



A-583-008
Administrative Review
POR: 05/01/2018- 04/30/2019
Public Document
E&C/OV: NM

January 12, 2021

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

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

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

I. SUMMARY

The Department of Commerce (Commerce) analyzed the comments submitted by interested parties in the 2018-2019 administrative review of the antidumping duty (AD) order on certain circular welded carbon steel pipes and tubes (steel pipes and tubes) from Taiwan.¹ This review covers one mandatory respondent, Shin Yang Steel Co., Ltd. (Shin Yang). Based on our analysis of the comments received, we made changes to the margin calculation for Shin Yang for the final results.² We recommend that you approve the positions described in the “Discussion of Issues” section of this memorandum. Below is the complete list of issues for which we received comments from interested parties:

- Comment 1: Whether to Adjust Shin Yang’s Reported Costs for Affiliated Purchases in Accordance with the Major Input Rule
- Comment 2: Whether to Adjust Shin Yang’s Reported General and Administrative (G&A) Expense Ratio
- Comment 3: Whether to Deduct Section 232 Duties from Shin Yang’s U.S. Sales Price

¹ See *Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Antidumping Duty Order*, 49 FR 19369 (May 7, 1984) (*Order*).

² See Memorandum, “Cost of Production and Constructed Value Calculation Adjustments for the Final Results – Shin Yang Steel Co., Ltd.,” dated January 19, 2021 (Final Cost Memo).



II. BACKGROUND

On July 24, 2020, Commerce published the *Preliminary Results* of this administrative review.³ The period of review (POR) is May 1, 2018 through April 30, 2019. We invited interested parties to comment on the *Preliminary Results*.⁴ On August 24, 2020, we received a timely-filed case brief on behalf of Nucor Tubular Products Inc. (the petitioner).⁵ On August 31, 2020, we received a timely-filed rebuttal brief on behalf of Shin Yang.⁶

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

IV. CHANGES SINCE THE PRELIMINARY RESULTS

Based on review of the record and comments received from interested parties, we revised our treatment of Shin Yang's hot-rolled coil (HRC) purchases from an affiliated party under the "transactions disregarded" rule, as discussed in detail below. In addition, we used the updated U.S. sales database provided by Shin Yang on March 3, 2020.⁷ However, neither of these revisions resulted in a change to the margin calculated for Shin Yang in these final results of review.⁸

V. DISCUSSION OF THE ISSUES

Comment 1: Whether to Adjust Shin Yang's Reported Costs for Affiliated Purchases in Accordance with the Major Input Rule

Shin Yang reported that it purchased HRC from an affiliated party during the POR.⁹ In response to Commerce's request, Shin Yang provided the transfer price, market price, and affiliate's acquisition cost plus selling, general and administrative (SG&A) expenses for the HRC

³ See *Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Preliminary Results of Administrative Review of the Antidumping Duty Order; 2018-2019*, 85 FR 44852 (July 24, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

⁴ *Id.*, 85 FR at 44854.

⁵ See Petitioner's Letter, "Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Nucor Tubular's Case Brief and Request to Participate in Any Hearing Requested," dated August 24, 2020 (Petitioner's Case Brief).

⁶ See Shin Yang's Letter, "Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Rebuttal Brief," dated August 31, 2020 (Shin Yang's Rebuttal Brief).

⁷ See Shin Yang's March 3, 2020 Section B-C Supplemental Questionnaire Response at Exhibit 9.

⁸ See Final Cost Memo; see also Memorandum, "Final Results Analysis Memorandum for Shin Yang Steel Co., Ltd.," dated concurrently with these final results.

⁹ See Shin Yang's September 13, 2019 Section B, C, and D Questionnaire Response (Shin Yang September 13, 2019 BCDQR) at 115.

purchased from the affiliate.¹⁰ For the *Preliminary Results*, Commerce adjusted Shin Yang's reported transfer price of the HRC purchased from the affiliate in accordance with section 773(f)(3) of the Act (the major input rule).¹¹

Petitioner's Comments:

- Shin Yang inappropriately excluded certain expenses from the affiliate's cost of production (COP) of HRC while including other expenses that should have been excluded.¹²
- These revisions should result in a revision to the major input adjustment.¹³

Shin Yang's Comments:

- The major input rule does not apply to the HRC purchases in question because the affiliated party is not a producer of the HRC.¹⁴
- Instead, section 773(f)(2) of the Act (the "transactions disregarded" rule) applies here and, as a result, the petitioner's arguments regarding the affiliate's COP are moot.¹⁵
- If Commerce decides that it is necessary to adjust Shin Yang's reported costs, Commerce should rely on the transactions disregarded rule and adjust the transfer price of HRC to reflect market price.¹⁶

Commerce's Position: We agree with Shin Yang that the transactions disregarded rule applies in this case because the affiliated party is a reseller of the HRC in question, rather than a producer of the HRC. As a result, we revised our analysis of Shin Yang's HRC purchases from the affiliated party under the transactions disregarded rule in accordance with section 773(f)(2).¹⁷

As stipulated in section 773(f)(3) of the Act, the major-input rule is applicable only in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the merchandise.¹⁸ Here, as noted by Shin Yang, the affiliated supplier did not produce the HRC but, rather, it purchased and resold the HRC to Shin Yang.¹⁹ Therefore, for

¹⁰ *Id.* at Exhibit D-5.

¹¹ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Shin Yang Steel Co., Ltd.," dated July 20, 2020 at 2. Because Shin Yang and the affiliated party are both consolidated into the same parent company's consolidated financial statements, the affiliated supplier's acquisition costs do not include financial expenses, consistent with Commerce's practice (*see, e.g., Certain Carbon and Alloy Steel Cut-to-Length Plate From France: Final Determination of Sales at Less Than Fair Value*, 82 FR 1663 (April 4, 2017), and accompanying Issues and Decision Memorandum (IDM) at Comment 12).

¹² See Petitioner's Case Brief at 2.

¹³ *Id.* at 4.

¹⁴ See Shin Yang's Rebuttal Brief at 2.

¹⁵ *Id.*

¹⁶ *Id.* at 4.

¹⁷ See Final Cost Memo at 1.

¹⁸ See *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 77 FR 17422 (March 26, 2012), and accompanying IDM at Comment 28.

¹⁹ See Shin Yang's Section A Questionnaire Response, dated August 30, 2019 (Shin Yang August 30, 2019 AQR) at 10.

purposes of these final results, we applied the transactions disregarded rule which relates to direct or indirect transactions between affiliated persons.²⁰

Pursuant to section 773(f)(2) of the Act, Commerce may disregard transactions between affiliated persons if those transactions do not fairly reflect market value. For purposes of the transactions disregarded rule, when the respondent purchases inputs from an affiliated supplier, Commerce's practice is to test the transfer price between the affiliated supplier and the respondent with the available market prices for the input.²¹ Available market prices may relate to a respondent's purchases of the same input directly from unaffiliated suppliers, and/or an affiliated reseller's average acquisition price plus the affiliated reseller's SG&A expenses.²² In this case, there are two available sources on the record to consider using as a market price: (1) the price Shin Yang's affiliated supplier paid to its unaffiliated suppliers for the input plus the affiliated supplier's SG&A expenses; and (2) the prices paid by Shin Yang directly to unaffiliated suppliers of HRC.²³ Given that both market price options are representative of market prices, for the final results, we calculated a weighted-average market price using both sources.²⁴ Our analysis shows that the transfer price paid by Shin Yang to the affiliated supplier for HRC during the POR was less than the weighted-average market price.²⁵ Therefore, we increased Shing Yang's reported costs to reflect the higher market price.²⁶

While the petitioner's arguments regarding the major input rule are moot because the major input rule does not apply in this case, we find that Shin Yang failed to include certain expenses in the calculation of the affiliated supplier's SG&A expense rate as noted in the petitioner's brief.²⁷ For the final results, we revised the affiliate's SG&A expense rate to include these expenses.²⁸

Comment 2: Whether to Adjust Shin Yang's Reported G&A Expense Ratio

Petitioner's Comments:

- Commerce should exclude the income from the sales of scrap, reported by Shin Yang as an offset to its G&A expenses, from the numerator of the G&A expense rate because Shin Yang already included a scrap offset to its reported cost of manufacturing (COM).²⁹
- Because Shin Yang failed to include an inventory write-down in the numerator of its G&A expense rate and unallocated fixed manufacturing overhead expenses in its reported COM, partial adverse facts available are warranted.³⁰

²⁰ See section 773(f)(2) of the Act.

²¹ See *Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 82 FR 16378 (April 4, 2017), and accompanying IDM at Comment 6.

²² See *Light-Walled Rectangular Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 16646 (April 22, 2019), and accompanying IDM at Comment 5.

²³ See Shin Yang September 13, 2019 BCDQR at Exhibit D-5.

²⁴ See Final Cost Memo at 1.

²⁵ *Id.*

²⁶ *Id.*

²⁷ See Petitioner's Case Brief at 2.

²⁸ See Final Cost Memo at 1.

²⁹ See Petitioner's Case Brief at 4.

³⁰ *Id.* at 5.

- At a minimum, Commerce should include the inventory write-down and unallocated fixed manufacturing overhead expenses in the numerator of Shin Yang's G&A expense rate and exclude the unallocated fixed manufacturing overhead expenses from the denominator of the G&A expense rate (*i.e.* cost of sales).³¹
- Commerce should also exclude the cost of services from the denominator of the G&A expense rate.³²

Shin Yang's Comments:

- The income from the sales of scrap reported as an offset to the numerator of the G&A expense rate resulted from scrap generated from the sales of consumables, rather than scrap generated by production.³³
- Because the scrap in question was not related to production, but rather related to the company as a whole, it is appropriate to use the income for the sale of this scrap as an offset to G&A expenses.³⁴
- Shin Yang included both the unallocated fixed manufacturing overhead and inventory valuation losses identified by the petitioner in the reported COM.³⁵
- Commerce should continue to include the cost of services in the denominator of the G&A expense rate because the services relate to Shin Yang's general activities.³⁶

Commerce's Position: We agree with Shin Yang. As a result, we have relied on Shin Yang's reported G&A expense rate for the final results.

Commerce's practice is to calculate the G&A expense rate using income and expenses relating to the general operations of the company.³⁷ The Court of International Trade (CIT) has agreed with Commerce that G&A expenses are those expenses which relate to the general operations of the company as a whole rather than to the production process.³⁸ The scrap income at issue here is not scrap generated from the production process.³⁹ Instead, the scrap was generated from various types of consumables, such as metal containers used for storage.⁴⁰ Moreover, it is clear that the scrap income at issue was not included in the scrap offset reported by Shin Yang in its cost database.⁴¹ Therefore, we find it reasonable to include the revenue from the sales of this scrap as an offset to Shin Yang's G&A expenses (*i.e.* the numerator of the G&A expense rate).

³¹ *Id.*

³² *Id.*

³³ See Shin Yang's Rebuttal Brief at 5.

³⁴ *Id.*

³⁵ *Id.* at 6.

³⁶ *Id.* at 7.

³⁷ See, e.g., *Notice of Final Results of Antidumping Duty Administrative Review: Silicomanganese from Brazil*, 69 FR 13813 (March 24, 2004), and accompanying IDM at Comment 10.

³⁸ See, e.g., *U.S. Steel Group, et al. v. United States*, 998 F. Supp 1151, 1154 (CIT 1998) (citing *Rautaruukki Oy v. United States*, 19 CIT 438, 444 (CIT 1995)).

³⁹ See Shin Yang's December 20, 2019 Supplemental Section D Questionnaire Response (Shin Yang December 20, 2019 SDQR) at 18-19 and Exhibits 9 (scrap originated during production) and 15 (scrap not originated by production).

⁴⁰ See Shin Yang December 20, 2019 SDQR, Exhibit 15.

⁴¹ See Shin Yang December 20, 2019 SDQR, Exhibits 9 and 15; see also Shin Yang's April 15, 2020 Second Supplemental Section D Questionnaire Response at Exhibit 2 (Cost Database).

We disagree with the petitioner that Shin Yang failed to include “unallocated fixed manufacturing costs and inventory valuation losses.” Exhibit 2 of Shin Yang’s December 20, 2019 SDQR and Exhibit 8 of Shin Yang’s September 13, 2019 BCDQR show that these expenses were included in the calculation of Shin Yang’s reported COM.

We also disagree with the petitioner that the cost of services should be excluded from the denominator of the G&A expense rate. Because Commerce considers G&A expenses to be related to the company as a whole, Commerce’s practice is to allocate the company-wide G&A expense rate over the company’s total cost of sales (*i.e.* products and services).⁴²

Comment 3: Whether to Deduct Section 232 Duties from Shin Yang’s U.S. Sales Price

Petitioners’ Comments

- Commerce should deduct Section 232 duties from Shin Yang’s U.S. price to achieve an apples-to-apples comparison and permit the calculation of an accurate dumping margin.⁴³
- The POR in this proceeding covers May 1, 2018 through April 30, 2019, and Section 232 duties went into effect on March 23, 2018. As a consequence, entries of subject merchandise in this review were subject to payment of Section 232 duties.⁴⁴
- For the final results, Commerce should account for Section 232 duties and deduct an amount equal to 25 percent of entered value from Shin Yang’s sales price for all U.S. sales.⁴⁵
- Shin Yang’s claim that it neither pays these duties, nor knows who does pay them, necessarily means that its unaffiliated purchaser must also not be the importer of record; otherwise, the respondent would have been able to identify the company importing the subject merchandise and the destination of the merchandise.⁴⁶
- Commerce should account for these duties in the final margin calculation because the record is devoid of any explanation of how Shin Yang actually determined that its customers paid the required Section 232 duties during the POR.⁴⁷
- Because Shin Yang did not report an entered value for its U.S. sales, Commerce should estimate the entered value from the standard language in the margin program to use as the basis for calculating the necessary Section 232 duties.⁴⁸

Shin Yang’s Comments

- Although Section 232 duties were effective during the entire POR, Shin Yang’s U.S. sales price did not account for the Section 232 duties because: (1) all of Shin Yang’s U.S. sales are export price (EP) sales; and (2) Shin Yang was not the importer of record for those sales.⁴⁹

⁴² See, e.g., *Certain Steel Concrete Reinforcing Bars from Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination to Revoke in Part*, 70 FR 67665 (November 8, 2005), and accompanying IDM at Comment 13.

⁴³ See Petitioner’s Case Brief at 6.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 7.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ See Shin Yang’s Rebuttal Brief at 8.

- The petitioner’s argument is speculative and should be rejected because the record clearly shows that Shin Yang was not the importer of record for its U.S. sales, nor did Shin Yang’s affiliates serve as the importer of record for Shin Yang’s U.S. sales.⁵⁰
- The record shows that Shin Yang was not the party responsible for the payment of Section 232 duties based on the terms of delivery for its U.S. sales.⁵¹
- Because all of Shin Yang’s U.S. sales are EP sales, it was Shin Yang’s unaffiliated U.S. customers and unaffiliated importers that were responsible for the payment of the Section 232 duties.⁵²
- As Shin Yang was not the importer of record and all of its U.S. sales were EP sales, Shin Yang does not have access to the import documentation which would allow Shin Yang to identify the exact parties that paid for the Section 232 duties.⁵³

Commerce’s Position: We agree with Shin Yang that there is no basis for Commerce to adjust Shin Yang’s U.S. price for Section 232 duties for these final results of review.

In March 2018, the President exercised his authority under Section 232 of the Trade Expansion Act of 1962,⁵⁴ 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.⁵⁵ In considering whether U.S. price should be adjusted for Section 232 duties, we look to section 772 of the Act. In particular, section 772(c)(2)(A) of the Act directs Commerce to adjust EP for “the amount, if any, included in such price, attributable to any additional cost, charges, or expenses, and United States import duties.”

In its questionnaire responses, Shin Yang reported that:

Shin Yang (or any of its affiliates) is not the importer of record for its sales of subject merchandise made to the U.S. during the POR; thus, Shin Yang did not pay for import duties, including Section 232 duties, for its sales of subject merchandise to the U.S. during the POR. Nor did Shin Yang or its affiliates provide a refund of the Section 232 duties to Shin Yang’s U.S. customers. The amount of the Section 232 duties which were paid on Shin Yang’s sales of subject merchandise to the U.S. during the POR is unknown to Shin Yang.⁵⁶

In addition, Shin Yang stated that, to the best of Shin Yang’s knowledge, it was Shin Yang’s U.S. customers who paid the Section 232 duties on Shin Yang’s POR sales of subject

⁵⁰ *Id.* (citing Shin Yang September 13, 2019 BCDQR at Appendix IV “Questions Regarding Section 232 Duties” (Appendix IV)).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ See 19 U.S.C. 1862.

⁵⁵ See Proclamation 9705 of March 8, 2018, 83 FR 11627 (March 8, 2018) (Proclamation 9705).

⁵⁶ See Shin Yang September 13, 2019 BCDQR at Appendix IV.

merchandise.⁵⁷ Shin Yang was able to report the vessel on which the subject merchandise was shipped based on the bill of lading, but it reported that it is unable to provide the date of entry, the entered value, the Section 232 duties, the HTS subheadings used to enter the merchandise, and the U.S. importer of record.⁵⁸ This fact pattern is consistent with its reported sales terms,⁵⁹ and sales documentation submitted by Shin Yang support its reported sales terms.⁶⁰ Further, according to Shin Yang, the terms of delivery for all of Shin Yang's U.S. sales provided that Shin Yang was not the party responsible for payment of Section 232 duties.⁶¹ We did not request additional documentation over the course of this review regarding Shin Yang's reported sales terms, nor did we request that Shin Yang obtain the information that it was unable to provide from its U.S. customer.

Because the record does not provide any basis to doubt Shin Yang's claims that it was not the importer of record, and because the sales terms for all of Shin Yang's U.S. sales provided that Shin Yang was not responsible for the payment of Section 232 duties, we find it reasonable to conclude that the unaffiliated customer or unaffiliated importer would be the party responsible for paying the Section 232 duties. We also find it reasonable that Shin Yang is not certain whether its unaffiliated customer was the importer of record because Shin Yang is not in a position to know whether its customer directly sold to another U.S. customer under sales terms that would require the downstream customer to assume responsibility for payment of Section 232 duties. Therefore, because nothing on the record supports such an adjustment, we made no changes to our preliminary decision not to adjust Shin Yang's reported U.S. sales price for Section 232 duties for these final results.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ See Shin Yang September 13, 2019 BCDQR at 69-70.

⁶⁰ See Shin Yang August 30, 2019 AQR at Exhibit A-10.

⁶¹ See Shin Yang's Rebuttal Brief at 8 (citing Shin Yang September 13, 2019 BCDQR at 69-70).

VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this administrative review in the *Federal Register*.



Agree

Disagree

1/12/2021

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler

Assistant Secretary

for Enforcement and Compliance