



DEPARTMENT OF COMMERCE

## International Trade Administration

[A-583-856]

### **Corrosion-Resistant Steel Products from Taiwan: Notice of Third Amended Final Determination of Sales at Less than Fair Value Pursuant to Court Decision and Partial Exclusion from Antidumping Duty Order**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On June 23, 2023, the U.S. Court of International Trade (CIT) sustained the U.S. Department of Commerce's (Commerce) second remand redetermination concerning the antidumping duty investigation of certain corrosion-resistant steel products (CORE) from Taiwan, which: (1) reinstated the use of an adverse inference in the calculation of respondent Prosperity Tieh Enterprise Co., Ltd.'s (Prosperity) reporting of yield strength for CORE production, and (2) reversed Commerce's determination from the investigation to collapse mandatory respondent Prosperity with the other mandatory respondent, the Yieh Phui Enterprise Co., Ltd. (Yieh Phui) and Synn Industrial Co., Ltd. (Synn) single entity (collectively, Yieh Phui/Synn). Accordingly, Commerce is issuing a third amended final determination for the less-than-fair-value (LTFV) investigation of CORE from Taiwan. The determination to not collapse Prosperity with the Yieh Phui/Synn entity results in a negative amended final determination of sales at LTFV for Yieh Phui/Synn and, thus, excludes Yieh Phui/Synn from the antidumping duty order.

**DATES:** Applicable July 3, 2023.

**FOR FURTHER INFORMATION CONTACT:** Brendan Quinn, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5848.

## SUPPLEMENTARY INFORMATION:

### Background

The litigation in this case relates to Commerce’s final determination in the LTFV investigation of CORE from Taiwan, which was later amended. In the *Preliminary Determination*, Commerce determined that Yieh Phui and Synn comprised a single entity, and no party challenged this determination in its case brief. Thus, Commerce continued to find Yieh Phui and Synn to be a single entity in the *Final Determination*.<sup>1</sup> In the *Final Determination*, Commerce further determined that Prosperity was part of the Synn single entity.<sup>2</sup> With regard to Prosperity and Synn, Commerce found that Prosperity was affiliated with Synn, and that it should be treated as a part of the Synn single entity. As a result, Commerce concluded that “{s}ince Prosperity Tieh is collapsed with {Synn}, and Yieh Phui is collapsed with {Synn}, {as a result of} the potential for manipulation of price and production among the three companies comprising the two collapsed entities, we find that Prosperity Tieh/{Synn} and Yieh Phui/{Synn} should be collapsed as a single entity for purposes of the final determination in this investigation.”<sup>3</sup>

Also, in the *Final Determination*, Commerce determined that Prosperity misrepresented the yield strength of certain of its sales of CORE, which resulted in Commerce’s determination that Prosperity failed to cooperate to the best of its ability.<sup>4</sup> To determine the costs of the sales found to have been misclassified by Prosperity, Commerce resorted to partial adverse facts available pursuant to sections 776(a)(2)(B) and (D) and 776(b) of the Tariff Act of 1930, as amended (the

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<sup>1</sup> See *Certain Corrosion-Resistant Steel Products from Taiwan: Negative Preliminary Determination of Sales at Less than Fair Value*, 81 FR 72 (January 4, 2016), and accompanying Preliminary Decision Memorandum (PDM) at 4; see also *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, 35314 (June 2, 2016) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM); and Memorandum, “Less Than Fair Value Investigation of Certain Corrosion-Resistant Steel Products from Taiwan: Final Affiliation and Collapsing Memorandum,” dated May 24, 2016 (Final Collapsing Memo).

<sup>2</sup> See *Certain Corrosion Resistant Steel Products (CORE) from India, Italy, China, Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders*, 81 FR 48390 (July 26, 2016) (*Amended Final Determination and Order*). Although the *Amended Final Determination* changed the weighted-average dumping margins, it did not change the analysis from the *Final Determination*.

<sup>3</sup> See Final Affiliation and Collapsing Memorandum, at 9.

<sup>4</sup> See *Final Determination*, 81 FR 35314, and accompanying IDM at Comment 1.

Act).<sup>5</sup>

Mandatory respondents, Prosperity and Yieh Phui, each a Taiwanese producer and exporter of CORE, challenged aspects of Commerce’s final affirmative LTFV determination before the CIT, including Commerce’s single entity determination with respect to Prosperity and the Yieh Phui/Synn entity and Commerce’s use of facts otherwise available with an adverse inference in response to Prosperity’s reporting of yield strength. In *Prosperity I*, the CIT ordered Commerce to: (1) reconsider its decision to collapse Prosperity with the Yieh Phui/Synn entity; and (2) “correct the errors resulting from {Commerce’s} unlawful decision to use the facts otherwise available and an adverse inference pertaining to the yield strength classification and coding of Prosperity’s home market and U.S. market sales.”<sup>6</sup> In its *First Redetermination Results*, Commerce: (1) reconsidered the collapsing determination in accordance with the CIT’s opinion, but continued to treat Prosperity, Yieh Phui, and Synn as a single-entity, consistent with 19 CFR 351.401(f); and (2) under respectful protest, revised the Yieh Phui/Prosperity/Synn entity’s weighted-average dumping margin by using Prosperity’s reported yield strength data rather than facts otherwise available with an adverse inference.<sup>7</sup> In *Prosperity II*, the CIT sustained Commerce’s *First Redetermination Results*.<sup>8</sup> On February 26, 2019, Commerce published the second amended final determination and notification of final judgment that is not in harmony with Commerce’s amended final determination of the antidumping investigation.<sup>9</sup>

In *Prosperity III*, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) vacated the CIT’s judgment on the collapsing issue in *Prosperity II* by concluding that “Commerce acted contrary to law when it collapsed Prosperity, Yieh {Phui}, and Synn without considering the {19 CFR} 351.401(f) factors as between the relationships of Prosperity and Yieh

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<sup>5</sup> *Id.*

<sup>6</sup> See *Prosperity Tieh Enter. Co. v. United States*, 284 F. Supp. 3d 1364, 1382 (CIT 2018) (*Prosperity I*).

<sup>7</sup> See *Final Results of Redetermination Pursuant to Court Remand, Prosperity Tieh Enterprise Co., Ltd. et al. v. United States*, Consol. Court No. 19-00138, Slip Op 18-5 (CIT 2018), dated May 23, 2018 (*First Redetermination Results*).

<sup>8</sup> See *Prosperity Tieh Enter. Co. v. United States*, 358 F. Supp. 3d 1363, 1370 (CIT 2018) (*Prosperity II*).

<sup>9</sup> See *Corrosion-Resistant Steel Products from Taiwan: Notice of Court Decision Not in Harmony With Final Determination of Antidumping Duty Investigation and Notice of Amended Final Determination of Investigation*, 84 FR 6129 (February 26, 2019) (*Second Amended Final Determination and Timken Notice*).

{Phui} or between Prosperity and Yieh {Phui}/Synn... Commerce must consider the ‘totality of circumstances’ between all entities when it evaluates whether, for purposes of collapsing entities, there is significant potential for manipulation of price or production to circumvent antidumping duties.”<sup>10</sup> Regarding Prosperity’s yield strength, the Federal Circuit held that the CIT “erred when it reversed Commerce’s finding that Prosperity misreported yield strength,” and that “{s}ubstantial evidence also supports Commerce’s finding that Prosperity failed to provide yield strength information based on the ASTM industry standard.”<sup>11</sup>

The Federal Circuit remanded to the CIT for further proceedings consistent with its opinion, and on September 1, 2021, the CIT issued its remand order, ordering Commerce to reach a new determination on whether collapsing is appropriate, reinstate the use of facts available with an adverse inference with respect to Prosperity’s reporting of yield strength which Commerce used in its final and amended LTFV determinations, and redetermine margins, as appropriate, consistent with *Prosperity III*.<sup>12</sup> On February 14, 2022, Commerce issued the second remand redetermination, in which it reversed its determination to collapse Prosperity with the Yieh Phui/Synn single-entity based on the lack of record evidence to support a collapsing determination as to Prosperity and Yieh Phui and reinstated its use of AFA as to Prosperity’s reporting of yield strength for CORE production.<sup>13</sup> On June 23, 2023, the CIT issued its final judgment to sustain the *Second Redetermination Results* concerning the underlying LTFV investigation of CORE from Taiwan.<sup>14</sup>

#### All-Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated weighted-average dumping

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<sup>10</sup> See *Prosperity Tieh Enter. Co. v. United States*, 965 F.3d 1320, 1326 (Fed. Cir. 2020) (*Prosperity III*); Federal Circuit Mandate in Appeal # 19-1400 (September 8, 2020), ECF. No. 132; see also *Prosperity Tieh Enter. Co. v. United States*, 532 F. Supp. 3d 1401 (CIT 2021) (*Prosperity IV*).

<sup>11</sup> See *Prosperity III*, 965 F.3d at 1328.

<sup>12</sup> See *Prosperity IV*, 532 F. Supp. 3d at 1401.

<sup>13</sup> See *Final Results of Redetermination Pursuant to Court Remand, Prosperity Tieh Enterprise Co., Ltd. et al. v. United States*, Consol. Court No. 19-00138, Slip Op. 21-113 (CIT 2021), dated February 14, 2022 (*Second Redetermination Results*).

<sup>14</sup> See *Prosperity Tieh Enterprise Co., Ltd. and Yieh Phui Enterprise Co., Ltd. v. United States*, Consolidated Court No. 16-00138, Slip Op. 23-95 (CIT 2023) (*Prosperity V*).

margin for all other producers and exporters not individually examined shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated excluding rates that are zero, *de minimis*, or determined entirely under section 776 of the Act. Prosperity is the only respondent for which Commerce calculated an estimated weighted-average dumping margin that is not zero, *de minimis*, or based entirely on facts otherwise available. Therefore, for purposes of determining the “all-others” rate, and pursuant to section 735(c)(5)(A) of the Act, we are using the estimated weighted-average dumping margin calculated for Prosperity, as referenced in the “Third Amended Final Determination” section below.

Third Amended Final Determination

Because there is now a final court decision, Commerce is amending the *Final Determination, Amended Final Determination and Order*, and *Second Amended Final Determination and Timken Notice*. The revised, amended weighted-average dumping margins for the period April 1, 2014, through March 31, 2015, are as follows:

<b>Producer or Exporter</b>	<b>Weighted-average dumping margin (percent)</b>
Prosperity Tieh Enterprise Co., Ltd.	11.04
Yieh Phui Enterprise Co., Ltd., and Synn Industrial Co., Ltd.	1.20 ( <i>de minimis</i> )
All Others	11.04

Partial Exclusion from Antidumping Duty Order

Pursuant to section 735(a)(4) of the Act, Commerce “shall disregard any weighted average dumping margin that is *de minimis* as defined in section 733(b)(3) of the Act.” Furthermore, and pursuant to section 735(c)(2) of the Act, “the investigation shall be terminated upon publication of that negative determination,” and Commerce shall “terminate the suspension of liquidation” and “release any bond or other security, and refund any cash deposit.” As a result of this amended final determination, in which Commerce has calculated a *de minimis* estimated weighted-average dumping margin of 1.20 percent for Yieh Phui/Synn, Commerce is hereby excluding merchandise produced and exported by Yieh Phui/Synn from the *Order*. Accordingly,

if the CIT's ruling is not appealed, or if appealed and upheld, Commerce will direct U.S. Customs and Border Protection (CBP) to refund cash deposits pertaining to any suspended entries produced and exported by Yieh Phui/Synn.

Commerce applies the exclusion from the *Order* to the producer/exporter combination that was examined in the investigation. Entries of subject merchandise in any other producer/exporter combination, *e.g.*, merchandise produced by a third party and exported by Yieh Phui or Synn, or produced by Yieh Phui or Synn and exported by a third party, are subject to the cash deposit requirements at the all-others rate. We note, however, pursuant to *Timken*, the suspension of liquidation must continue during the pendency of the appeals process.<sup>15</sup> Accordingly, we will instruct CBP to continue to suspend liquidation of all unliquidated Yieh Phui/Synn entries referenced above until appropriate liquidation instructions are sent. As of the date of the publication of this notice in the *Federal Register*, a cash deposit rate of 0.00 percent will be the applicable cash deposit rate for Yieh Phui/Synn entries referenced above.

Lastly, as a result of the exclusion of Yieh Phui/Synn from the *Order*, Commerce is: (1) discontinuing the ongoing administrative review of the *Order* covering the 7/1/2021 through 6/30/2022 period of review, in part, with respect to Yieh Phui and Synn; and (2) will not initiate any new administrative reviews of Yieh Phui's or Synn's entries pursuant to the *Order*.

#### Cash Deposit Requirements

Since the *Final Determination*, Commerce has established a new cash deposit rate for Prosperity.<sup>16</sup> Therefore, this amended final determination has no effect on subsequent cash deposit rates determined for Prosperity. For all-other producers and/or exporters, except for companies that received their own rates in subsequent administrative reviews, Commerce will issue revised cash deposit instructions to CBP, adjusting the cash deposit rate for all-other producers and/or exporters to 11.04 percent, effective as of the date of this publication of this

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<sup>15</sup> See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

<sup>16</sup> See *Certain Corrosion-Resistant Steel Products from Taiwan: Amended Final Results of Antidumping Duty Administrative Review; 2020–2021*, 88 FR 13779 (March 6, 2023).

notice.

### Liquidation of Suspended Entries

At this time, Commerce remains enjoined by Court orders from liquidating entries that were produced and exported by: (1) Prosperity and imported by Prosperity Tieh USA; that were subject of the United States Department of Commerce's final results in *Certain Corrosion-Resistant Steel Products from Taiwan: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 16613 (Dep't Commerce March 24, 2020); and that were entered, or withdrawn from warehouse, during the period 07/01/2017 through 6/30/2018 (*see* CBP message number 0101402, dated April 10, 2020); (2) Prosperity Tieh Enterprise Co., Ltd and imported by Prosperity Tieh USA, that were the subject of the United States Department of Commerce's final results in *Certain Corrosion-Resistant Steel Products From Taiwan: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 64527 (Dept Commerce Dec. 17, 2018), and that were entered, or withdrawn from warehouse, on or after June 2, 2016 up to and including June 30, 2017 (*see* CBP message number 9035305, dated February 24, 2023); (3) Yieh Phui Enterprise Co., Ltd; that were the subject of the United States Department of Commerce's final determination in the *Certain Corrosion-Resistant Steel Products from Taiwan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments 2020-2021*, 88 FR 7408 (February 3, 2023); and that were entered or withdrawn from warehouse, for consumption, during the period July 1, 2020, through June 30, 2021 (*see* CBP message 3055401, dated February 24, 2023); and (4) Yieh Phui Enterprise Co., Ltd and imported by Yieh Phui America, Inc.; that were subject of the United States Department of Commerce's final results in *Certain Corrosion-Resistant Steel Products from Taiwan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019-2020*, 87 FR 7106 (Dep't Commerce Feb. 8, 2022); and that were entered or withdrawn from

warehouse, on or after July 1, 2019 up to and including June 30, 2020 (*see* CBP message number 2074409, dated March 15, 2022).

These entries will remain enjoined pursuant to the terms of the injunctions issued in CIT Court No. 16-00138 during the pendency of any appeals process.

Notification to Interested Parties

This notice of the amended final determination is issued and published in accordance with sections 735(d) and 516A(c)(1) and (e) of the Act.

Dated: August 21, 2023.

Abdelali Elouaradia,  
Deputy Assistant Secretary  
for Enforcement and Compliance.

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