



A-583-856

Administrative Review
POR: 07/01/2018 – 06/30/2019
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November 17, 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 2018-
2019 Antidumping Duty Administrative Review: Certain
Corrosion-Resistant Steel Products from Taiwan

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain corrosion-resistant steel products (CORE) from Taiwan covering the period of review (POR) July 1, 2018, through June 30, 2019. This administrative review covers two producers/exporters of the subject merchandise: (1) Yieh Phui Enterprise Co., Ltd. (YP) and Synn Industrial Co., Ltd. (Synn) (collectively, YP/Synn)¹ and (2) Prosperity Tieh Enterprise Co., Ltd. (Prosperity). In past reviews, we have treated YP and Synn as a single entity. However, for these preliminary results, we have determined that YP and Synn should no longer be collapsed; therefore, we have treated YP and Synn as a separate entity and thus

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

calculated a margin for Prosperity and YP.² We preliminarily determine that the companies subject to this review made sales of the subject merchandise at prices below normal value (NV) during the POR.

II. BACKGROUND

On July 1, 2019, Commerce published a notice of opportunity to request an administrative review of the *Order* for the 2018-2010 review period.³ In July 2019, Commerce received timely requests to conduct an administrative review of entries of CORE produced and/or exported by Taiwanese firms from YP/Synn,⁴ Prosperity,⁵ and the petitioners;⁶ as well requests for review of entries of CORE from Vietnam which may be suspended under the case number relevant to the instant review pursuant to Commerce's prior anticircumvention inquiry regarding exports of CORE from Vietnam produced from Taiwanese substrate⁷ from Vietnamese producer/exporters Hoa Sen Group (HSG) and Ton Dong A Corporation (TDA), as well as several U.S. importers of CORE from Vietnam.⁸ On September 9, 2019, we published a notice initiating an AD administrative review of CORE from Taiwan with respect to Taiwanese producer/exporters Prosperity, YP/Synn, and Sheng Yu Steel Co., Ltd. (SYSCO); as well as entries of CORE from

² See "Affiliation and Collapsing" section, below. See also Memorandum, "Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Steel Products from Taiwan: Preliminary Affiliation and Collapsing Memorandum for Yieh Phui Enterprise Co., Ltd. and Synn Industrial Co., Ltd.," dated concurrently with this memorandum (Affiliation-Collapsing Memo).

³ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 31295 (July 1, 2019).

⁴ See YP/Synn's Letter, "Corrosion-Resistant Steel Products from Taiwan; Administrative Review Request," dated July 23, 2019.

⁵ See Prosperity's Letter, "Corrosion-Resistant Steel Products from Taiwan, Case No. A-583-856: Request for Administrative Review," dated July 25, 2019.

⁶ The petitioners are AK Steel Corporation (AK Steel), California Steel Industries, Inc. (California Steel), Steel Dynamics Inc., ArcelorMittal USA LLC, Nucor Corporation, and United States Steel Corporation, manufacturers of the domestic like product in the United States. The petitioners requested Commerce to conduct administrative reviews of the sales of subject merchandise of four producers and/or exporters: Prosperity Tieh Enterprise Co., Ltd., Sheng Yu Steel Co., Ltd., Synn Industrial Co., Ltd., and Yieh Phui Enterprise Co., Ltd. See Petitioners' Letter, "Corrosion-Resistant Steel from Taiwan / Request for Administrative Review," dated July 31, 2019.

⁷ See *Certain Corrosion-Resistant Steel Products from Taiwan: Affirmative Final Determination of Circumvention Inquiry on the Antidumping Duty Order*, 84 FR 70937 (December 26, 2019) (*Taiwan-Vietnam CORE Circumvention Final*).

⁸ See TDA and HSG's Letter, "Corrosion-Resistant Steel Products from Taiwan. A-583-856: Review Request," dated July 31, 2019; Mitsui & Co. (U.S.A.) Inc.'s (Mitsui) Letter, "Corrosion-Resistant Steel Products from Taiwan: Request for Administrative Review," dated July 31, 2019; Stemcor USA Inc.'s (Stemcor) Letter, "Corrosion-Resistant Steel Products from Taiwan – Stemcor's Request for Administrative Review," dated July 31, 2019; and Metal One America, Inc.'s (Metal One) Letter, "Corrosion-Resistant Steel Products from Taiwan: Metal One America, Inc.'s Request for Administrative Review," dated July 31, 2019. U.S. importers Stemcor and Metal One later submitted letters certifying that they had no entries of CORE from Vietnam produced from Taiwanese substrate, and requested that Commerce issue an instruction to U.S. Customs and Border Protection (CBP) to liquidate Stemcor and Metal One's entries of CORE imported from Vietnam during the POR, without regard to the AD order on CORE from Taiwan. See Stemcor's Letter, "Corrosion-Resistant Steel Products from Taiwan – Stemcor's Notice of No Circumventing Shipment during the Period of Review," dated October 9, 2019; and Metal One's Letter, "Corrosion-Resistant Steel Products from Taiwan – Metal One's Notice of No Circumventing Shipment during the Period of Review," dated October 9, 2019. Mitsui did not provide a no shipment certification.

Vietnam produced from Taiwanese substrate produced and/or exported by Vietnamese firms HSG, TDA, Nippon Steel, and Sumikin Sales Vietnam Co., Ltd.⁹

On October 23, 2019, we selected Prosperity and YP/Synn as mandatory respondents for individual review in this proceeding, and issued the initial AD questionnaire to these respondents.¹⁰ Both respondents provided timely responses to the relevant sections of the initial AD questionnaire.¹¹ In July 2020, we issued supplemental questionnaires to Prosperity and YP/Synn; Prosperity and YP/Synn, provided timely responses, as requested.¹² YP/Synn's AQR response indicated that YP had divested its interest in Synn prior to the POR and had no transactions with Synn during the period of review.¹³ As such, YP/Synn's AQR questionnaire responses concerned only sales and costs with respect to the YP entity.¹⁴ Synn separately reported that it had no shipments of CORE to the United States during the POR.¹⁵

On January 19, 2020, we received a particular market situation (PMS) allegation from petitioners California Steel Industries and Steel Dynamics Inc.¹⁶ On July 27, 2020, we notified interested parties that Commerce accepted the petitioners' PMS allegation on the record to further examine the issue during this administrative review and set a deadline for interested parties to submit factual information to rebut, clarify, or correct the information in the PMS Allegation, pursuant to 19 CFR 351.301(c)(2)(v).¹⁷ On August 17, 2020, the petitioners provided additional comment and information to supplement the PMS Allegation.¹⁸ Also on August 17, 2020, Prosperity,

⁹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 47242 (September 9, 2019).

¹⁰ See Memorandum, "2018-2019 Administrative Review of Certain Corrosion-Resistant Steel Products from Taiwan: Respondent Selection," dated October 23, 2019.

¹¹ See Prosperity's Letters, "Certain Corrosion-Resistant Steel Products from Taiwan, 7/1/2018–6/30/2019 Administrative Review, Case No. A-583-856: Section A Initial Questionnaire Response," dated November 20, 2019 (Prosperity's AQR); and "Certain Corrosion-Resistant Steel Products from Taiwan, 7/1/2018–6/30/2019 Administrative Review, Case No. A-583-856: Sections B-D of Initial Questionnaire Response," dated December 13, 2019 (Prosperity's BQR, Prosperity's CQR, and Prosperity's DQR); see also YP/Synn's Letters, "Corrosion-Resistant Steel Products from Taiwan; Section A Response," dated November 20, 2019 (YP/Synn's AQR) and "Corrosion-Resistant Steel Products from Taiwan; Sections B-D Response," dated December 13, 2019 (YP/Synn's BQR, YP/Synn's CQR, and YP/Synn's DQR).

¹² See Prosperity's Letter, "Certain Corrosion-Resistant Steel Products from Taiwan, 7/1/2018–6/30/2019 Administrative Review, Case No. A-583-856: Supplemental Sections A-D Questionnaire Response," dated August 4, 2020 (Prosperity's Supplemental A-D QR); and YP/Synn's Letter, "Corrosion-Resistant Steel Products from Taiwan; First Supplemental Response," dated August 11, 2020 (YP/Synn's Supplemental A-D QR).

¹³ See YP's AQR at 1 and 10-11.

¹⁴ *Id.*

¹⁵ See Synn's Letter, "Corrosion-Resistant Steel Products from Taiwan; No Shipment Certification," dated September 20, 2019 (Synn's No Shipment Certification).

¹⁶ See Petitioners' Letters, "Certain Corrosion-Resistant Steel Products from Taiwan: Particular Market Situation Allegation – Qualitative Submission," dated January 19, 2020; and "Certain Corrosion-Resistant Steel Products from Taiwan: Particular Market Situation Allegation and Supporting Factual Information – Quantitative Submission," dated January 16, 2020 (collectively, PMS Allegation), both filed on ACCESS on January 16, 2020.

¹⁷ See Commerce's Letter, "Third Antidumping Duty Administrative Review of Certain Corrosion-Resistant Steel Products from Taiwan: Acceptance of Particular Market Situation Allegation," dated July 27, 2020.

¹⁸ See Petitioners' Letter, "Certain Corrosion-Resistant Steel Products From Taiwan: Submission of Information Regarding the PMS Allegation," dated August 17, 2020.

YP/Synn, and China Steel Corporation (CSC), provided comment and information in rebuttal to the PMS Allegation.¹⁹

On March 16, 2020, we extended the preliminary results of this review to no later than July 30, 2020.²⁰ On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.²¹ On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.²² The deadline for the preliminary results of this review is now November 17, 2020.

III. SCOPE OF THE ORDER

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

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

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

¹⁹ See Prosperity’s Letter, “Certain Corrosion-Resistant Steel Products from Taiwan, 7/1/2018– 6/30/2019 Administrative Review, Case No. A-583-856: Particular Market Situation Allegation Comments,” dated August 17, 2020; *see also* YP/Synn’s Letter, “Corrosion-Resistant Steel Products from Taiwan; Response to Particular Market Situation Allegation,” dated August 17, 2020; and CSC’s Letter, “Administrative Review of the Antidumping Order of Corrosion Resistant Steel Products from Taiwan for the 2018-19 Review Period — Response to the Department’s July 27 Request for Comments on Petitioners’ “Particular Market Situation” Allegation,” dated August 17, 2020.

²⁰ See Memorandum, “Certain Corrosion-Resistant Steel Products from Taiwan: Extension of Time Limit for Preliminary Results of the 2018- 2019 Antidumping Duty Administrative Review,” dated March 16, 2020.

²¹ 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.

²² See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

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. AFFILIATION AND COLLAPSING

As noted above, YP and Synn were collapsed and treated as a single entity for the purposes of the LTFV investigation and each of the prior administrative reviews of this antidumping order. As a result, we selected the YP/Synn entity as a single combined respondent and treated it as such in the pre-preliminary phase of this review. However, we preliminarily determine that the instant record no longer supports a finding that YP should be collapsed with Synn, and therefore should no longer be collapsed as the YP/Synn entity. Specifically, as a result of various changes in investment/ownership between relevant entities applicable to the POR, in comparison to the investigation period, as well as a lack of evidence of transactions or intertwined operations between YP and Synn, we preliminarily determine to treat YP and Synn as distinct respondents for the purposes of this administrative review.²³

V. PRELIMINARY DETERMINATION OF NO SHIPMENTS

On September 20, 2019, Synn submitted a letter certifying that it had no exports or sales of subject merchandise into the United States during the POR.²⁴ CBP did not have any information

²³ For a further discussion of the preliminary affiliation and collapsing determination, *see* Affiliation-Collapsing Memo.

²⁴ *See* Synn's No Shipment Certification.

to contradict these claims of no shipments during the POR.²⁵ Therefore, pursuant to our preliminary determination to treat YP and Synn as distinct respondents for the purposes of this administrative review, as discussed immediately above, and based on evidence on this record, we preliminarily determine that Synn did not have any reviewable transactions during the POR. Consistent with Commerce's practice, we will not rescind the review with respect to Synn, but rather will complete the review and issue instructions to CBP based on the final results.²⁶

Though we received "no shipment" certifications from certain U.S. importers of CORE with respect to entries of CORE from Vietnam, certifying that entries of such merchandise during the POR produced and/or exported by Vietnamese firms were not produced from Taiwanese substrate (and thus subject to the instant order pursuant to the prior *Taiwan-Vietnam CORE Circumvention Final*²⁷); we note that the *Initiation Notice* states that, "If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30 days of publication of this notice in the Federal Register."²⁸ Accordingly, because Commerce specifies that such "no shipment" certifications are required with respect to producers/exporters, and not U.S. importers, and as no "no shipment" certifications were received from the Vietnamese exporters themselves, we have not further considered such "no shipment" certifications with respect to importer-specific entries.

VI. RATES FOR RESPONDENTS NOT SELECTED FOR INDIVIDUAL EXAMINATION

Hoa Sen Group, Nippon Steel, SYSCO, Sumikin Sales Vietnam Co., Ltd., and Ton Dong A Corporation: (1) were not selected as mandatory respondents; (2) were not the subject of a withdrawal of request for review;²⁹ (3) did not request to participate as a voluntary respondent; (4) did not submit a claim of no shipments; and (5) were not otherwise collapsed with a mandatory respondent. As such, these companies remain respondents not selected for individual examination.

²⁵ See Memorandum, "2018-2019 Administrative Review of on Certain Corrosion-Resistant Steel Products from Taiwan: U.S. Customs and Border Protection Data," dated November 5, 2020.

²⁶ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012-2013*, 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012-2013*, 79 FR 51306, 51307 (August 28, 2014).

²⁷ See *Taiwan-Vietnam CORE Circumvention Final*, 84 FR at 70937.

²⁸ See *Initiation Notice*, 84 FR at 47242.

²⁹ Though Hoa Sen Group later withdrew its self-request for review, because U.S. importers also requested a review of Hoa Sen Group, it remains subject to the instant review.

The statute and Commerce's regulations do not address the establishment of a rate to be applied to individual respondents not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents which we did not examine in an administrative review. Section 735(c)(5)(A) of the Act establishes a preference to avoid using rates which are zero, *de minimis*, or based entirely on facts available (FA) in calculating an all others rate. Accordingly, Commerce's practice in administrative reviews has been to average the weighted-average dumping margins for the companies selected for individual examination in the annual review, excluding rates that are zero, *de minimis*, or based entirely on FA.³⁰

For these preliminary results of review, we preliminarily calculated a *de minimis* preliminary weighted-average dumping margin for Prosperity and a preliminary weighted-average dumping margin for YP that is above *de minimis* and not based entirely on FA. Therefore, consistent with our practice, we preliminarily assign to Hoa Sen Group, Nippon Steel, SYSCO, Sumikin Sales Vietnam Co., Ltd., and Ton Dong A Corporation a margin of 1.51 percent (*i.e.*, the weighted-average dumping margin calculated for YP) as the rate for non-selected respondents in this review.

VII. DISCUSSION OF THE METHODOLOGY

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

A. Comparisons to Normal Value

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

1. *Determination of the Comparison Method*

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

³⁰ See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying IDM at Comment 16.

nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.³¹

In recent investigations, Commerce applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.³² Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

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

³¹ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012), and accompanying IDM at Comment 1; see also *JBK RAK LLC v. United States*, 790 F. 3d 1358, 1363-65 (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); and *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

³² See, *e.g.*, *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); see also *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014), or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

merchandise. Then, the Cohen's d coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's d test: small, medium, or large (0.2, 0.5, and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's d test, if the calculated Cohen's d coefficient is equal to or exceeds the large, *i.e.*, 0.8, threshold.

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

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

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this segment of the proceeding.³³

2. *Results of the Differential Pricing Analysis*

Prosperity

For Prosperity, based on the results of the differential pricing analysis, we preliminarily find that 86.50 percent of the value of U.S. sales pass the Cohen's *d* test,³⁴ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, we are applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Prosperity.

YP

For YP, based on the results of the differential pricing analysis, we preliminarily find that 79.14 percent of the value of U.S. sales pass the Cohen's *d* test,³⁵ 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 weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on 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 YP.

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

In March 2018, the President exercised his authority under Section 232 of the Trade Expansion Act of 1962, as amended, and issued Proclamation 9705 that mandated, to address national security concerns, imposition of a global tariff of 25 percent on imports of steel articles in order to reduce imports to a level that the Secretary assessed would enable domestic steel producers to use approximately 80 percent of existing domestic production capacity and thereby achieve long-term economic viability through increased production. In considering whether U.S. price should

³³ The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 862 F. 3d 1322 (Fed. Cir. July 12, 2017) affirmed much of Commerce's differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

³⁴ See Memorandum, "Certain Corrosion-Resistant Steel Products from Taiwan: Prosperity Tieh Enterprise Co., Ltd. – Analysis Memorandum for the Preliminary Results of the Administrative Review, 2018-2019," dated concurrently with this memorandum (Prosperity's Preliminary Analysis Memorandum).

³⁵ See Memorandum, "Certain Corrosion-Resistant Steel Products from Taiwan: Yieh Phui Enterprise Co., Ltd. – Analysis Memorandum for the Preliminary Results of the Administrative Review, 2018-2019," dated concurrently with this memorandum (YP's Preliminary Analysis Memorandum).

be adjusted for section 232 duties, we look to section 772 of the Act. In particular, section 772(c)(2)(A) of the Act directs Commerce to adjust EP and CEP for “the amount, if any, included in such price, attributable to any additional cost, charges, or expenses, and United States import duties....” Therefore, we find that the analysis here depends on whether section 232 duties constitute “United States import duties,” and whether the duties are “included in such price.”

The CAFC has previously considered whether certain types of duties constitute “United States import duties” for purposes of section 772(c)(2)(A) of the Act. In *Wheatland*, the CAFC sustained Commerce’s determination not to adjust U.S. price in antidumping proceedings for section 201 safeguard duties under that statutory provision.³⁶ Having acknowledged Commerce’s analysis of the legislative history to the Antidumping Act of 1921, which “referred to ‘United States import duties’ as normal customs duties and referred to antidumping duties as ‘special dumping duties’ and that ‘special dumping duties’ were distinguished and treated differently from normal customs duties,” the CAFC in *Wheatland* agreed that “Congress did not intend all duties to be considered ‘United States import duties.’”³⁷

The CAFC then found reasonable Commerce’s analysis that section 201 duties were more akin to antidumping duties than “ordinary customs duties.”³⁸ 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 termination provision, and are permanent unless modified by Congress.”³⁹ In sustaining Commerce’s decision regarding section 201 duties in *Wheatland*, the CAFC also held that “[t]o access both a safeguard duty and an antidumping duty on the same imports with regard to the safeguard duty, would be to remedy substantially overlapping injuries twice.”⁴⁰

Section 232 duties are not akin to antidumping or 201 duties. Proclamation 9705 states that it “is necessary and appropriate to adjust imports of steel articles so that such imports will not threaten to impair the *national security*....”⁴¹ The text of section 232 of the Trade Expansion Act of 1962

³⁶ See *Wheatland Tube Co. v. United States*, 495 F. 3d 1355, 1363 (Fed. Circ. 2007) (*Wheatland*).

³⁷ *Id.* at 1361.

³⁸ *Id.* at 1362.

³⁹ *Id.* at 1362-63.

⁴⁰ *Id.* at 1365.

⁴¹ See Proclamation 9705, 83 FR at 11627 (emphasis added); see also Proclamation 9711 of March 22, 2018, 83 FR 13361, 13363 (March 28, 2018) (Proclamation 9711) (“In proclaiming this tariff, I recognized that our Nation has important security relationships with some countries whose exports of steel articles to the United States weaken our national economy and thereby threaten to impair the national security”); Proclamation 9740 of April 30, 2018, 83 FR 20683 (May 7, 2018) (Proclamation 9740) (similar); Proclamation 9759 of May 31, 2018, 83 FR 25857 (June 5, 2018) (Proclamation 9759) (similar); Proclamation 9772 of August 10, 2018, 83 FR 40429 (August 15, 2018) (Proclamation 9772) (similar); and Proclamation 9777 of August 29, 2018, 83 FR 45025 (September 4, 2018) (Proclamation 9777) (similar).

also clearly concerns itself with “the effects on the *national security* of imports of the article.”⁴² The particular national security risk spelled out in proclamation 9705 is that the “industry will continue to decline, leaving the United States at risk of becoming reliant on foreign producers of steel to meet our national security needs – a situation that is fundamentally inconsistent with the safety and security of the American people.”⁴³ In other words, section 232 duties are focused on addressing national security prerogatives, separate and apart from any function performed by antidumping and 201 safeguard duties to remedy injury to a domestic industry.

Even more critical to this point is that the Presidential Proclamation states that section 232 duties are to be imposed in addition to other duties unless expressly provided for in the proclamations.⁴⁴ The Annex to Proclamation 9740 refers to section 232 duties as “ordinary” customs duties, and it also states that “[a]ll anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein.” Notably, there is no express exception in the HTSUS revision in the Annex. In other words, section 232 duties are intended to be treated as any other duties for purposes of the trade remedy laws. Had the President intended that AD duties would be reduced by the amount of section 232 duties imposed, the Presidential Proclamation would have expressed that intent.

For the reasons noted, and consistent with our treatment of 232 duties in *OCTG from Ukraine*⁴⁵ and *Circular Welded Pipe and Tube From Turkey*,⁴⁶ we have determined that section 232 duties should be treated as “United States import duties” for purposes of section 772(c)(2)(A) of the Act – and thereby as “U.S. Customs duties,” which are deducted from U.S. price.

C. Date of Sale

Section 351.401(i) of Commerce’s regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a

⁴² See section 232(b)(1)(A) of the Trade Expansion Act of 1962 (emphasis added); see also section 232(a) of the Trade Expansion Act of 1962 (explaining that “[n]o action shall be taken . . . to decrease or eliminate the duty or other import restrictions on any article if the President determines that such reduction or elimination would threaten to impair the national security”).

⁴³ See Proclamation 9705, 83 FR at 11627.

⁴⁴ See Proclamation 9705, 83 FR at 11627; see also Proclamation 9711, 83 FR at 13363; Proclamation 9740, 83 FR at 20685-87 (“All anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein.”); Proclamation 9759, 83 FR at 25857; Proclamation 9772, 83 FR at 40430-31; and Proclamation 9777, 83 FR at 45025. The proclamations do not expressly provide that 232 duties receive different treatment.

⁴⁵ See Memorandum, “Issues and Decision Memorandum for the Final Normal Value Calculations to be Effective from the Release of the Final Normal Values through June 30, 2019, under the Agreement Suspending the Antidumping Duty Investigation on Certain Oil Country Tubular Goods from Ukraine,” dated February 15, 2019, at Comment 1 (*OCTG from Ukraine*); see also Memorandum, “2017-2018 Administrative Review of Certain Corrosion-Resistant Steel Products from Taiwan: Additional Information on Section 232 Duties,” dated concurrently with this Memorandum at Attachment.

⁴⁶ See *Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 34345 (July 18, 2019), and accompanying IDM at 11-13.

different date better reflects the date on which the exporter or producer establishes the material terms of sale. Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.

Prosperity

Prosperity reported the earlier of the date of invoice or the date of shipment as the date of sale for its home market and U.S. sales.⁴⁷ Our examination of Prosperity's home market sales database revealed that the invoice date always matched with the shipment date. Further, we found that the date of sale reported in Prosperity's U.S. sales database comported with the reporting methodology provided in its narrative. Therefore, we preliminarily determine to use Prosperity's reported date of sale as the date of sale for Prosperity's home market and U.S. sale transactions.

YP

For home market sales, YP reported the government uniform invoice date as date of sale for home market sales.⁴⁸ For export price U.S. sales, YP reported that it did not act as the importer of record and thus reported the earlier of sale invoice date and shipment date.⁴⁹ For CEP sales, all of the subject merchandise sold by YP to the United States was made through its affiliate in the United States, Yieh Phui America, Inc. (YPA), and YP is able to identify the transactions of merchandise under review which entered into the United States during the POR.⁵⁰ Thus, YP reported all transactions of the merchandise under review which entered the United States during the POR where the entry date was known to Yieh Phui, and reported the date of sale based on the earlier of the invoice date and shipment date where that date falls within the POR.⁵¹ Therefore, consistent with our practice, we used the government uniform invoice date as the date of sale for home market sales and the earlier of sale invoice date and shipment date for both EP and CEP sales.

D. Product Comparisons

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

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

⁴⁷ See Prosperity's BQR at 32; and CQR at 23.

⁴⁸ See YP's BQR at 21.

⁴⁹ See YP's CQR at 46.

⁵⁰ *Id.*

⁵¹ *Id.*

States, the reported control number identifies the characteristics of CORE, as exported by Prosperity and YP.

E. Export Price and Constructed Export Price

1. *Export Price*

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

Prosperity

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

YP

We calculated EP for YP based on packed prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for movement expenses (*i.e.*, inland freight from plant to port of export and domestic brokerage and handling fees); direct selling expenses (*e.g.*, inland and on-board stevedoring fees, dock passage fees, trade promotion fees, cargo certification fees, and harbor construction fees); inventory carrying costs; indirect selling expenses incurred in the country of manufacture. Because neither YP nor its affiliates were importers of record for EP sales, YP did not pay for the section 232 duties, and thus did not report section 232 duties for EP sales.⁵²

2. *Constructed Export Price*

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

⁵² See YP’s CQR at Appendix V.

YP

For reported CEP sales, we calculated CEP based on delivered prices to YP's affiliate in the United States, Yieh Phui America, Inc. (YPA). We also made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2) of the Act. These adjustments included international freight, U.S. customs duties, brokerage and handling costs incurred in the United States, indirect selling expenses incurred in the country of manufacture, and section 232 duties.⁵³

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

F. Normal Value

1. *Home Market Viability*

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

In order to determine whether there was a sufficient volume of sales in the home market or in the third country to serve as a viable basis for calculating NV, we compared each of Prosperity's and YP's volume of home-market sales of the foreign like product to the respective volume of U.S. sales of the subject merchandise in accordance with sections 773(a)(1)(B) and (C) of the Act. We found that Prosperity's and YP's individual aggregate sales volume of foreign like product in the home market was greater than five percent of the respective company's sales of subject merchandise to the United States. Therefore, in accordance with section 773(a)(1)(C) of the Act, Taiwan constitutes a viable home market for Prosperity and YP. Accordingly, Taiwan was selected for each respondent as the comparison market for purposes of analysis in this review.

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

Commerce may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not

⁵³ See, generally, YP's CQR and Appendix V.

affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.⁵⁴ Under section 773(a)(5) of the Act, Commerce has considerable discretion in deciding whether to include affiliated party sales when calculating NV.⁵⁵ Commerce excludes home-market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because Commerce considers them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, “[Commerce] may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length.”⁵⁶

During the POR, Prosperity and YP each made sales of CORE in Taiwan to affiliated parties, as defined in section 771(33) of the Act. Consequently, we tested these sales to ensure that they made such sales at arm's-length prices in accordance with 19 CFR 351.403(c). To test whether the companies made sales to affiliated parties at arm's-length prices, we compared the unit prices of sales to affiliated and unaffiliated customers net of all direct selling expenses and packing. Pursuant to 19 CFR 351.403(c) and in accordance with Commerce's practice, where the price to an affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade (LOT), we determined that the sales made to the affiliated party were at arm's length.⁵⁷ Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we consider these sales to be outside the ordinary course of trade.⁵⁸

3. *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, we will calculate NV based on sales of foreign like products at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁵⁹ Substantial differences in selling activities are necessary, but not a sufficient, condition for determining that there is a difference in the stages of marketing.⁶⁰ To determine whether the comparison-market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

⁵⁴ See 19 CFR 351.403(c).

⁵⁵ See section 773(a)(5) of the Act; *see also NTN Corp. v. United States*, 306 F. Supp. 2d 1319, 1332 (CIT 2004) (affirming Commerce's discretion to apply the arm's-length test to determine whether to exclude certain home market sales to affiliated parties in the NV calculation).

⁵⁶ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003) (affirmed on remand, 306 F. Supp. 2d 1291 (CIT 2004) (citing *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55355 (September 7, 2011)).

⁵⁷ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002).

⁵⁸ See section 771(15) of the Act; *see also* 19 CFR 351.102(b)(35).

⁵⁹ See 19 CFR 351.412(c)(2).

⁶⁰ *Id.*; *see also Notice of Final Determination of Sales at Less Than Fair Value Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

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),⁶¹ 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.⁶²

When we are unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁶³

In this review, we obtained information from Prosperity and YP regarding the marketing stages involved in making their reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution.⁶⁴ None of the respondents claim LOT adjustments in either the home market or the U.S. market.⁶⁵ Consequently, we matched all EP and CEP sales to home market sales, and no LOT adjustment was warranted.

G. Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act, Commerce requested CV and cost of production (COP) information from both respondents.

1. *Calculation of COP*

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

⁶¹ 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).

⁶² *See Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

⁶³ *See, e.g., Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying IDM at Comment 7.

⁶⁴ *See* YP/Synn's BQR at 40 and CQR at 88; *see also* Prosperity's AQR at Exhibit A-9; and SYSCO's AQR at Exhibit A-7 and CEP Attachment Exhibit ACEP-10.

⁶⁵ *See* Prosperity's AQR at 17 and BQR at 43. *See also* YP's BQR at 30 ("There is no significant variation in selling functions provided to home market customers. There is only one level of trade for Yieh Phui's sales in the home market. Therefore, Yieh Phui is not making a claim for a level of trade adjustment.").

We examined Prosperity and YP's cost data and determined that our quarterly cost methodology is not warranted. Therefore, we have applied our standard methodology of using annual average costs based on respondents' reported data.⁶⁶

We calculated YP's G&A and financial ratios based on the 2018 financial statement.⁶⁷ We also excluded guaranteed income fees from YP's G&A ratio.⁶⁸ Because Prosperity purchased some of its hot-rolled coil from an affiliated supplier, we have made a major input adjustment to Prosperity's reported COP.⁶⁹

2. *Test of Comparison Market Sales Prices*

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

3. *Results of the COP Test*

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

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

⁶⁶ See Prosperity's Preliminary Analysis Memorandum and YP's Preliminary Analysis Memorandum.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ See Prosperity's Preliminary Analysis Memorandum.

H. Particular Market Situation

California Steel Industries and Steel Dynamics Inc., petitioners in this administrative review, submitted an allegation that a PMS exists in Taiwan such that the COPs of CORE in Taiwan are distorted, and thus warrant an adjustment to the respondents' COP.

Section 504 of the TPEA amended section 771(15) of the Tariff Act of 1930, as amended (the Act) by adding an additional circumstance that Commerce will consider to be outside the ordinary course of trade: "{s}ituations in which the administering authority determines that the particular market situation prevents a proper comparison with the export price or constructed export price." The TPEA also provided Commerce with discretion to "use another calculation methodology under this subtitle or any other calculation methodology" when a PMS exists "such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade."⁷⁰ The statute does not define "particular market situation," but the SAA explains that such a situation may exist for sales "where there is government control over pricing to such an extent that home market prices cannot be considered competitively set."⁷¹

For these preliminary results, Commerce finds that a PMS did not exist in Taiwan during the POR concerning the costs of primary inputs as a component of the COP.⁷²

I. Calculation of NV Based on Comparison-Market Prices

We based NV for Prosperity and YP on comparison market prices where there was an appropriate number of sales at prices above the COP. We calculated NV based on delivered, ex-works, or ex-sales depot prices, as applicable, to unaffiliated and affiliated customers where the sale was made at arm's length. We made deductions from the starting price for billing adjustments, early payment discounts, warranty discounts, early shipment discounts, transportation fee discounts, non-trimmed discounts, movement expenses, including inland freight from the plant to the distribution warehouse and inland freight from the plant or distribution warehouse to the unaffiliated customer in the third country under section 773(a)(6)(B)(ii) of the Act as appropriate. We made adjustments for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and in circumstances of sale (imputed credit expenses, inventory carrying costs and warranty expense) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We deducted comparison-market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act. We made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales, *i.e.*, credit expenses and warranty expenses, and added U.S. direct selling expenses, *i.e.*, credit expenses, commissions, trade promotion fees, cargo certification fees, and harbor construction fees, and bank charges where appropriate.

⁷⁰ See section 773(e) of the Act.

⁷¹ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 822.

⁷² For a complete discussion, see Memorandum, "2018-2019 Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Steel Products from Taiwan: Decisions on Particular Market Situation Allegations," dated concurrently with this memorandum.

When comparing U.S. sales with comparison-market sales of similar, but not identical, merchandise, we also made adjustments for differences in merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and merchandise under consideration.⁷³

VIII. CURRENCY CONVERSION

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

IX. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒

☐

Agree

Disagree

11/17/2020

X



Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

⁷³ See 19 CFR 351.411(b).