



A-583-008
Administrative Review
POR: 05/01/2018- 04/30/2019
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July 20, 2020

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

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

SUBJECT: Decision Memorandum for the Preliminary Results of the
Administrative Review of the Antidumping Duty Order on Certain
Circular Welded Carbon Steel Pipes and Tubes from Taiwan;
2018-2019

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain circular welded carbon steel pipes and tubes (steel pipes and tubes) from Taiwan for the period of review (POR) May 1, 2018 through April 30, 2019. The review covers one company, Shin Yang Steel Co., Ltd. (Shin Yang). We preliminarily determine that Shin Yang made sales of subject merchandise at prices below normal value (NV) during the POR.

II. BACKGROUND

On May 1, 2019, Commerce published a notice of opportunity to request an administrative review of the AD order on steel pipes and tubes from Taiwan for the POR.¹ Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b)(1), Commerce received timely requests to conduct an administrative review of the AD order on steel pipes and tubes from Taiwan from: Wheatland Tube Company (Wheatland Tube), Independence Tube Corporation, a Nucor Company, and Southland Tube, Incorporated (collectively, the domestic interested parties), and Shin Yang.² On July 15, 2019, in accordance with 19 CFR

¹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 18479 (May 1, 2019).

² See Shin Yang's Letter, "Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Administrative Review Request," dated May 31, 2019; see also Wheatland Tube's Letter, "Certain Circular Welded Carbon Steel

351.221(c)(1)(i), we published a notice of initiation of the administrative review of the AD order on steel pipes and tubes from Taiwan, covering 27 companies.³

In the “Respondent Selection” section of the *Initiation Notice*, Commerce stated that, if necessary, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for entries of steel pipes and tubes from Taiwan during the POR.⁴ On July 26, 2019, Tension Steel Industries Co., Ltd. (Tension Steel) and Yieh Hsing Enterprise Co., Ltd. (Yieh Hsing) timely filed statements reporting that they each made no shipments of subject merchandise to the United States during the POR.⁵ On August 1, 2019, Commerce selected Shin Yang as the sole mandatory respondent for this review,⁶ and we issued the standard AD questionnaire to that company. Between August 30, 2019 and April 15, 2020, Shin Yang submitted timely responses to Commerce’s initial and supplemental questionnaires.

Commerce stated in the *Initiation Notice* that parties may withdraw a request for an administrative review within 90 days of publication of the *Initiation Notice*.⁷ On November 22, 2019, we rescinded the administrative review with respect to 26 companies for which all review requests were timely withdrawn, including Tension Steel and Yieh Hsing.⁸

On January 27, 2020, Commerce postponed the preliminary results of this review until May 29, 2020.⁹ On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days pursuant to section 751(a)(1) of the Act, thereby extending the deadline for these results until July 20, 2020.¹⁰

III. SCOPE OF THE ORDER

The merchandise subject to the order is certain circular welded carbon steel pipes and tubes from Taiwan, which are defined as: welded carbon steel pipes and tubes, of circular cross section, with walls not thinner than 0.065 inch, and 0.375 inch or more but not over 4.5 inches in outside diameter, currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. Although the

Pipes and Tubes from Taiwan Request for Administrative Review,” dated May 29, 2019 and Domestic Interested Parties’ Letter, “Certain Welded Carbon Steel Standard Pipes and Tubes from Taiwan: Request for Administrative Review,” dated May 31, 2019.

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 33739 (July 15, 2019) (*Initiation Notice*).

⁴ *Id.*

⁵ See Tension Steel’s Letter, “Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan; No Shipment Certification,” dated July 26, 2019, *see also* Yieh Hsing Letter, “Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan; No Shipment Certification,” dated July 26, 2019.

⁶ See Memorandum, “Respondent Selection,” dated August 1, 2019.

⁷ See *Initiation Notice*, 84 FR at 33740.

⁸ See *Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Partial Rescission of Antidumping Duty and Administrative Review; 2018 – 2019*, 84 FR 64463 (November 22, 2019). Because the review of Tension Steel and Yieh Hsing was rescinded, we did not conduct an analysis of the companies’ claims of no shipments.

⁹ See Memorandum, “Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Extension of Deadline for Preliminary Results of Antidumping Administrative Review,” dated January 27, 2020.

¹⁰ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19,” dated April 24, 2020.

HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

IV. DISCUSSION OF THE METHODOLOGY

A. Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Shin Yang's sales of steel pipes and tubes from Taiwan were made in the United States at less than NV, we compared the export price (EP) to the NV as described in the "Export Price" and "Normal Value" sections of this notice.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs)) (the average-to-average) unless Commerce determines that another method is appropriate in a particular situation. In less-than-fair-value (LTFV) investigations, Commerce examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in LTFV investigations.¹¹

In recent investigations, Commerce applied a "differential pricing" analysis for determining whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.¹² Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with

¹¹ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum (IDM) at Comment 1; see also *JBF RAK LLC v. United States*, 790 F. 3d 1358, 1365 (Fed. Cir. 2015) (“{t}he fact that the statute is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties”) (citations omitted).

¹² See *e.g.*, *Polyethylene Terephthalate Resin from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 19696 (May 4, 2018), unchanged in *Polyethylene Terephthalate Resin from Taiwan: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 48287 (September 24, 2018); *Large Diameter Welded Pipe from Canada: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 43649 (August 27, 2018), unchanged in *Large Diameter Welded Pipe from Canada: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 6378 (February 27, 2019); and *Cast Iron Soil Pipe from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 83 FR 44567 (August 31, 2018), unchanged in *Cast Iron Soil Pipe from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 6767 (February 28, 2019).

addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating weighted-average dumping margins.

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

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to a particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large threshold (*i.e.*, 0.8).

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

Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the average-to-average method method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if (1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average method method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results of review, including arguments for modifying the group definitions used in this proceeding.¹³

2. Results of the Differential Pricing Analysis

For Shin Yang, based on the results of the differential pricing analysis, Commerce finds that 80.66 percent of the value of U.S. sales pass the Cohen's *d* test,¹⁴ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences, because the margin moves across the *de minimis* threshold between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping calculated using an alternative comparison method applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, Commerce is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Shin Yang.

¹³ The Court of Appeals for the Federal Circuit (CAFC) has affirmed much of Commerce's differential pricing methodology. *See e.g., Apex Frozen Foods v. United States*, 862 F.3d 1322 (Fed. Cir. 2017). We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

¹⁴ *See* Memorandum, "Antidumping Duty Administrative Review of Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Preliminary Results Analysis Memorandum for Shin Yang Steel Co., Ltd.," dated concurrently with this memorandum.

B. Date of Sale

Section 351.401(i) of Commerce's regulations states that, "in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business." The regulation provides further that Commerce may use a date other than the date of invoice if Commerce is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.¹⁵ Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.¹⁶

For all home market sales, Shin Yang reported the earlier date of the sales invoice date and the date of shipment as the date of sale.¹⁷ For all U.S. sales, Shin Yang reported the earlier of commercial invoice date or shipment date from the plant or distribution warehouse as the date of sale.¹⁸ Shin Yang indicated that the terms of sale are subject to change up until the issuance of the invoices.¹⁹ In accordance with our practice, we used the earlier of the invoice date or shipment date as the date of sale for the U.S. and home markets for these preliminary results.

C. Product Comparisons

For purposes of determining an appropriate product comparison to U.S. sales, in accordance with section 771(16)(A) of the Act, we considered all products sold in the home market as described in the "Scope of the Order" section, above, that were sold in the ordinary course of trade. In making the product comparisons, we matched foreign like products to the products sold in the United States based on their physical characteristics. In order of importance, these physical characteristics are: specification/grade, nominal diameter, nominal wall thickness, coating, and end finish.

Pursuant to 19 CFR 351.414(f), we compared U.S. sales of steel pipes and tubes to home market sales of steel pipes and tubes within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the month of the last U.S. sale. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(B) of the Act, we compared U.S. sales of steel pipes and tubes to sales of the most similar foreign like product made in the ordinary course of trade.

¹⁵ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

¹⁶ See e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying IDM at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

¹⁷ See Shin Yang's September 13, 2019, Sections B, C, D Questionnaire Response (Shin Yang September 13, 2019 BCDQR) at 25.

¹⁸ See Shin Yang September 13, 2019 BCDQR at 68.

¹⁹ See Shin Yang's August 30, 2019 Section A Questionnaire Response (Shin Yang August 30, 2019 AQR) at 15.

D. Export Price

Section 772(a) of the Act defines EP as “the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,” as adjusted under section 772(c) of the Act. For Shin Yang, we based EP on the packed prices to the first unaffiliated purchasers in the United States. Where appropriate, we made deductions, consistent with section 772(c)(2)(A) of the Act, for the following movement expenses: domestic inland freight, domestic brokerage and handling, domestic warehousing, international freight, and other international movement expenses.

E. Normal Value

1. Home Market Viability as Comparison Market

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

In this review, Commerce preliminarily determined that the aggregate volume of home market sales of the foreign like product for Shin Yang was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise.²⁰ Therefore, Commerce used home market sales as the basis for NV for Shin Yang, in accordance with section 773(a)(1)(B) of the Act.

2. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).²¹ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.²² In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the

²⁰ See Shin Yang August 30, 2019 AQR at Exhibit 1.

²¹ See 19 CFR 351.412(c)(2).

²² *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (*OJ from Brazil*), and accompanying IDM at Comment 7.

distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),²³ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.²⁴

When Commerce is unable to compare the NV based on sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale prices to sale prices at a different LOT in the comparison market. In comparing EP or CEP to sale prices at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.²⁵

In this review, we obtained information from Shin Yang regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution. Shin Yang reported that it made sales through one channel of distribution in the home market and two channels of distribution in the U.S. market.²⁶ Shin Yang's selling functions performed in its home market and U.S. market indicate that the selling functions performed for sales in both markets are virtually identical, with no significant variation across the broader categories of sales process/marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.²⁷ Although Shin Yang reported more than one channel of distribution in the U.S. market, Shin Yang reported no differences in LOT between those channels of distribution and did not claim to have different LOTs.²⁸ Because we determine that Shin Yang only had one channel of distribution in the home market, we determine that Shin Yang's sales in the home market during the POR were made at the same LOT. Further, because we determine that substantial differences in Shin Yang's selling activities do not exist between the U.S. market sales channels, we determine that Shin Yang's sales in the U.S. market during the POR were made at the same LOT.

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions Shin Yang performed for its U.S. and home market customers do not differ significantly.²⁹ Specifically, Shin Yang performed the same selling functions in the home market, which are grouped in one LOT, as it performed in the U.S. market, which are also

²³ Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling, general, and administrative expenses, and profit for CV, where possible. *See* 19 CFR 351.412(c)(1).

²⁴ *See Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

²⁵ *See OJ from Brazil* IDM at Comment 7.

²⁶ *See* Shin Yang August 30, 2019 AQR at Exhibit 7.

²⁷ *Id.* at Exhibit 8.

²⁸ *See* Shin Yang September 13, 2019 BCDQR at 34 and 76.

²⁹ *See* Shin Yang August 30, 2019 AQR at Exhibit 8.

grouped in one LOT, at similar levels of intensity. Thus, we preliminarily determine that Shin Yang's U.S. sales and home market sales during the POR were made at the same LOT and, as a result, no LOT adjustment pursuant to section 773(a)(7)(A) of the Act is warranted.

3. Affiliated Party Transactions and the Arm's-Length Test

Commerce may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.³⁰ Commerce excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because Commerce considers them to be outside the ordinary course of trade.³¹

During the POR, Shin Yang made less than one percent of its sales of steel pipes and tubes in the home market to affiliated parties.³² Consequently, we tested these sales to ensure that they were made at arm's-length prices, in accordance with 19 CFR 351.403(c). In addition to comparing sales at the same level of trade, the test adjusts affiliated and unaffiliated party prices for numerous differences relating to the sales. The adjustments account for, among other things, differences in packing expenses, movement expenses from the original place of shipment, discounts and rebates, and selling expenses that relate directly to the sale at issue. While Commerce's questionnaire specifically requests information pertaining to a number of adjustments, it also allows for responding companies to claim additional adjustments for other expenses relating to the sales at issue. Thus, provided that a respondent has accurately reported its claimed differences in circumstances of sale, along with other expenses and price adjustments relating to the reported sales, the arm's-length test will account for such differences between sales to affiliates and non-affiliates.

Pursuant to 19 CFR 351.403(c) and, in accordance with Commerce's practice, where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm's length. We excluded sales to affiliated customers in the home market that were not made at arm's-length prices from our analysis because we considered these sales to be outside the ordinary course of trade.³³

4. Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act, we requested cost of production (COP) information from Shin Yang. We examined Shin Yang's cost data and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

³⁰ See 19 CFR 351.403(c).

³¹ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1367 (CIT 2003), *aff'd*, 306 F. Supp. 2d 1291 (CIT 2004) (citing *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55355 (September 7, 2011)).

³² See Shin Yang September 13, 2019 BCDQR at Exhibit 1.

³³ See section 771(15) of the Act; *see also* 19 CFR 351.102(b).

a. Calculation of Cost of Production

We calculated the COP for Shin Yang based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general, and administrative expenses, and financial expenses, in accordance with section 773(b)(3) of the Act. We relied on the COP data submitted by Shin Yang except as follows:

- We performed the arms-length test for certain inputs and adjusted, as necessary, in accordance with sections 773(f)(2) and (3) of the Act, *i.e.*, the transactions disregarded rule and the major input rule.³⁴
- We revised the reported costs of non-prime steel pipes and tubes to reflect market value and, consequently, we increased the reported costs for prime steel pipes and tubes for the difference between the reported costs of non-prime steel pipes and tubes, and the market value of non-prime steel pipes and tubes.³⁵

b. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COP for the POR to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales by Shin Yang had been made at prices below the COP. In particular, in determining whether to disregard home market sales made at prices below their COP, we examined whether such sales were made within an extended period of time in substantial quantities and at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(2)(B), (C), and (D) of the Act. For purposes of this comparison, we used COP exclusive of selling and packing expenses. We determined the net comparison market prices for the below-cost test by adjusting the gross unit price for all applicable billing adjustments and rebates, movement charges, actual direct and indirect selling expenses, and packing expenses.

c. Results of the COP Test

Section 773(b)(1)(A) and (B) of the Act provides that, where sales made at less than the COP “have been made within an extended period of time in substantial quantities” and “were not at prices which permit recovery of all costs within a reasonable period of time,” Commerce may disregard such sales when calculating NV. Pursuant to section 773(b)(2)(C)(i) of the Act, we did not disregard below-cost sales that were not made in “substantial quantities,” *i.e.*, where less than 20 percent of sales of a given product were made at prices less than the COP. We disregarded below-cost sales when they were made in substantial quantities, *i.e.*, where 20 percent or more of a respondent’s sales of a given product were at prices less than the COP and where “the weighted average per unit price of the sales . . . is less than the weighted average per unit cost of

³⁴ See Memorandum, “Cost Production and Constructed Value Calculation Adjustment for Preliminary Results – Shin Yang Steel Co., Ltd.,” dated concurrently with this memorandum at 1-2.

³⁵ *Id.* at 2.

production for such sales.”³⁶ Finally, based on our comparison of prices to the weighted-average COPs, we considered whether the prices would permit the recovery of all costs within a reasonable period of time.³⁷

We found that, for certain products, more than 20 percent of Shin Yang’s comparison market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

5. Calculation of NV Based on Home Market Prices

We calculated NV based on the prices Shin Yang reported for home market sales to unaffiliated customers that we determined were made within the ordinary course of trade. We adjusted the starting price, where appropriate, for billing adjustments and rebates in accordance with 19 CFR 351.401(c). We also made deductions from NV for certain movement expenses, *i.e.*, inland freight, consistent with section 773(a)(6)(B)(ii) of the Act.

In addition, we made adjustments for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made these adjustments, where appropriate, by deducting direct selling expenses incurred on home market sales and adding U.S. direct selling expenses to NV. Direct selling expenses consisted of credit expenses, bank charges, cargo certification fees, harbor construction fees, and trade promotion fees. Finally, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

When comparing U.S. sale prices with NVs based on comparison market sale prices of similar, but not identical, merchandise, we also made adjustments for physical differences in merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable costs of manufacturing for the foreign like products and the subject merchandise.³⁸

V. CURRENCY CONVERSION

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

³⁶ See section 773(b)(2)(C)(ii) of the Act.

³⁷ See section 773(b)(2)(D) of the Act.

³⁸ See 19 CFR 351.411(b).

VI. RECOMMENDATION

Based on our analysis, we recommend adopting the above positions in these preliminary results. If this recommendation is accepted, we will publish the preliminary results of the review and the preliminary dumping margins in the *Federal Register*.

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Agree

Disagree

7/20/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance