232 duties were implemented pursuant to a concern of safety and security for the entire United States, and not to protect a single enterprise or industry. We thus find that the national security purpose of section 232 duties is vastly different than the purpose of antidumping duties or section 201 safeguard measures.[55]

Moreover, we note that the Presidential proclamations state that section 232 duties are to be imposed in addition to other duties unless expressly provided for in the proclamations.[56] The

---

[47] *Id*. at 1364.

[48] *See 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"); *see also 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 9722*) (similar); *Proclamation 9777 of August 29, 2018*, 83 FR 45025 (September 4, 2018) (*Proclamation 9777*) (similar); and Section 232 Duties Memorandum at 8.

[49] *See Proclamation 9705*, 83 FR 11627 (emphasis added).

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

[51] *See* Prosperity's Case Brief at 4-5, citing Senate Report No. 90-1385, pt. 2, at 13 (1968) and *Forest Laboratories, Inc. United States*, 403 F. Supp. 2d 1348 (CIT 2005).

[52] *See* Prosperity's Case Brief at 9-10.

[53] *See* section 232 of the Trade Expansion Act of 1962.

[54] *Id*.

[55] *See* Section 232 Duties Memorandum at 8-9.

[56] *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;

Annex to *Proclamation 9740* refers to 232 duties are "ordinary" customs duties, and it also states that "{a}ll anti-dumping and countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein."[57] Notably, there is no express exception in the HTSUS revision in the Annex. In other words, we find that section 232 duties are treated as any other duties. No express reduction to antidumping duties by the amount of the section 232 duties is contained in the Presidential Proclamation. Had the President intended that antidumping duties be reduced by the amount of section 232 duties imposed, the Presidential Proclamation would have expressed that intent.

Although Prosperity argues that Chapter 99 of the HTSUS is reserved for "special" duties imposed under special authority delegated by Congress and pointed out President Bush's modification of subchapter III of Chapter 99 when imposing safeguard duties under section 201 of the Tariff Act of 1974,[58] we do not agree that section 232 duties are analogous to section 201 or antidumping duties, for the reasons discussed above. Nevertheless, although we made this point in *Stainless Steel Wire Rod from Korea* regarding section 201 duties being included in Chapter 99 of HTSUS, this was not the sole basis upon which Commerce declined to adjust U.S. price for section 201 duties.[59] For example, Commerce explained that "{t}o some extent, section 201 duties are interchangeable with special {antidumping} duties," such that section "201 duties are more appropriately regarded as a type of special remedial duty, rather than ordinary customs duties."[60]

Prosperity argues that deducting section 232 duties from the U.S. price risks imposing a double remedy.[61] However, we find that reducing U.S. EP and CEP by the amount of reported section 232 duties in the context of this administrative review is consistent with section 772(c)(2)(A) of the Act, because it instructs Commerce to adjust EP and CEP for "the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties."[62] Furthermore, as explained in the *Preliminary Results*, we find that the function of antidumping duties and section 232 duties are separate and distinct, and that there would be no overlap between the two in providing the remedies sought by each.[63] Prosperity also references the Foreign Trade Zones Board's announcements published in the *Federal Register* and points out the Board's characterization of section 232 duties as "special" duties.[64] However, we find Prosperity's comparison of the application of section 232 duties to its merchandise manufactured in Taiwan (and subsequently exported to the United States) and to "foreign-status materials and

Proclamation 9772, 83 FR at 40403-31; and *Proclamation 9777*, 83 FR at 45025. The proclamations do not expressly provide that 232 duties receive differential treatment.

[57] *See Proclamation 9740*, 83 FR at 20685-87.

[58] *See* Prosperity's Case Brief at 8, citing *Proclamation 7529 To Facilitate Positive Adjustment to Competition From Imports of Certain Steel Products*, 67 FR 10553 (March 5, 2002).

[59] *See Stainless Steel Wire Rod from Korea*, 69 FR at 19160.

[60] *Id*.

[61] *See* Prosperity's Case Brief at 11-13.

[62] *See* section 772(c)(2)(A) of the Act.

[63] *See* Section 232 Duties Memorandum at 9.

[64] *See* Prosperity's Case Brief at 12-13, citing *FTZ 203* and *FTZ 158*.

components used in export production" claimed by producers/manufacturers located in the United States[65] inapplicable, and thus, its argument unpersuasive.

Lastly, we note that there is no dispute among parties with regard to record evidence that the amount of 232 duties were included in the price paid by Prosperity's U.S. customers. Thus, pursuant to section 777(c)(2)(A) of the Act, we find that it is appropriate to deduct this amount from Prosperity's reported EP.[66] However, in the *Preliminary Results*, we accepted Prosperity's reported section 232 duties by inadvertently making an upward adjustment to its EP. For these final results, and for the reasons noted above, we treated Prosperity's section 232 duties as U.S. import duties and properly made changes to Prosperity's margin program by deducting the reported section 232 duties as U.S. import duties from Prosperity's EP.[67]

Comment 2: Application of Differential Pricing Methodology to Prosperity's U.S. Sales

Prosperity's Case Brief

- Commerce incorrectly applied the average-to-transaction (A-T) method of margin calculation for all of Prosperity's U.S. sales. This is contrary to the United States' World Trade Organization (WTO) obligations and should be revised for the final results.[68]
- The Appellate Body of the WTO has ruled that Commerce's differential pricing methodology (DPM) violates the AD agreement. Specifically, the DPM impermissibly identifies a pattern across purchasers, regions, and time periods, because it is impossible to discern a "regular and intelligible form or sequence across these factors."[69]
- The Appellate Body also held that if Commerce finds such a pattern, it may apply an A-T methodology only to those sales identified as part of the pattern and may not apply A-T methodology to all sales. Further, pursuant to the same WTO ruling, "zeroing" of negative dumping margins is not permitted even when the A-T methodology is justified.[70]
- The Appellate Body stated that Commerce must provide a qualitative explanation examining circumstances where a weighted average-to-weighted average or transaction-to-transaction (T-T) comparison is insufficient to account for the differences in prices.[71] Commerce provided no explanation in the *Preliminary Results*, but rather justified its application of the A-T margin calculation and inflated Prosperity's margin.[72]
- Commerce should thus discontinue its present application of the DPM and bring its margin calculation into conformance with the findings of the Appellate Body.[73]

---

[65] *See FTZ 203* at 11503; *see also FTZ 158* at 55142.
[66] *See* Prosperity's 1st SQR at 21-22 and at Exhibit C-34.
[67] *See* Prosperity's Final Analysis Memorandum at Attachment 3.
[68] *See* Prosperity's Case Brief at 13.
[69] *Id*. at 13-14, citing Appellate Body Report, *United States – Anti-Dumping and Countervailing Duty Measures on Large Residential Washers from Korea*, WTO Doc. WT/DS464/AB/R (adopted September 26, 2016) (*Washers from Korea* and Washers from Korea Panel Report) at paragraphs 5.34-36 and 6.2-3.
[70] *Id*. at 14, citing Washers from Korea Panel Report at paragraphs 5.153, 5.171.
[71] *Id*., citing Washers from Korea Panel Report at paragraphs 5.75-76, 6.6.
[72] *Id*. at 1-2, citing 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 September 5, 2019 (Prosperity's Preliminary Analysis Memorandum).
[73] *See* Prosperity's Case Brief at 14.

Petitioners' Rebuttal Brief

- A more recent WTO panel departed from *Washers from Korea* and generally upheld Commerce's DPM.[74] Although the panel report is still under panel, the issue of whether the DPM may violate WTO obligations is far from settled.[75]
- WTO dispute settlement decisions have no effect on U.S. law, unless and until implemented through the procedures of the Uruguay Round Agreements Act (URAA). By law, Commerce may not – in the context of this proceeding – alter its practice in response to any WTO ruling.[76]
- Rather, it may do so through the set procedure established in the URAA at 19 U.S.C. §§ 3533(g) and 3538.[77]

Commerce's Position: We disagree with Prosperity's contention that our differential pricing analysis is contrary to the United States' WTO obligations and that we have not justified the numerical thresholds used in our analysis. We also disagree with Prosperity's assertion that we failed to provide a qualitative explanation of why a weighted average-to-weighted average (A-A) comparison is inappropriate here. Accordingly, for the final results, we continue to apply our standard DPM and continue to calculate Prosperity's margin by using the weighted A-T method.

We note that section 777A(d) of the Act that mandates how we measure whether there is a pattern of prices that differ significantly or explains why the A-T method cannot account for such differences. On the contrary, carrying out the purpose of the statute[78] here is a gap filling exercise by Commerce.[79] As explained in the *Preliminary Results*, as well as in various other proceedings,[80] Commerce's differential pricing analysis, including the use of the Cohen's *d* test as a component in this analysis, is reasonable and is not contrary to the law.

At the outset, Commerce disagrees with Prosperity regarding the effect that the WTO Appellate Body's findings in *Washers from Korea* has on Commerce's methodology utilized in AD

---

[74] *See* Petitioners' Case Brief at 9, citing *United States – Anti-Dumping Measures Applying Differential Pricing Methodology to Softwood Lumber from Canada* (WT/DS534/R) (April 9, 2019).
[75] *Id*.
[76] *Id*.
[77] *Id*. at 9-10.
[78] *See Koyo Seiko Co., Ltd. V. United States*, 20 F. 3d 1156, 1159 (Fed. Circ. 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.).
[79] *See Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc*., 467 U.S. 837, 842-43 (1984) (recognizing deference where a statute is ambiguous, and an agency's interpretation is reasonable).
[80] *See, e.g., Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015), and accompanying IDM at Comment 1; *see also Circular Welded Non-Alloy Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32937 (June 10, 2015), and accompanying IDM at Comments 1 and 2; and *Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 46647 (July 18, 2016), and accompanying IDM at Comment 4.

proceedings. 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.[81] In fact, Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.[82] As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically supersede the exercise of Commerce's discretion in applying the statute.[83] We have not revised or changed our use of the DPM in light of the case cited by Prosperity, nor has the United States adopted changes to its methodology pursuant to the URAA's implementation procedure. As such, we find that Prosperity's reference to the WTO's ruling in *Washers from Korea* does not undermine the adherence of the differential pricing methodology U.S. law.

We find that the purpose of section 777A(d)(1)(B) of the Act is to evaluate whether the A-A method is the appropriate tool to measure whether, and if so, to what extent, a given respondent is dumping the subject merchandise at issue in the U.S. market.[84] While "targeting" and "targeted dumping" may be used as a general expression to denote this provision of the statute,[85] these terms impose no additional requirements beyond those specified in the statute for Commerce to determine that the A-to-A method is not an appropriate comparison methodology. Furthermore, although "targeting" implies a purpose or intent on behalf of the exporter to focus on a sub-group of its U.S. sales, the U.S. Court of International Trade (CIT) and CAFC have found that the purpose and intent behind an exporter's pricing behavior in the U.S. market is irrelevant to Commerce's analysis of the statutory provisions section 777(A)(d)(1)(B) of the Act.[86] The CAFC held that:

> Section 777A(d)(1)(B) of the Act does not require Commerce to determine the reasons why there is a pattern of export prices for comparable merchandise that differs significantly among purchasers, regions, or time periods, nor does it mandate which comparison methods Commerce must use in administrative reviews. As a result, Commerce looks to its practices in antidumping duty investigations for guidance. Here, the {U.S. Court of International Trade (CIT)} did not err in finding there is no intent requirement in the statute, and we agree with the CIT that requiring Commerce to determine the intent of a targeted dumping respondent "would create a tremendous burden on Commerce that is not required or suggested by the statute."[87]

---

[81] *See Corus Staal BV v. U.S. Dep't of Commerce*, 395 F. 3d 1343, 1347-49 (Fed. Circ. 2005), *cert. denied* 126 S. Ct. 1023 (2006), *accord Corus Staal BV v. United States*, 502 F. 3d 1370, 1375 (Fed. Cir. 2007).
[82] *See, e.g.*, 19 U.S.C. 3533, 3538 (sections 123 and 129 of the URAA).
[83] *See, e.g.*, 19 U.S.C. 3538(b)(4) (implementation of WTO reports is discretionary).
[84] *See* 19 CFR 351.414(c)(1).
[85] *See, e.g., Samsung v. United States*, 72 F. Supp. 3d 1359, 1364 (CIT 2015) ("Commerce may apply the A-to-T methodology 'if (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or period of time, and (ii) the administering authority explains why such differences cannot be taken into accounting using 'the A-to-A or to T-to-T methodologies.
[86] *See JBF RAK LLC v. United States*, 991 F. Supp. 2d 1343, 135 (CIT 2014); *aff'd JBF RAK LLC v. United States*, 790 F. 3d 1358, 1368 (Fed. Circ.2015) (*JBF RAK*); *see also Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. v. United States*, 608 Fed. Appx 948 (Fed. Circ. 2015) (*Borusan*).
[87] *See JBF RAK*, 790 F. 3d at 1368 (internal citations omitted).

Moreover, the CIT in *Apex II* held that Commerce's change in practice (from targeted dumping to its differential pricing analysis) was exempt from the Administrative Procedures Act (APA)'s rule making requirements, stating:

> Commerce explained that it continues to develop its approach with respect to the use of A-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-A} comparison method." Final I&D Memo at 19 (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-(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-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.[88]

Moreover, the CIT acknowledged in *Apex II* that as Commerce "gains greater experience with addressing potentially hidden or masked dumping that can occur when {Commerce} determines weighted-average dumping margins using the {A-to-A} comparison method, {Commerce} expects to continue to develop its approach with respect to the use of an alternative comparison method."[89] 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.

The CIT's holding in *Apex II* has since been upheld by the CAFC.[90] Thus, we find that the numerical thresholds used in Commerce's standard differential pricing analysis are reasonable and consistent with the requirements of section 777A(d)(1)(B) of the Act. Accordingly, Commerce's development of the differential pricing analysis and the application of this analysis in this case, including the thresholds relied upon herein, are consistent with established law. We note that Prosperity has not submitted any factual evidence or argument to demonstrate how these thresholds should be modified for the purposes of this review.

Lastly, we disagree with Prosperity's contention that we failed to explain why the A-A method cannot account for any pattern of price differences observed. We find 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 masked dumping. As the CIT has explained,

---

[88] *See Apex Frozen Foods Pvt. Ltd. v. United States*, 144 F. Supp. 3d 1308, 1330 (CIT 2016) (*Apex II*) ("Commerce is not restricted in what type of sales it may consider in assessing the existence of such a pattern so long as its methodological choice enables Commerce to reasonably determine whether application of A-to-T is appropriate.") (internal citations and quotations limited).

[89] *Id*.

[90] *See Apex Frozen Foods Private Ltd*., 862 F. 3d at 1337.

> Where the amount of uncovered masked dumping results in an A-T calculated margin that is not *de minimis*, and the A-A calculated margin would be *de minimis*, it is reasonable for Commerce to presume that A-A cannot account for the pattern of significant price differences because, unlike A-T, A-A cannot uncover the dumping that was masked by the differentially priced sales. The fact that A-A was able to is reason enough to demonstrate that A-A could not account for the pattern of significant price differences here.[91]

In this instant proceeding, the A-A and A-T methodologies calculated different dumping margins for Prosperity. This result demonstrates that the A-A method cannot account for the pattern of significant price differences.

Accordingly, for the above reasons, we find that Commerce's differential pricing analysis is consistent with section 777A(d)(1)(B) of the Act and the Statement of Administrative Action (SAA) which accompanied the URAA. Furthermore, the differential pricing analysis establishes a reasonable framework to determine whether the A-A method is appropriate, and if not, then how the A-T methodology may be considered as an alternative to the standard A-A methodology based on the significant differences in the pattern of prices, as identified by the Cohen's *d* test. We have thus continued to calculate Prosperity's dumping margin by applying the A-T methodology.

Comment 3: Universe of Constructed Export Price (CEP) Sales for SYSCO

Background: SYSCO makes certain sales through an affiliate in the U.S. market (Company A).[92] In the *Preliminary Results*, we set a date of sale as the earlier of invoice or shipment date for U.S. sales SYSCO made through Company A.

Petitioners' Case Brief

- The statute does not direct how Commerce should define the universe of sales for a review.[93] Based on its regulations, Commerce has found that the date of sale, date of export, or date of entry may be appropriate for determining the universe of sales.[94]
- Commerce only considers a universe of sales based on date of sale in the case of CEP sales where merchandise enters the physical inventory of the affiliate, which Commerce calls CEP sales made after importation.
- SYSCO's description of its channel of distribution field, CHANNELU, demonstrates that certain CEP sales included in the *Preliminary Results* (CEP Sales A) are not subject

[91] *See Apex II*, 144 F. Supp. 3d 1308 at 1332-1335.
[92] The identity of SYSCO's U.S. affiliate is bracketed as business proprietary information and is referred to herein as Company A.
[93] *See* Petitioners' Case Brief at 1, citing *Helmerich & Payne, Inc. v. United States*, 24 F. Supp. 2d 304, 310 (CIT 1998) (*Helmerich & Payne, Inc.*).
[94] *Id*. at 2, citing 19 CFR 351.213(e)(1)(ii).

merchandise.[95] Commerce should remove these sales from consideration because they entered the United States prior to the POR.

- SYSCO's universe of sales should be modified to account for particular sales (CEP Sales B) which are not subject merchandise as they are not reviewable by statute due to their entry before the suspension of liquidation. Commerce failed to remove these sales in the *Preliminary Results* but should do so now.[96]

SYSCO's Rebuttal Brief

- Commerce should reject the petitioners' argument regarding these sales of subject merchandise that entered the United States prior to the POR but were sold during the POR.[97]
- The petitioners' citation to the *Preamble* supports a conclusion contrary to their argument. When addressing comments on the proposed regulations, Commerce rejected a proposal that the said regulations should clarify that it would not consider merchandise entered prior to the suspension of liquidation.[98] Commerce stated that the ability to tie specific sales to entries does not necessitate that assessment rates should be determined using such a link.[99]
- Commerce has found that the delay between entries and resale to an unaffiliated customer often means that merchandise entered by the CEP affiliate during the POR is different from merchandise sold by that affiliate during the POR. Commerce consistently calculates CEP margins using sales made during the POR and applied the related rates to entries made during the POR.[100]
- Commerce may have reasons to not base its review on entries during the POR, *e.g.*, ensuring that sales are not missed or double-counted between reviews based on previously used methodology.[101]
- Certain entries were made by SYSCO's affiliate during the period covered by Commerce's first review period but were sold during the POR. These were subject to the assessment rate issued for the first review. However, they were not yet sold to an unaffiliated customer by SYSCO's affiliate.[102]
- In the first review, Commerce did not limit CEP sales to only entries during that period of review, and it has stated its desire to use "a consistent approach from review to review."[103]
- Accepting the petitioners' argument would provide an opportunity for dumping. Specifically, merchandise could enter an affiliate's inventory in one review period but be

[95] *Id*. at 2, citing SYSCO's Letter, "Corrosion-Resistant Steel Products from Taiwan: Section BC Response," dated December 4, 2018 (SYSCO's BCQR) at CEP attachment at 17.
[96] *Id*. at 3, citing *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27314 (May 19, 1997) (*Preamble*).
[97] *See* SYSCO's Rebuttal Brief at 3.
[98] *Id*. at 3, citing *Preamble*, 62 FR at 27314.
[99] *Id*.
[100] *Id*. at 4.
[101] *Id*. at 4, citing *Preamble*, 62 FR at 27314.
[102] *Id*. at 5.
[103] *Id*. at 5, citing *Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 51611 (November 7, 2017), and accompanying IDM at Comment 1.

sold in a subsequent review period, even if that affiliate had no entries, allowing for dumped sales that Commerce would not review.[104]

- Commerce accepts that assessment rates applied to entered values will vary to some degree from dumping duties based on sales values; it seeks "to collect a reasonable approximation of the antidumping duties."[105]
- Commerce has previously considered all sales made during a period of review without respect to entries occurred.[106]

Commerce's Position: We disagree with the petitioners' contention regarding CEP Sales A and are not altering our treatment of them for the final results of this administrative review.

As a general matter, the petitioners are correct that 19 CFR 351.213(e)(i) establishes that Commerce will review "entries, exports, or sales of subject merchandise during the 12 months immediately preceding the most recent anniversary month." They are also correct that the statute does not specify how Commerce establishes the universe of sales used to determine dumping margins.[107] However, Commerce's general practice is to include in its dumping margin calculations all CEP sales made after importation that have a date of sale within the POR.[108]

The petitioners contend that Commerce should treat CEP Sales A as sales made before importation, based on their characterization of a description of the channel of distribution field (CHANNELU) in SYSCO's initial questionnaire response.[109] In the *Preliminary Results*, we established that, for SYSCO's CEP sales, we would utilize the earlier of shipment date or invoice date as the date of sale.[110] Additionally, SYSCO's U.S. affiliate, Company A, reported that it "generally invoices customers on the date the customer receives the product" and that the invoice date and the date of title transfer coincide.[111] Company A describes its relevant sales process as beginning with receiving an order from the end customer and ending with arranging delivery to the end customer.[112] When asked about CEP Sales A in the context of channels of distribution, SYSCO's response emphasized that all CEP sales were made after importation.[113] Thus, for the final results, we have continued to include SYSCO's CEP Sales A in the U.S. sales database.

---

[104] *Id*. at 6.
[105] *Id*. at 6, citing *Koyo Seiko Co., Ltd. v. United States*, 258 F. 3d 1340 (Fed. Cir. 2001) (*Koyo Seiko*).
[106] *Id*. at 7, citing, *Oil Country Tubular Goods, Other than Drill Pipe, from Korea: Final Results of New Shipper Review and Antidumping Duty Administrative Review*, 68 FR 2313 (January 16, 2003) and accompanying IDM at Comment 4.
[107] *See* Petitioners' Case Brief at 1, citing *Helmerich & Payne, Inc.*, 24 F. Supp. 2d 304.
[108] *See, e.g.*, *Certain New Pneumatic Off-the-Road Tires from India: Negative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 55431 (August 19, 2016) and accompanying PDM at 11-12, unchanged in *Certain New Pneumatic Off-the-Road Tires from India: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 82 FR 4848 (January 17, 2017).
[109] *See* Petitioners' Case Brief at 2, citing SYSCO's BCQR at Attachment CEP 17.
[110] *See Preliminary Results* PDM at 13.
[111] *See* SYSCO's Letter, "Corrosion-Resistant Steel Products from Taiwan: Section A Response," dated November 2, 2018 (SYSCO's AQR) at CEP attachment at 21.
[112] *Id*., at CEP attachment at 18.
[113] *See* SYSCO's Letter, "Corrosion-Resistant Steel Products from Taiwan: Supplemental Section BCD Response," dated August 23, 2019 (SYSCO's 2SQR) at 7.

Thus, because CEP Sales A had dates of sale during the POR, and were made after importation, we have not removed them from SYSCO's U.S. sales database.

However, with respect to CEP Sales B, the *Preamble* to Commerce's regulations notes an exception to the practice to include in Commerce's dumping margin calculations all CEP sales made after importation that have a date of sale within the POR. Specifically, the *Preamble* states that: "Sales of merchandise that can be demonstrably linked with entries prior to the suspension of liquidation are not subject merchandise and therefore are not subject to review by {Commerce}."[114] There is no disagreement between SYSCO and the petitioners that SYSCO can link the CEP Sales B with entries prior to the suspension of liquidation.[115] Therefore, in accordance with Commerce's practice,[116] we have excluded from our analysis SYSCO's CEP Sales B, which entered prior to the suspension of liquidation because they are not subject merchandise within the meaning of section 771(25) of the Act.[117]

Comment 4: SYSCO's Categorization of Sales as U.S. or Home Market

Background: In its initial questionnaire responses for sections B and C, SYSCO updated its quantity and value tables to account for sales it identified as known to be further exported to the United States by a domestic customer (Company B).[118] In addition, it updated the totals to reflect sales it identified to three domestic customers (Customers C) which were exported to third countries.[119]

Petitioners' Case Brief

- When deciding in which market to classify a sale to a home market customer, Commerce examines knowledge of the ultimate destination of the merchandise and knowledge of whether the merchandise was consumed before exportation.[120]
- SYSCO reported certain sales to Company B as U.S. sales, based on reported knowledge of destination, but the record demonstrates that these sales were consumed domestically before exportation.[121]
- SYSCO's constructive knowledge of consumption in the home market is supported by record evidence.[122]

---

[114] *See Preamble*, 62 FR at 27314.
[115] *See* SYSCO's Rebuttal Brief at 3; *see also* Petitioners' Case Brief at 3-4; and SYCO's 2SQR at 2 and 5.
[116] *See, e.g.*, *Large Residential Washers from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2014-2015*, 81 FR 62715 (September 12, 2016) and accompanying IDM at Comment 1.
[117] *See* Memorandum, "Certain Corrosion-Resistant Steel Products from Taiwan: Sheng Yu Steel Co., Ltd. – Final Analysis Memorandum for the Final Results of the Administrative Review, 2017-2018," dated concurrently with this memorandum (SYSCO Final Analysis Memo).
[118] The identity of SYSCO's customer is bracketed as business proprietary information and is referred to herein as Company B.
[119] The identity of SYSCO's customers is bracketed as business proprietary information and is referred to herein as Customers C.
[120] *See* Petitioners' Case Brief at 4-5, citing *Stainless Steel Plate in Coils from Taiwan: Notice of Final Determination of Sales at Less Than Fair Value*, 64 FR 15493 (March 31, 1999) (*SSPC from Taiwan*), and accompanying IDM at Comment 1.
[121] *Id*. at 5.
[122] *Id*. at 6.

- SYSCO stated actual knowledge of domestic consumption of these sales when it stated the domestic customer's "purchase orders show they are using SYSCO's coils for further painting before shipped to customers in the U.S., Home market and third countries."[123]
- Commerce holds that if merchandise is further processed before exportation, the merchandise in question is a home market sale, and painting is a model match characteristic.[124] SYSCO's knowledge of the destination becomes irrelevant if the merchandise is considered to be consumed.
- Commerce requested that certain sales to Customers C be included in SYSCO's home market database. SYSCO did not comply with this request.[125]
- The submitted documentation with respect to these sales to Customers C is partially untranslated and does not demonstrate that the material was not consumed prior to exportation, the purchaser of the merchandise, or whether the merchandise was exported.[126]
- Additionally, SYSCO mistakenly treated sales to Company B as third country sales, despite knowledge of their domestic consumption.[127]
- These facts are worse than in *Stainless Steel Plate in Coils from Taiwan*, where Commerce applied adverse facts available for failing to report home market sales. Commerce should entertain applying total adverse facts available to account for SYSCO's errors and omissions.[128]

SYSCO's Rebuttal Brief

- The petitioners are correct that Commerce examines whether a respondent "knew or should have known" at the time of sale that merchandise was to be sold in a particular market or where the merchandise is considered to be consumed based on the circumstances surrounding a sale.[129]
- The petitioners are wrong to state that Commerce equates further manufacturing with consumption, and do not support their claim with case citations.[130] Commerce has found that merchandise is consumed prior to exportation when it is used to produce non-subject merchandise.[131]
- The scope specifically covers painted and unpainted CORE. Company B's painting of merchandise did not change it into non-subject merchandise. Thus, at the time of sale, SYSCO knew that these sales would be exported as subject merchandise to the United

[123] *Id*. at 6-7, citing SYSCO's 2SQR at 12.
[124] *Id*. at 7.
[125] *Id*. at 7-8, citing SYSCO's 2SQR at 13-14.
[126] *Id*. at 8.
[127] *Id*. at 8, citing SYSCO's 2SQR at 12.
[128] *Id*. at 8.
[129] *See* SYSCO's Rebuttal at 7-8, citing *Tung Mung Development Co. v. United States*, Slip Op. 01-83 (CIT 2001) (*Tung Mung Development Co.*) at 45-48.
[130] *Id*. at 8.
[131] *Id*. at 8, citing *Tung Mung Development Co*. at 46-47, *Final Determination of Sales at Less Than Fair Value Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, Certain Cut-to-Length Carbon Steel Plate from Korea*, 58 FR 37176, 37182 (July 9, 1993) (*Steel Products from Korea*); and *Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea*, 58 FR 15467, 15473 (March 23, 1993) (*DRAMS from Korea*).

States.[132] This contrasts with *SSPC from Taiwan* where the equivalent merchandise was further manufactured and transformed into non-subject merchandise.[133]
- Commerce has also preliminarily found that galvanizing hot-rolled and cold-rolled steel from Taiwan to be an insignificant or minor process of assembly in a CORE anticircumvention case. It would be inconsistent to find painting to be significant enough processing to be considered consumption in this case.[134]
- The petitioners do not contest any record evidence that SYSCO knew at the time of sale to Company B that these sales would be exported to the United States.[135]
- Identifying these sales to Company B as U.S. sales is consistent with how similar sales to this customer were reported in the previous review. Accepting these as U.S. sales is also in keeping with Commerce's previous applications of this knowledge test.[136]

Commerce's Position: We disagree with the petitioners' assertion that the act of painting subject merchandise represents consumption and continue to accept SYSCO's reporting of certain sales to Company B as U.S. sales based on knowledge of exportation. Additionally, we agree with SYSCO's classification of certain sales to Customers C as third-country sales.

The petitioners contend that Company B's painting of subject merchandise represents consumption of the merchandise, given that whether merchandise is painted is a product characteristic captured in the field used to establish type (*i.e.*, whether the products are clad, coated, or plated, and whether the product is painted or laminated), CTYPEH/U.[137] SYSCO notes that the scope, included *supra*, includes CORE "whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating."[138]

SYSCO's knowledge of consumption, either constructive or actual, is immaterial if the merchandise in question is not consumed.[139] The petitioners' sole support for their argument regarding consumption is *SSPC from Taiwan*.[140] However, in that case, Commerce found that the merchandise was consumed in the production of non-subject merchandise.[141] The petitioners also note that SYSCO stated that Company B consumes the merchandise in question domestically. The full context of this observation is that Company B does consume some

[132] *Id*. at 9.
[133] *Id*.
[134] *Id*. at 9-10, citing *Corrosion-Resistant Steel Products from Taiwan: Affirmative Preliminary Determination of Anticircumvention Inquiry on the Antidumping Order*, 84 FR 32,864 (July 10, 2019).
[135] *Id*. at 10, citing SYSCO's 2SQR at 12-13 and Exhibits B-3 and B-4.
[136] *Id*. at 10, citing *Crystalline Silicon Photovoltaic Products from Taiwan: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 30401 (June 28, 2018) (*Solar Products from Taiwan 2016-2017*) and accompanying IDM at Comment 1.
[137] *See* SYSCO's BCQR at B-15, C-19, and CEP attachment at 8-9.
[138] *See* SYSCO's Rebuttal Brief at 9.
[139] As an aside, we note that the factors that the petitioners cite to regarding constructive knowledge of consumption would also generally be true of domestic sales that SYSCO could identify as further exported. *See* Petitioners' Case Brief at 6.
[140] *Id*. at 4-5.
[141] *See SSPC from Taiwan* IDM at Comment 1.

merchandise domestically, "but also resold subject merchandise to the U.S. market and third countries," and matches SYSCO's characterization of these sales.[142]

SYSCO's citation to *Tung Mung Development Co.* correctly emphasizes a key distinction here; Commerce has judged merchandise to be consumed domestically before exportation when it is processed into non-subject merchandise. That case follows Commerce's practice in *Steel Products from Korea* (itself following Commerce's practice in *DRAMS from Korea*): "Where a product within the scope of an investigation has been transformed into a product outside that scope before exportation, we consider that product to have been 'consumed' within the country."[143] We note that in *Steel Products from Korea*, Commerce found that some customers further manufactured the merchandise in question into both subject and non-subject merchandise. Commerce decided to exclude all of these sales as exported as the respondent did not have knowledge of the nature of the processing that took place.[144] We emphasize that, in that case, Commerce was concerned about whether any of this merchandise was processed into non-subject merchandise, not that any further manufacturing or processing took place, as the petitioners contend.

The petitioners also argue that the record is incomplete regarding sales to Customers C, which SYSCO identified as destined for third countries. SYSCO argued against their inclusion in the home market sales database, after Commerce requested their inclusion, by stressing that they had knowledge of their exportation.[145] We note the sales documents provided by SYSCO in support include orders and confirmations with third-country end users, some hand-translated.[146] As SYSCO notes, *Solar Products from Taiwan 2016-2017* stressed Commerce's ability to use a wide variety of documentary evidence to establish a respondent's knowledge.[147] In the instant case, we determine that SYSCO's response provided a sufficient amount of information to address the underlying question of its knowledge of exportation. The petitioners take issue with the fulsomeness of SYSCO's responses, but there is no information on the record that contradicts said responses with respect to the reporting of these sales as destined for other markets. The record in the instant case does not parallel Commerce's decision in *SSPC from Taiwan*, as the petitioners suggest, where Commerce applied adverse facts available after discovering unreported sales at its verification.[148]

[142] *See* SYSCO's BCQR at C-52.
[143] *See Steel Products from Korea* at Comment 9.
[144] *Id*.
[145] *See* SYSCO's 2SQR at 13-14.
[146] *Id*. at Exhibits SB-5.1 to SB-5.3.
[147] *See Solar Products from Taiwan 2016-2017* IDM at Comment 1. Commerce's analysis in this case provides that knowledge can be determined from documents ranging from a signed contract to packaging.
[148] *See SSPC from Taiwan* IDM at Comment 1.

Comment 5: SYSCO's Costs on Arm's-Length Basis

Petitioners' Case Brief

- SYSCO purchased hot-rolled coil from an affiliate (Company D) during the POR.[149] Under the "major input rule," Commerce must value major inputs purchased from affiliates at the higher of transfer price, market price, or cost of production.[150]
- SYSCO's major input chart shows that its purchases of hot-rolled steel were not at arm's length.[151] Commerce should make an adjustment to SYSCO's costs to account for this. Commerce should utilize adverse facts available to the extent that additional information to make an appropriate cost adjustment is missing.[152]
- Differences in some aspects of relevant transactions on the record mean that Commerce cannot just increase the total cost of manufacturing (TOTCOM) by the difference in transaction values. Commerce should consider applying adverse facts available as a result.[153]

SYSCO's Rebuttal Brief

- Section 773(f)(3) of the Act states that Commerce shall determine whether inputs obtained from affiliates are valued at arm's-length prices, which normally results in a comparison of the prices charged by the affiliate against the affiliate's cost of production or market price.[154]
- Purchases of hot-rolled coil from Company D represent a very small portion of total hot-rolled coil purchases. This small portion is not likely to have a distortive effect.[155]
- SYSCO's major input chart establishes that its hot-rolled steel purchases from affiliates were at prices comparable to purchases from other suppliers. The petitioners should not make comparisons utilizing Company D's costs, but rather the purchase price from unaffiliated suppliers.[156]
- The petitioners are incorrect in their assessment of the relevant transactions. SYSCO provided enough documentation for Commerce to appropriately make a judgement using record evidence.[157]

Commerce's Position: We agree with the petitioners that an adjustment should be made to account for SYSCO's purchases of hot-rolled steel from Company D but, as discussed below, we find the transactions disregarded rule to be more applicable to the facts on the record than the remedy suggested by the petitioners. We expand on this distinction in a separate memorandum

[149] The identity of SYSCO's affiliate is bracketed as business proprietary information and is referred to herein as Company D.
[150] *See* Petitioners' Case Brief at 9, citing section 773(f)(3) of the Act; 19 CFR 351.407(b); and *Certain Hot-Rolled Carbon Steel Flat Products from Thailand, Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 27802 (May 17, 2007), and accompanying IDM at Comment 3.
[151] *Id*. at 9, citing SYSCO's Letter, "Corrosion-Resistant Steel Products from Taiwan: Section D Response," dated December 6, 2018 (SYSCO's DQR) at Exhibit D-5.
[152] *Id*. at 9.
[153] *Id*. at 9-10, citing SYSCO's DQR at Exhibits SD-14 and SD-15.
[154] *See* SYSCO's Rebuttal Brief at 11.
[155] *Id*. at 11-12.
[156] *Id*. at 12.
[157] *Id*. at 12-14, citing SYSCO's 2SQR at Exhibits D-13 to D-15.

to protect business proprietary information and further detail the calculation of this adjustment.[158]

We note that the input in question represents a minor amount, such that the percentage of the cost of merchandise (COM) attributed to this input times the percentage obtained from an affiliated party is equal to a minor percentage of COM. As the input in question was obtained from an affiliate who purchased it from an unaffiliated producer, the transactions disregarded rule found in section 773(f)(2) of the Act applies. Under this rule, Commerce tests the transfer price between the affiliated supplier and the respondent with available market prices for the input.

As SYSCO has provided information concerning the quantity and value of its purchases of hot-rolled steel from affiliated and non-affiliated parties,[159] we are able to compare the per-unit prices of each and calculate an appropriate adjustment in keeping with Commerce's practice.[160]

Comment 6: SYSCO'S Prime and Non-Prime Sales

Background: SYSCO reported its merchandise in three tiers: prime (grades 1 and S), secondary (grades 3 and B), and inferior (grades 4, 5, 6, and W). For the *Preliminary Results*, Commerce treated secondary and inferior grades as non-prime sales.

Petitioners' Case Brief

- In its responses, SYSCO has confirmed that prime and non-prime merchandise have the same costs and both categories are included in its reported costs. SYSCO reported that grades B, 3, 4, 5, 6, and W "cannot be used in the same applications as prime merchandise."[161]
- Commerce should remove these non-prime sales and reassign the costs of these non-prime grades to prime production quantities. Commerce should deny any offset for revenue from these non-prime sales in the event SYSCO has not demonstrated support on the record. Additionally, if the record does not contain enough information to reassign non-prime costs to prime sales, Commerce should use adverse facts available as the basis of SYSCO's margin.[162]
- SYSCO initially reported that grades 1, S, B, and 3 were prime products, with a distinction that grades B and 3 were secondary merchandise. Grades 4 to 6 and W were labelled as non-prime. Additionally, SYSCO initially reported that there was no "cost difference between prime and non-prime products."[163]

[158] *See* SYSCO Final Analysis Memo.
[159] *See* SYSCO's DQR at Exhibit D-5.
[160] *See, e.g.*, *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 76 FR 12700 (March 8, 2011), and accompanying IDM at Comment 2; *see also Citric Acid and Certain Citrate Salts from Canada: Final Results of Antidumping Duty Administrative Review*, 76 FR 34044 (June 10, 2011), and accompanying IDM at Comment 3; and *Sugar from Mexico: Final Determination of Sales at Less Than Fair Value*, 80 FR 57341, (September 23, 2015), and accompanying IDM at Comment 9.
[161] *See* Petitioners' Case Brief at 11-12, citing SYSCO's DQR at 19.
[162] *Id*. at 11-13.
[163] *Id*. at 11, citing SYSCO's DQR at 19.

- SYSCO later confirmed that non-prime products were included in reported production quantities used to allocate production costs.[164]
- Commerce permits non-prime sales to be reported as home market sales and to be assigned costs if the non-prime products are capable of being used in the same application as prime merchandise. Otherwise, non-prime products are considered scrap and not included in the sales databases and production costs are allocated only over the quantity of prime merchandise, potentially with an offset to costs from scrap revenue. This was Commerce's position in *WLP from Korea*.[165]
- SYSCO confirmed that grades B, 3, 4, 5, 6, and W cannot be used in the same applications as prime merchandise and that these sales have been assigned full costs.[166] As a result, Commerce should reassign costs only to prime production quantities as it has done in other cases.

SYSCO's Rebuttal Brief

- SYSCO has fully reported all costs for all products it labels as prime, grades 1 and S, and secondary, grades 3 and B. SYSCO reported that grades 4, 5, 6, and W are inferior and did not calculate costs for these grades. Revenue from sales of inferior grades is booked under "419900 – other operating income." Other grades are booked under "410100 – sales revenue."[167]
- Commerce included inferior grade sales as non-prime sales in the home market database. SYSCO does not record costs for these in the normal course of business as it does not consider these grades as prime commercial grade products.[168]
- Commerce also classified sales with a billing adjustment as non-prime merchandise, even though SYSCO reported these as grades 1 and S. SYSCO reported costs for these products as they were booked in SYSCO's records.[169]

Commerce's Position: We agree with the petitioners' contention, in part, and are applying an adjustment to SYSCO's total costs to account for SYSCO's equal treatment of prime and secondary grades of its merchandise in its records. In addition, we agree with the petitioners' characterization of inferior grades (4, 5, 6, and W) and note that SYSCO essentially treats these grades as scrap with respect to costs; as a result, we are removing sales of inferior grades from SYSCO's home market sales database.

Commerce generally examines non-prime sales on a case-by-case basis in the context of their suitability for use in applications in the manner of prime subject merchandise, whether they

[164] *Id*. at 11, citing SYSCO's 2SQR at 19.
[165] *Id*. at 12, citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 47355 (July 21, 2016) (*HWR Pipes and Tubes from Turkey*) and accompanying IDM at Comment 11, further citing *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61,366 (October 13, 2015) (*WLP from Korea*), and accompanying IDM at Comment 9.
[166] *Id*. at 12, citing SYSCO's 2SQR at 19.
[167] *See* SYSCO's Rebuttal Brief at 14-15, citing SYSCO's 2SQR at 18.
[168] *Id*. at 15.
[169] *Id*.

remain within the scope, and their treatment in a respondent's books and records.[170] The petitioners request that we treat SYSCO's non-prime grades as scrap, arguing that they cannot be used in the same applications as prime merchandise. The argument includes merchandise SYSCO has reported as secondary and inferior grades, but specifically addresses the secondary grades, as SYSCO assigns the same cost to both prime and secondary products.[171]

SYSCO reported to Commerce that it seeks to only produce prime grades of merchandise. Secondary grade merchandise reflects a difference in quality after production, whereas inferior grade merchandise reflects a product that is not at a commercial level. As a result, SYSCO does not calculate cost of manufacture for inferior grades.[172] Additionally, it books revenue from secondary grade sales the same as prime grade sales but treats revenue from inferior grades as other operating income.[173] SYSCO later clarified that it treats inferior grades as "by-products" representing a "failure in production process" that is priced according to the salvage market and not the prime merchandise market.[174]

From the record, it is apparent that SYSCO regards inferior grade merchandise as by-products. With respect to costs, SYSCO confirmed that inferior grades "(*i.e.* Grades 4, 5, 6, and W) are treated as comparing the difference of their net realized sales value and input costs to be absorbed by normal products, 1, S, B, and 3."[175] As costs from these grades are already distributed across prime and secondary grade merchandise, we note that SYSCO and the petitioners are functionally in agreement over their status. Consequently, because these are sales of by-products, we have removed SYSCO's inferior grade sales from the home market database.

With respect to SYSCO's secondary grade sales, the petitioners argue that Commerce should treat these sales as non-subject merchandise, stating that they cannot be used in the same applications as prime merchandise.

When asked about whether non-prime products have the same applications as prime products, SYSCO responded that "The downgraded products (non-prime/secondary = grades B, 3; inferior = grades 4, 5, 6, W) are with inferior quality and was not acceptable by customers. They are not possible to be used as prime products."[176] SYSCO did not list any applications that non-prime products could not be used for, but did later confirm that customers may use the non-prime products to produce downstream products but also that SYSCO does not monitor the ultimate consumption of downgraded products.[177]

SYSCO's answer that downgraded products cannot "be used as prime products" is ambiguous but suggests in context that that characterization may refer to SYSCO's sales treatment of the

---

[170] *See Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review; 2015– 2016*, 83 FR 27754 (June 14, 2018) (*Rebar from Mexico*), and accompanying IDM at Comment 2.
[171] *See* Petitioners' Case Brief at 10-13.
[172] *See* SYSCO's BCQR at B2-3.
[173] *Id*.
[174] *See* SYSCO's 2SQR at 18.
[175] *Id*.
[176] *See* SYSCO's 2SQR at 19.
[177] *Id*.

downgraded products as it continues by discussing its discounting of sales prices as a result.[178] We note that while SYSCO records sales of prime and secondary grades in the same sales revenue account, it prices secondary grades based on the market, but proportionally less than prime grades.[179]

In *Solar Products from Taiwan 2016-2017*, Commerce noted that a comparison regarding market value can be instructive in how to treat non-prime sales.[180] The same case also stresses the importance of examining whether a respondent's normal books and records reasonably reflect relevant production costs.[181] SYSCO reported production quantities of all CORE products inclusive of both prime and secondary grades in the calculation of reported costs, effectively assigning prime and secondary grades of each product the average cost of all CORE production.[182] As SYSCO has also noted that secondary grades cannot be used as prime products, we are applying an adjustment to SYSCO's costs.[183] [184] Our determination of this adjustment is detailed in a separate memorandum to protect SYSCO's business proprietary information.[185]

Section 773(f)(1)(A) of the Act requires that a respondent's costs be based on the company's normal books and records, so long as those records are kept in accordance with the exporting country's GAAP and reasonably reflect production costs.[186] The extant case parallels Commerce's decision to apply an adjustment to certain downgraded products in *Solar Products from Taiwan 2014-2016*.[187] In that case, Commerce examined the allocation of costs to particular grades using the GAAP principle of the lower of cost or market (LCM) rule.[188] After our examination of SYSCO's reported costs and the selling price of secondary grades, we find it appropriate to apply the aforementioned adjustment, which accounts for the difference in sales price and cost for the secondary grade products by grade that SYSCO reported.[189]

Accordingly, because the record establishes that SYSCO's secondary grades cannot be used the same as its prime grade merchandise, we find it reasonable to assign secondary grades a cost

---

[178] *Id*.
[179] *Id*. at 18.
[180] *See Solar Products from Taiwan 2016-2017* IDM at Comment 4, "If the downgraded product cannot be used for the same applications as the prime product, then the downgraded product's market value is usually significantly impaired to a point where its full cost cannot be recovered."
[181] *Id*.
[182] *See* SYSCO's 2SQR at 17.
[183] *See Solar Products from Taiwan 2016-2017* IDM at Comment 4.
[184] *See* SYSCO's 2SQR at 20 and Exhibits SD-7 and SD-8.
[185] *See* SYSCO Final Analysis Memo.
[186] *See Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Carbon and Alloy Steel Cut-To-Length Plate from France*, 82 FR 16363 (April 4, 2017) and accompanying IDM at Comment 11.
[187] *See Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Results of Antidumping Duty Administrative Review; 2014-2016*, 82 FR 31555 (July 7, 2017) (*Solar Products from Taiwan 2014-2016*) and accompanying IDM at Comment 7.
[188] *Id*., "That is, an item's allocated cost is not always the most accurate or representative benchmark of its true value. Where a downgraded product cannot be used in its intended applications and it has a significantly impaired value compared to the prime product value, we do not consider it reasonable to assign full production costs to the non-prime merchandise."
[189] *See* SYSCO Final Analysis Memo; *see also* SYSCO's 2SQR at 18.

equal to their POR average per-unit sales price, rather than the average POR cost assigned by SYSCO to prime grades. Assigning the POR-average per unit sales price of the secondary grades, rather than the average cost, ensures that these secondary grades are not assigned a cost that is higher than the value of their sales revenue. Thus, for the final results, we have re-allocated the excess cost assigned to secondary merchandise to all prime production.

Comment 7: Interest Revenue Cap - SYSCO

Petitioners' Case Brief

- Commerce should cap interest revenue by imputed credit expenses in relation to certain sales for SYSCO, in accordance with practice established in *OJ from Brazil*.[190]

SYSCO's Rebuttal Brief

- The petitioners are incorrect in their assessment of *OJ from Brazil*. In that case, Commerce determined that interest revenue related to late payments should be treated as a price adjustment rather than an offset to imputed credit.[191] Commerce has consistently not capped such revenue by imputed credit expenses and should reject the petitioners' request here.[192]

Commerce's Position: We disagree with the petitioners' characterization of Commerce's past practice in *OJ from Brazil* and are not altering our treatment of SYSCO's reported interest revenue for the final results of this administrative review.

In *OJ from Brazil*, Commerce capped interest revenue in its preliminary results, but upon further consideration, treated interest revenue as a price adjustment in its final results. Citing to its decision in *Cement from Mexico*, Commerce noted that "{o}ur longstanding practice of treating early payment discounts as an adjustment to price leads us to the same determination concerning late payment increases to the price. In either instance, the amount of the discount or the additional charge effectively amounts to a post-sale price adjustment and may or may not be equivalent to any reduction or increase in the company's actual or imputed interest expenses."[193] The final treatment of interest revenue in that case was instructive of Commerce's practice in *Ferrosilicon from Russia*,[194] and Commerce continued this treatment in *Ball Bearings from*

[190] *See* Petitioners' Case Brief at 13, citing *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, Determination Not to Revoke Antidumping Duty Order in Part, and Final No Shipment Determination*, 76 FR 50176 (August 12, 2011) (*OJ from Brazil*), and accompanying IDM at Comment 2.
[191] *See* SYSCO's Rebuttal Brief at 16, citing *OJ from Brazil* IDM at Comment 2.
[192] *Id*. at 17, citing *Ferrosilicon from the Russian Federation*, 79 FR 44393 (July 31, 2014) (*Ferrosilicon from Russia*), and accompanying IDM at Comment 7; and citing *Ball Bearings and Parts Thereof from France, Germany, and Italy*, 77 FR 73415 (December 10, 2012) (*Ball Bearings from France, Germany, and Italy*), and accompanying IDM at Comment 6.
[193] *See OJ from Brazil* IDM at Comment 2, citing Commerce's practice as stated in *Gray Portland Cement and Clinker from Mexico: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 2909 (January 18, 2006) (*Cement from Mexico*), and accompanying IDM at Comment 9, "{…} the amount of the discount or the additional charge effectively amounts to a post-sale price adjustment and may or may not be equivalent to any reduction or increase in the company's actual or imputed interest expenses."
[194] *See Ferrosilicon from Russia* IDM at Comment 7, "The Department does not cap such fees."

France, Germany, and Italy, stating "revenue earned as late payment fees is a different type of revenue than movement- or packing-related revenues."[195]

SYSCO reported that its CEP affiliate, Company B, received interest income when merchandise remained in one particular customer's warehouse for over an agreed upon period of time. Company B then charged this income on an invoice basis.[196] We note that SYSCO's reporting of interest revenue is on an invoice-specific basis, consistent with the fact pattern in the aforementioned cases.[197] Particularly, in *Ferrosilicon from Russia*, Commerce noted its decision in *CWP from Korea* in which it stated "{Commerce} does not cap such fees because 'the amount of the discount or the additional charge effectively amounts to a post-sale price adjustment and may or may not be equivalent to any reduction or increase in the company's actual or imputed interest expenses.'"[198] Thus, we find that it is not appropriate to cap such revenue by imputed credit expenses, consistent with our practice.

Comment 8: Yieh Phui's U.S. Date of Sale and Shipment Dates

Background: During the *Preliminary Results*, Commerce used the invoice date as the date of sale and adjusted for shipment date from factory in cases where the shipment date from factory preceded sale date.[199]

Yieh Phui/Synn's Case Brief

- Adjusting for shipment date from factory as opposed to adjusting for shipment date from seaport warehouse to the United States was an error as this methodology excluded certain U.S. transactions that should have been included in Yieh Phui's *Preliminary Results* where Yieh Phui first shipped merchandise from the factory and subsequently shipped merchandise from the seaport warehouse to the United States.[200]

[195] *See Ball Bearings from France, Germany, and Italy* IDM at Comment 6.
[196] *See* SYSCO's BCQR at CEP attachment 51, "The interest income was calculated by taking the overall interest amount {Company B} charged on a specific invoice, dividing this dollar amount by the MT of the invoice, and allocating the per MT amount to the lines on the U.S. sales database for that invoice."
[197] *See Ball Bearings from France, Germany, and Italy* IDM at Comment 6, "In the instant case, where SKF Italy claims fees charged for late payments as interest revenue, the revenue is appropriately treated a post-sale price adjustment."
[198] S*ee Ferrosilicon from Russia* IDM at Comment 7, quoting *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2010-201*, 78 FR 35248 (June 12, 2013) (*CWP from Korea*), and accompanying IDM at Comment 15.
[199] *See Preliminary Results* PDM and accompanying 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 September 6, 2019 (Yieh Phui Preliminary Analysis Memorandum) at page 6 (*i.e.*, line 6783) of Attachment 3. (We note that the Yieh Phui Preliminary Analysis Memorandum should be dated concurrently, that is September 5, 2019, with the *Preliminary Results* PDM; however, the Yieh Phui Preliminary Analysis Memorandum is dated September 6, 2019.)
[200] *See* Yieh Phui/Synn's Case Brief at 1-2.

Petitioners' Rebuttal Brief

- Date of sale should continue to be earlier of invoice date or date of shipment from factory, as opposed to earlier of invoice date or date of shipment from seaport warehouse to the United States.
- There were no instances where the material terms of sale changed between the date of shipment from the factory and the date of shipment from the seaport.[201]

Commerce's Position: We agree with the petitioners that the date of sale should continue to be earlier of invoice date or date of shipment from the factory, as opposed to the earlier of invoice date or date of shipment from seaport warehouse to the United States. We acknowledge that the actual methodology we used during the *Preliminary Results* contrasts with the methodology we explained we used in the *Preliminary Results* PDM where we stated, "consistent with our practice, … we used … 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 {Yieh Phui}/Synn."[202] Notwithstanding that inconsistency, our practice as demonstrated in *Plate from Belgium* is to recognize the U.S. date of sale as date of shipment where the date of shipment precedes the invoice date.[203] Further, our practice is to recognize the date of shipment when the terms of sale are set and unchanged.[204] In the U.S. sales database, Yieh Phui reported fields for document numbers and dates corresponding with those documents for: invoice, initial sales contract, and new contract replacing old sales contract.[205] Yieh Phui explained that the contract date precedes the invoice date for Yieh Phui's U.S. sales because the invoice is issued after the initial sales contract.[206] For certain U.S. sales, a revised contract was created, subsequent to the initial sales contract, that replaced the initial sales contract.[207] The U.S. sales at issue reported both: a date of shipment from factory and a date of shipment from seaport warehouse; for the applicable sales with reported dates of shipment from seaport warehouse, a survey of the U.S. sales transactions reported with any changes in sales terms (established by any reported sale invoice date, contract date, and/or revised contract dates for any given transaction) demonstrate that Yieh Phui's request to adjust the U.S. date of sale to reflect the earlier of invoice date and date of shipment from seaport warehouse is not warranted.[208] Indeed, a comparison of the dates of shipment from seaport warehouse against the reported sale invoice, contract, and revised contract dates demonstrate that for the U.S. sales at issue, sales terms between the date of shipment from factory and the date of shipment from seaport warehouse do not change

[201] *See* Petitioners' Rebuttal Brief at 2-6.
[202] *See Preliminary Results* PDM at 12-13.
[203] *See* Petitioners' Rebuttal Brief at 3-4, citing *Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 82 FR 16378 (April 4, 2017) (*Plate from Belgium*), and accompanying IDM at 32-37.
[204] *See* Petitioners' Rebuttal Brief at 3-4, citing *Plate from Belgium* IDM at 32-37.
[205] *See* Yieh Phui/Synn's Letter, "Corrosion-Resistant Steel Products from Taiwan; First Supplemental Response," dated May 28, 2019 (Yieh Phui/Synn's 1st SQR) at 17-19 and Exhibit 20, 'Revised U.S. sales database'.
[206] *See* Yieh Phui/Synn's 1st SQR at 17-19.
[207] *Id.*
[208] *See* Petitioners' Rebuttal Brief at 5; *see also* Yieh Phui/Synn's 1st SQR at Exhibit 20, 'Revised U.S. sales database'.

materially. Therefore, we determine that the date of U.S. sale should continue to be the earlier of invoice date or date of shipment from factory.

Comment 9: Ministerial Errors and Other Issues

Yieh Phui commented on a ministerial error regarding the earliest reported date of sale.[209] We agree with Yieh Phui and adjusted the program accordingly.[210] No other interested party provided comment on this issue.

The petitioners, SYSCO, and TAI comment that Commerce erred in its treatment of one company's specific assessment rate.[211] We agree and have adjusted our programming language and instructions accordingly.[212]

VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these positions are accepted, we will publish the final results of this administrative review and the final weighted-average dumping margins in the *Federal Register*.

☒ Agree ☐ Disagree

3/10/2020

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[209] *See* Yieh Phui/Synn's Case Brief at 3-4.
[210] *See* Yieh Phui/Synn's Final Analysis Memorandum.
[211] *See* Petitioners' Case Brief at 14, SYSCO's Rebuttal Brief at 17, and TAI's Case Brief at 4-5.
[212] *See* SYSCO's Final Analysis Memo.