



A-583-856

Administrative Review

POR: 07/01/2019 – 06/30/2020

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July 30, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Results and Partial
Rescission of the 2019-2020 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, 2019, through June 30, 2020. This administrative review covers the following 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, consistent with our determination in the final results of the

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).

immediately preceding review,² for these preliminary results, we have determined that YP and Synn should no longer be collapsed; therefore, we are treating YP and Synn as two distinct respondents rather than a collapsed single entity and thus calculated a margin for Prosperity and YP.³ Additionally, we preliminarily determine that Synn had no shipments during the POR, and we are rescinding this review for three companies. 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, 2020, Commerce published a notice of opportunity to request an administrative review of the *Order* for the 2019-2020 review period.⁴ In July 2020, Commerce received timely requests to conduct an administrative review of entries of CORE from Taiwan produced and/or exported from YP/Synn, which Commerce was still treating as a collapsed entity at the time of the review's initiation;⁵ Prosperity;⁶ Great Grandeul Steel Co., Ltd. (GGS), Great Fortune Steel Co., Ltd. (GFS), and Great Grandeul Steel Company Limited (a.k.a. Great Grandeul Steel Company Limited Somoa and Great Grandeul Steel Company Limited (Somoa)) (GGS Somoa) (collectively, GGS Companies),⁷ and the petitioners.⁸ On September 3, 2020, we published a notice initiating an AD administrative review of CORE from Taiwan with respect to Prosperity, YP/Synn, Sheng Yu Steel Co., Ltd. (SYSCO), GGS, GFS, and GGS Somoa.⁹

On November 6, 2020, 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

² See *Certain Corrosion-Resistant Steel Products from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018–2019*, 85 FR 74660 (November 23, 2020) (*CORE AR3 Prelim*), unchanged in *Certain Corrosion-Resistant Steel Products from Taiwan: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019*, 86 FR 28554 (May 27, 2021) (*CORE AR3 Final*).

³ See “Affiliation and Collapsing” section, below.

⁴ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 85 FR 39531, 39532 (July 1, 2020).

⁵ See YP’s Letter, “Corrosion-Resistant Steel Products from Taiwan; Administrative Review Request,” dated July 24, 2020.

⁶ See Prosperity’s Letter, “Corrosion-Resistant Steel Products from Taiwan, Case No. A-583-856: Request for Administrative Review,” dated July 28, 2020.

⁷ See GGS Companies’ Letter, “Corrosion-Resistant Steel Products from Taiwan; Administrative Review Request,” dated July 31, 2020.

⁸ The petitioners are AK Steel Corporation (AK Steel), Steel Dynamics Inc. (SDI), ArcelorMittal USA LLC, Nucor Corporation, and United States Steel Corporation, manufacturers of the domestic like product in the United States and are therefore interested parties within the meaning of section 771(9)(C) of the Tariff Act of 1930, as amended (the Act). 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 30, 2020.

⁹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 54983, 54989 (September 3, 2020) (*Initiation Notice*).

¹⁰ Commerce selected the then-collapsed single YP/Synn entity as a mandatory respondent in this review. We subsequently determined that YP and Synn are distinct entities in the final results of the preceding administrative

AD questionnaire.¹¹ In March, April, and May 2021, 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 YP.¹⁴ Synn separately reported that it had no shipments of CORE to the United States during the POR.¹⁵

On February 24, 2021, we received a particular market situation (PMS) allegation from petitioner SDI.¹⁶ On June 18, 2021, SDI provided timely response to Commerce's request for information regarding certain deficiencies identified in the PMS Allegation.¹⁷ On June 22, 2021, we notified interested parties that Commerce accepted the 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).¹⁸ On July 13, 2021, Prosperity, YP, and China Steel Corporation (CSC), provided comment and information in rebuttal to the PMS Allegation.¹⁹ On July 23, 2021, SDI provided surrebuttal comments.²⁰ Final comments on the

review and, consistent with that determination, treat YP and Synn as two distinct entities for these preliminary results. See *CORE AR3 Final* and "Affiliation and Collapsing" section, below.

¹¹ See Prosperity's Letters, "Certain Corrosion-Resistant Steel Products from Taiwan, 7/1/2019–6/30/2020 Administrative Review, Case No. A-583-856: Section A Initial Questionnaire Response," dated December 22, 2020 (Prosperity's AQR); and "Certain Corrosion-Resistant Steel Products from Taiwan, 7/1/2019–6/30/2020 Administrative Review, Case No. A-583-856: Sections B-D of Initial Questionnaire Response," dated January 21, 2021 (Prosperity's BQR, Prosperity's CQR, and Prosperity's DQR); see also YP's Letters, "Corrosion-Resistant Steel Products from Taiwan; Section A Response," dated December 22, 2020 (YP's AQR) and "Corrosion-Resistant Steel Products from Taiwan; Sections B-D Response," dated January 14, 2021 (YP's BQR, YP's CQR, and YP's DQR).

¹² See Prosperity's Letter, "Certain Corrosion-Resistant Steel Products from Taiwan, 7/1/2019–6/30/2020 Administrative Review, Case No. A-583-856: Prosperity Supplemental Sections A-D Questionnaire Response," dated May 10, 2021; and YP's Letters, "Corrosion-Resistant Steel Products from Taiwan; 1st Supplemental Questionnaire Response," dated April 19, 2021 (YP's First SQR); and "Corrosion-Resistant Steel Products from Taiwan; 2nd Supplemental Questionnaire Response," dated June 29, 2021 (YP's Second SQR).

¹³ See YP's AQR at 1 and 16-17.

¹⁴ *Id.*

¹⁵ See Synn's Letter, "Corrosion-Resistant Steel Products from Taiwan; No Shipment Certification," dated September 30, 2020 (Synn's No Shipment Certification).

¹⁶ See SDI's Letters, "Certain Corrosion-Resistant Steel Products from Taiwan: Particular Market Situation Allegation and Supporting Factual Information – Qualitative Submission," dated February 24, 2021; and "Certain Corrosion-Resistant Steel Products from Taiwan: Particular Market Situation Allegation and Supporting Factual Information – Quantitative Submission," dated February 24, 2021 (collectively, PMS Allegation).

¹⁷ See SDI's Letter, "Certain Corrosion-Resistant Steel Products from Taiwan: Response to Request for Information Regarding the Particular Market Situation Allegation," dated June 18, 2021.

¹⁸ See Commerce's Letter, "2019-2020 Antidumping Administrative Review of Certain Corrosion-Resistant Steel Products from Taiwan: Particular Market Situation Allegation Acceptance," dated June 22, 2021.

¹⁹ See Prosperity's Letter, "Certain Corrosion-Resistant Steel Products from Taiwan, 7/1/2019–6/30/2020 Administrative Review, Case No. A-583-856: Particular Market Situation Allegation Comments," dated July 13, 2021; see also YP's Letter, "Corrosion-Resistant Steel Products from Taiwan; Response to Particular Market Situation Allegations," dated July 13, 2021; and CSC's Letter, "Administrative Review of the Antidumping Order of Corrosion-Resistant Steel Products from Taiwan for the 2019-20 Review Period — Response to the Department's June 22 Request for Comments on Petitioner's 'Particular Market Situation' Allegation," dated July 13, 2021.

²⁰ See SDI's Letter, "Certain Corrosion-Resistant Steel Products from Taiwan: Submission of Surrebuttal Factual Information Regarding Respondents' Particular Market Situation Rebuttal," dated July 23, 2021.

PMS allegation are due August 2, 2021.²¹ Accordingly, we intend to make a preliminary finding with respect to the PMS allegation in a post-preliminary memorandum issued subsequent to these preliminary results.

On November 30, 2020, GGS Companies timely withdrew their request for review.²² On March 25, 2021, we extended the preliminary results of this review to no later than July 30, 2021.²³

III. SCOPE OF THE *ORDER*

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

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

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

Steel products included in the scope of the *Order* 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

²¹ See Memorandum, “Deadline to Provide Responses to the Particular Market Situation Allegation,” dated July 1, 2021 (PMS Deadline Memo).

²² See GGS Companies’ Letter, “Corrosion-Resistant Steel Products from Taiwan; Withdrawal of Administrative Review Request,” dated November 30, 2020 (GGS Companies’ Withdraw Request).

²³ See Memorandum, “Certain Corrosion-Resistant Steel Products from Taiwan: Extension of Time Limit for Preliminary Results of the 2019-2020 Antidumping Duty Administrative Review,” dated March 25, 2021.

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 the *Order* unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of the *Order*:

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, 7210.49.0040, 7210.49.0045, 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 7212.60.0000.²⁴ The products subject to the *Order* 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. PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW

As stated above, on November 30, 2020, GGS Companies withdrew their self-request for an administrative review.²⁵ Because this request was timely filed and no other party requested a review of these companies, we are rescinding this administrative review with respect to GGS, GFS, and GGS Samoa, pursuant to 19 CFR 351.213(d)(1).

V. 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 prior administrative reviews of this *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, in the immediately preceding administrative review, we determined that YP and Synn should no longer be collapsed.²⁶ The factual record with respect to YP and Synn is identical to that of the prior review, and the determination to no longer collapse YP and Synn was unchallenged in the prior review. As a result, we preliminarily determine that the instant record also supports that YP and Synn should no longer be collapsed as the single 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 shared 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.²⁷

²⁴ See Memorandum, “Request from Customs and Border Protection to Update the ACE AD Case Reference File,” dated July 28, 2021 (explaining the addition of two HTSUS numbers).

²⁵ See GGS Companies’ Withdraw Request.

²⁶ See *CORE AR3 Prelim*, unchanged in *CORE AR3 Final*.

²⁷ See YP’s AQR at 1, 10-11.

VI. PRELIMINARY DETERMINATION OF NO SHIPMENTS

On September 30, 2020, Synn submitted a letter certifying that it had no exports or sales of subject merchandise into the United States during the POR.²⁸ Currently, the record contains no information which contradicts Synn's claim, and we will revisit this issue following these preliminary results if we receive additional information from CBP. 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.²⁹

VII. DUTY ABSORPTION

On October 1, 2020, AK Steel requested that Commerce conduct a duty absorption review with respect to Prosperity, YP, Synn, and SYSCO.³⁰ On July 7, 2021, Commerce informed Prosperity and YP, the sole mandatory respondents subject to individual examination, that if they wished to submit information regarding duty absorption on the record of this review to prove that their unaffiliated purchasers will ultimately pay the antidumping duties to be assessed on entries during the above-referenced review period, such information needed to be placed on the record no later than July 20, 2021. Commerce did not receive responses from Prosperity or YP on this issue.

Section 751(a)(4) of the Act provides that, if requested during an administrative review initiated two or four years after the publication of the order, Commerce will determine whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. Because this review was initiated four years after the publication of the *Order*,³¹ and because the petitioner made a request for a duty absorption review, we are making a duty absorption determination in this segment of the proceeding within the meaning of 19 CFR 351.213(j).

In determining whether the antidumping duties have been absorbed by the respondents during the POR, we examine the antidumping duties calculated in the administrative review in which the absorption inquiry is requested.³² Commerce presumes that the duties will be absorbed for those sales that have been made at less than NV. This presumption can be rebutted with evidence (*e.g.*, an enforceable agreement between the affiliated importer and unaffiliated

²⁸ See Synn's No Shipment Certification.

²⁹ 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).

³⁰ See AK Steel's Letter, "Corrosion-Resistant Steel from Taiwan / Request For Duty Absorption Determination," dated October 1, 2020.

³¹ See *Initiation Notice and Order*.

³² See 19 CFR 351.213(j)(3).

purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise.³³

Prosperity and YP did not respond to Commerce's letter regarding this issue. Accordingly, despite an opportunity to submit evidence that their unaffiliated purchasers will ultimately pay the antidumping duties, the respondents submitted no such evidence. Based on the information on the record, we cannot conclude that Prosperity's and YP's unaffiliated purchasers in the United States ultimately will pay the full assessed duties. Because the respondents did not rebut the duty-absorption presumption with evidence that their unaffiliated U.S. purchasers will pay the full duty ultimately assessed on the subject merchandise, we preliminarily find that AD duties have been absorbed by Prosperity for all U.S. sales and by YP for its sales through its affiliate, Yieh Phui America, Inc (YPA).

VIII. RATE FOR RESPONDENT NOT SELECTED FOR INDIVIDUAL EXAMINATION

SYSCO (1) was not selected as a mandatory respondent; (2) was not the subject of a withdrawal of request for review; (3) did not request to participate as a voluntary respondent; (4) did not submit a claim of no shipments; and (5) was not otherwise collapsed with a mandatory respondent. As such, SYSCO remains a respondent not selected for individual examination.

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.³⁴

For these preliminary results, we preliminarily calculated weighted-average dumping margins that are not zero, *de minimis*, or determined entirely on the basis of facts available for Prosperity and YP. We cannot apply our normal methodology of calculating a weighted-average margin using the actual net U.S. sales values and dumping margins for Prosperity and YP because doing so could indirectly disclose business-proprietary information to both of these companies. In order to strike a balance between our duty to safeguard parties' business proprietary information and our attempt to adhere to the guidance set forth in section 735(c)(5)(A) of the Act, we calculated a weighted-average margin for non-selected respondents using the publicly available,

³³ See, e.g., *Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind*, 70 FR 39735, 39737 (July 11, 2005).

³⁴ 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.

ranged total U.S. sales values of the selected respondents, compared the resulting public, weighted-average margin to the simple average of the dumping margins, and used the amount which is closer to the actual weighted-average margin of the selected respondents as the margin for the non-selected respondents.³⁵ On this basis, using section 735(c)(5)(A) of the Act as guidance, we have preliminarily assigned to the company not individually examined in this review the weighted-average of the dumping margins calculated using the public ranged sales data of Prosperity and YP.³⁶

IX. DISCUSSION OF THE METHODOLOGY

We are conducting this administrative review of the order in accordance with section 751(a) of 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 LTFV investigations, Commerce examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales (*i.e.*, the average-to-transaction (A-T) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in LTFV investigations.³⁷

³⁵ See *Ball Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53662 (September 1, 2010), and accompanying IDM at Comment 1.

³⁶ See Memorandum, "2019-2020 Antidumping Duty Administrative Review of Certain Corrosion-Resistant Steel Products from Taiwan: Calculation of All-Others' Rate in Preliminary Results," dated concurrently with this memorandum.

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

In numerous AD investigations and administrative reviews, 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.³⁸ Commerce finds that the differential pricing analysis is instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.

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 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

³⁸ 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).

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.³⁹

2. *Results of the Differential Pricing Analysis*

Prosperity

For Prosperity, based on the results of the differential pricing analysis, we preliminarily find that 81.55 percent of the value of U.S. sales pass the Cohen's *d* test,⁴⁰ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further,

³⁹ 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.

⁴⁰ See Memorandum, "Certain Corrosion-Resistant Steel Products from Taiwan: Prosperity Tieh Enterprise Co., Ltd. – Analysis Memorandum for the Preliminary Results of the Administrative Review, 2019-2020," dated concurrently with this memorandum (Prosperity's Preliminary Analysis Memorandum).

Commerce preliminarily determines that average-to-average method cannot account for such differences because there is a 25 percent relative change 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, Commerce is applying the average-to-transaction 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 82.94 percent of the value of U.S. sales pass the Cohen's *d* test,⁴¹ 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, we are 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.⁴² In considering whether U.S. price should be adjusted for section 232 duties, we look to section 772 of the Act. In particular, section 772(c)(2)(A) of the Act directs Commerce to adjust EP and CEP for “the amount, if any, included in such price, attributable to any additional cost, charges, or expenses, and United States import duties ...” Therefore, we find that the analysis here depends on whether section 232 duties constitute “United States import duties,” and whether the duties are “included in such price.”

The CAFC has previously considered whether certain types of duties constitute “United States import duties” for purposes of section 772(c)(2)(A) of the Act. In *Wheatland*, the CAFC sustained Commerce's determination not to adjust U.S. price in antidumping proceedings for section 201 safeguard duties under that statutory provision.⁴³ Having acknowledged Commerce's analysis of the legislative history to the Antidumping Act of 1921, which “referred

⁴¹ See Memorandum, “Certain Corrosion-Resistant Steel Products from Taiwan: Yieh Phui Enterprise Co., Ltd. – Analysis Memorandum for the Preliminary Results of the Administrative Review, 2019-2020,” dated concurrently with this memorandum (YP's Preliminary Analysis Memorandum).

⁴² See *Proclamation 9705 of March 8, 2018; Adjusting Imports of Steel into the United States*, 83 FR 11625 (March 15, 2018) (*Proclamation 9705*).

⁴³ See *Wheatland Tube Co. v. United States*, 495 F.3d 1355, 1363 (Fed. Cir. 2007) (*Wheatland*).

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.’”⁴⁴

The CAFC then found reasonable Commerce’s analysis that section 201 duties were more akin to antidumping duties than “ordinary customs duties.”⁴⁵ 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.”⁴⁶ 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.”⁴⁷

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* ...”⁴⁸ The text of section 232 of the Trade Expansion Act of 1962 also clearly concerns itself with “the effects on the *national security* of imports of the article.”⁴⁹ 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.”⁵⁰ 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.

⁴⁴ *Id.* at 1361.

⁴⁵ *Id.* at 1362.

⁴⁶ *Id.* at 1362-63.

⁴⁷ *Id.* at 1365.

⁴⁸ 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).

⁴⁹ 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”).

⁵⁰ See *Proclamation 9705*, 83 FR at 11627.

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.⁵¹ 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 antidumping 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*⁵² and *Circular Welded Pipe and Tube from Turkey*,⁵³ 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. We have therefore preliminarily deducted section 232 duties from U.S. price for these preliminary results.

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 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.⁵⁴ 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

⁵¹ 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.

⁵² 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 (*OCTG from Ukraine*) at Comment 1; 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.

⁵³ 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.

⁵⁴ See Prosperity’s BQR at 33-34; and Prosperity’s CQR at 24-25.

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 the date of sale for all home market sales.⁵⁵ 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 or shipment date.⁵⁶ For CEP sales, all of the subject merchandise sold by YP to the United States was made through its affiliate in the United States, YPA, and YP is able to identify the transactions of merchandise under review which entered into the United States during the POR.⁵⁷ 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 or shipment date where that date falls within the POR.⁵⁸ Therefore, consistent with our practice, we preliminarily used the government uniform invoice date as the date of sale for home market sales and the earlier of sale invoice date or 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 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

⁵⁵ See YP's BQR at 21.

⁵⁶ See YP's CQR at 48.

⁵⁷ *Id.*

⁵⁸ *Id.*

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 YP’s export price based on packed prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for movement expenses (*i.e.*, inland freight from YP’s factory to the processing service providers, inland freight from YP’s factory to the consumers, and domestic brokerage and handling fees); direct selling expenses (*e.g.*, seaport stevedoring and dock passage fees, bank charges, trade promotion fees, cargo certification fees, and harbor construction fees); inventory carrying costs; and indirect selling expenses incurred in the country of manufacture. Because YP and its affiliates were not importers of record for EP sales, YP did not incur any section 232 duties to report for EP sales.⁵⁹

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.

YP

In accordance with section 772(b) of the Act, we used the CEP methodology for certain of YP’s U.S. sales because the subject merchandise was sold in the United States by YP’s U.S. affiliate, Yieh Phui America, Inc. (YPA), after the date of importation, and EP, as defined by section 772(a) of the Act, was not otherwise warranted. We calculated CEP based on delivered prices to unaffiliated purchasers in the United States. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2) of the Act. These adjustments included international freight, U.S. customs duties, brokerage and handling costs, indirect selling expenses incurred by YPA in the United States, inventory carrying costs, and section 232 duties.⁶⁰

⁵⁹ See YP’s CQR at 146.

⁶⁰ See, generally, YP’s CQR and Appendix V.

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 United States. 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 affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.⁶¹ Under section 773(a)(5) of the Act, Commerce has considerable discretion in deciding whether to include affiliated party sales when calculating NV.⁶² 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

⁶¹ See 19 CFR 351.403(c).

⁶² 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).

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.”⁶³

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 preliminarily determined that the sales made to the affiliated party were at arm’s length.⁶⁴ 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.⁶⁵

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 LOT as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁶⁶ Substantial differences in selling activities are necessary, but not a sufficient, condition for determining that there is a difference in the stages of marketing.⁶⁷ To determine whether the comparison-market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),⁶⁸ 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.⁶⁹

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

⁶³ 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)).

⁶⁴ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002).

⁶⁵ See section 771(15) of the Act; see also 19 CFR 351.102(b)(35).

⁶⁶ See 19 CFR 351.412(c)(2).

⁶⁷ *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).

⁶⁸ 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).

⁶⁹ See *Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

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 an 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.⁷⁰

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.⁷¹ Neither of the respondents claim LOT adjustments in either the home market or the U.S. market.⁷² 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.

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 the respondents' reported data.⁷³

We calculated YP's G&A and financial ratios based on the 2019 financial statement.⁷⁴ We also excluded income from loan guarantee services from the calculation of YP's G&A expense ratio.⁷⁵ 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.⁷⁶

⁷⁰ 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.

⁷¹ See YP's BQR at 63 and CQR at 86; see also Prosperity's AQR at Exhibit A-9.

⁷² See Prosperity's AQR at 15-17; see also YP's BQR at 31 ("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.").

⁷³ See Prosperity's Preliminary Analysis Memorandum and YP's Preliminary Analysis Memorandum.

⁷⁴ See YP's Preliminary Analysis Memorandum.

⁷⁵ *Id.*

⁷⁶ See Prosperity's Preliminary Analysis Memorandum.

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.

H. Particular Market Situation

SDI, a petitioner 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.⁷⁷

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

⁷⁷ See PMS Allegation.

accurately reflect the cost of production in the ordinary course of trade.”⁷⁸ 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.”⁷⁹

Final comments on the PMS allegation are currently due August 2, 2021.⁸⁰ As the record with respect to this matter is not yet complete, Commerce intends to evaluate interested parties’ comments and issue a determination regarding the PMS allegation in this review following these preliminary results.

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 deducted comparison-market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act. We made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales, *i.e.*, credit expenses and warranty expenses, and added U.S. direct selling expenses, *i.e.*, credit expenses, commissions, trade promotion fees, cargo certification fees, and harbor construction fees, and bank charges where appropriate.

When comparing U.S. sales with comparison-market sales of similar, but not identical, merchandise, we also made adjustments for differences in merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and merchandise under consideration.⁸¹

X. 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

⁷⁸ See section 773(e) of the Act.

⁷⁹ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 822.

⁸⁰ See PMS Deadline Memo.

⁸¹ See 19 CFR 351.411(b).

the Federal Reserve Bank. The exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange>.

XI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒

☐

Agree

Disagree

7/30/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance