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Investigation  
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DATE: May 13, 2019

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

FROM: Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the  
Less-Than-Fair-Value Investigation of Strontium Chromate from  
France

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## I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that strontium chromate from France is being, or is likely to be, sold in the United States at less-than-fair-value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act).

## II. BACKGROUND

On September 5, 2018, Commerce received an antidumping duty (AD) petition covering imports of strontium chromate from France,<sup>1</sup> which was filed in proper form by Lumimove, Inc., d.b.a. WPC Technologies (the petitioner). Commerce initiated this investigation on September 25, 2018.<sup>2</sup>

On October 22, 2018, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of strontium chromate from France.<sup>3</sup>

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<sup>1</sup> See Petition for the Imposition of Antidumping and Countervailing Duties on Strontium Chromate from Austria and France, dated September 5, 2018 (Petition).

<sup>2</sup> See *Strontium Chromate from Austria and France: Initiation of Less-Than-Fair-Value Investigations*, 83 FR 49543 (October 2, 2018) (*Initiation Notice*).

<sup>3</sup> See *Strontium Chromate from Austria and France: Investigation Nos. 731-TA-1422-1423 (Preliminary)*, Publication 4836, October 2018 (ITC Publication 4836); see also *Determination; Strontium Chromate from Austria and France*, 83 FR 54139 (October 26, 2018).



In the *Initiation Notice*, Commerce stated that it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for certain of the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.<sup>4</sup> Accordingly, Commerce released the CBP entry data to interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.<sup>5</sup> Commerce subsequently selected Société Nouvelle des Couleurs Zinciques (SNCZ) as the sole respondent in this investigation.<sup>6</sup>

Also, in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of strontium chromate to be reported in response to Commerce's AD questionnaire.<sup>7</sup> Although no parties submitted comments on the scope of the investigation, in October 2018, the petitioner and Habich submitted comments regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes.<sup>8</sup> The petitioner, Habich, and SNCZ, a French producer and exporter of strontium chromate, submitted rebuttal comments.<sup>9</sup> The petitioner submitted additional comments in November 2018 concerning the physical characteristics of the merchandise.<sup>10</sup>

After analyzing the interested party comments and rebuttals, Commerce determined the product characteristics to be used for reporting purposes in the investigation and issued the AD Questionnaire to SNCZ.<sup>11</sup> In November 2018, the petitioner submitted comments on Commerce's AD questionnaire.<sup>12</sup>

In December 2018, SNCZ submitted a timely response to section A of Commerce's AD questionnaire, *i.e.*, general information.<sup>13</sup> In February 2019, SNCZ responded to sections B, C,

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<sup>4</sup> See *Initiation Notice*, at 49546. While the petitioner claimed, in the Petition, that SNCZ was the only known producer/exporter of the subject merchandise, the petitioner did not provide sufficient evidence of its claim; thus, Commerce obtained CBP data to select respondents.

<sup>5</sup> See Memorandum, "Antidumping Duty Investigation of Strontium Chromate from France: U.S. Customs Data for Respondent Selection," dated October 3, 2018.

<sup>6</sup> See Memorandum, "Less-Than-Fair-Value Investigation of Strontium Chromate from France: Respondent Selection," dated October 18, 2018 (Respondent Selection Memo), wherein we determined, based on our examination of the CBP data, that SNCZ is the only known producer/exporter of strontium chromate from France.

<sup>7</sup> See *Initiation Notice*, 83 FR at 49544.

<sup>8</sup> See Petitioner's letters, "Strontium Chromate from Austria and France: Comments on Product Characteristics," and "Strontium Chromate from Austria and France; Habich GmbH Comments on Product Characteristics," both dated October 15, 2018.

<sup>9</sup> See Petitioner's letter, "Strontium Chromate from Austria and France: Rebuttal Comments on Product Characteristics," dated October 26, 2018; *see also* SNCZ's letter, "Strontium Chromate from Austria and France: Rebuttal Comments on Product Characteristics," dated October 26, 2018; Habich's letter, "Strontium Chromate from Austria and France; Habich GmbH's Factual Information to Rebut, Clarify, or Correct Petitioner WPC's Comments on Product Characteristics," dated October 25, 2018.

<sup>10</sup> See Petitioner's letter, "Strontium Chromate from Austria and France: Comments on Issuance of Department's Questionnaire," dated November 16, 2018.

<sup>11</sup> See Commerce's Antidumping Duty Questionnaire, dated November 7, 2018 (AD Questionnaire).

<sup>12</sup> See Petitioner's letter, "Strontium Chromate from Austria and France: Comments on Issuance of Department's Questionnaire," dated November 16, 2018.

<sup>13</sup> See SNCZ's December 7, 2018 Section A Questionnaire Response (December 7 AQR).

and D of Commerce's AD questionnaire,<sup>14</sup> *i.e.*, home market sales, U.S. sales, and cost of production (COP)/constructed value (CV), respectively.<sup>15</sup> We sent supplemental questionnaires to SNCZ between December 2018, and May 2019.<sup>16</sup> We received responses to these supplemental questionnaires between February 2019 and May 2019.<sup>17</sup>

In its December 7, 2018 section A questionnaire response, SNCZ contended that the home market was an inappropriate comparison market and that Taiwan, its largest third country market, should be used as the comparison market.<sup>18</sup> SNCZ subsequently submitted a response to section B of the AD questionnaire for both its home market sales and sales to Taiwan.<sup>19</sup> Based on the record evidence, Commerce determined to use France as the comparison market, in accordance with section 773(a)(1)(B)(i) of the Act, and rejected SNCZ's section B questionnaire response relating to Taiwan.<sup>20</sup>

Commerce exercised its discretion to toll by 40 days all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.<sup>21</sup> On February 11, 2019, the petitioner requested that the date for the issuance of the preliminary determination in this investigation be extended by 50 days.<sup>22</sup> On March 11, 2019, Commerce postponed the preliminary determination deadline until May 13, 2019.<sup>23</sup>

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<sup>14</sup> See SNCZ's February 13, 2019 Sections B and C Questionnaire Response (February 13 BCQR); see also March 22, 2019 Sections B and C Questionnaire Response (March 22 BCQR); and February 19, 2019 Section D Questionnaire Response.

<sup>15</sup> SNCZ's initial sections B and C questionnaire response contained unsolicited third country data that Commerce rejected. Per Commerce's request, SNCZ submitted a revised sections B and C questionnaire response on March 22, 2019 with the third country data redacted. See Memorandum, "Antidumping Duty Investigation of Strontium Chromate from France: Selection of Appropriate Home market," dated March 15, 2019 (Third Country Data Rejection Memo).

<sup>16</sup> See Commerce's December 18, 2018 Section A Supplemental Questionnaire; see also Commerce's February 26, 2019 Second Section A Supplemental Questionnaire; Commerce's March 5, 2019 Section D Supplemental Questionnaire; Commerce's March 7, 2019 Sections B and C Supplemental Questionnaire; Commerce's April 3, 2019 Combined Sections A, B and C Questionnaire; and Commerce's May 1, 2019 Second Section D Supplemental Questionnaire.

<sup>17</sup> See SNCZ's February 7, 2019 Supplemental Section A Questionnaire Response (February 7 SAQR); see also SNCZ's February 15, 2019 Submission of Remaining Supplemental Section A Response English Translations; SNCZ's March 20, 2019 Second Supplemental Section A Questionnaire Response (March 20 SSAQR); SNCZ's April 1, 2019 Supplemental Sections B and C (April 1 SBCQR); SNCZ's April 1, 2019 Supplemental Section D Questionnaire Response; SNCZ's April 16, 2019 Combined Supplemental Sections A, B, and C Questionnaire Response (April 16 SABCQR); and SNCZ's May 9, 2019 Second Supplemental Section D Questionnaire Response.

<sup>18</sup> See December 7 AQR at 2.

<sup>19</sup> See February 13 BCQR.

<sup>20</sup> See Memorandum, "Antidumping Duty Investigation of Strontium Chromate from France: Selection of Appropriate Comparison Market," dated March 15, 2019 (Comparison Market Selection Memo).

<sup>21</sup> See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019.

<sup>22</sup> See Petitioner's letter, "Strontium Chromate from Austria: Request to Extend Preliminary Determination," dated February 11, 2019.

<sup>23</sup> See *Strontium Chromate from Austria and France: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 84 FR 8669 (March 11, 2019).

In April 2019, the petitioner filed a critical circumstances allegation, and we requested shipment data from SNCZ to conduct our critical circumstances analysis.<sup>24</sup> SNCZ submitted a price-based particular market situation allegation on April 12, 2019,<sup>25</sup> which we rejected from the record as untimely on April 18, 2019.<sup>26</sup> On April 23, 2019, the petitioner submitted comments for consideration in the preliminary determination.<sup>27</sup>

We are conducting this investigation in accordance with section 733(b) of the Act.

### **III. PERIOD OF INVESTIGATION**

The period of investigation (POI) is July 1, 2017, through June 30, 2018. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petition, which was September 2018.<sup>28</sup>

### **IV. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES**

On April 17, 2019, SNCZ requested, pursuant to 19 CFR 351.210(b)(2)(ii) and 19 CFR 351.210(e)(2), that, contingent upon an affirmative preliminary determination of sales at LTFV, Commerce postpone the final determination, and that provisional measures be extended to a period not to exceed six months.<sup>29</sup> On April 19, 2019, the petitioner requested, pursuant to 19 CFR 351.210(b)(2)(i), that Commerce postpone the final determination, contingent on a negative preliminary determination.<sup>30</sup> In addition, on April 19, 2019, the petitioner indicated that it did not object to the respondent's request to postpone the final determination in the event of an affirmative preliminary determination.<sup>31</sup> In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

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<sup>24</sup> See Petitioner's letter, "Strontium Chromate from France: Critical Circumstances Allegation," dated April 12, 2019 (Critical Circumstances Allegation).

<sup>25</sup> See Commerce's letter, "Particular Market Situation Allegation: Less-Than-Fair Value Investigation of Strontium Chromate from France," dated April 18, 2019.

<sup>26</sup> See Memorandum, "Strontium Chromate from France: Reject and Remove Particular Market Situation Allegation," dated April 19, 2019.

<sup>27</sup> See Petitioner's letter, "Strontium Chromate from France: Pre-Preliminary Determination Comments," dated April 23, 2019.

<sup>28</sup> See 19 CFR 351.204(b)(1).

<sup>29</sup> See SNCZ's letter, "Strontium Chromate from France: Request to Postpone the Due Date for the Final Determination," dated April 17, 2019.

<sup>30</sup> See Petitioner's letter, "Strontium Chromate from France: Request to Extend the Final Determination," dated April 18, 2019.

<sup>31</sup> *Id.*

## V. DISCUSSION OF THE METHODOLOGY

### Comparisons to Normal Value

Pursuant to sections 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether SNCZ's sales of subject merchandise from France to the United States were made at LTFV, Commerce compared the export price (EP) and constructed export price (CEP), as appropriate, to the normal value (NV), as described in the "Export Price and Constructed Export Price," and "Normal Value" sections of this memorandum.

#### *A) Determination of 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 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 method, as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In numerous investigations, Commerce has 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.<sup>32</sup> Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

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

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<sup>32</sup> 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); *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); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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

If both tests in the first stage, *i.e.*, the Cohen’s *d* test and the ratio test, demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, 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 this preliminary determination, including arguments for modifying the group definitions used in this proceeding.<sup>33</sup>

#### *B) Results of the Differential Pricing Analysis*

For SNCZ, based on the results of the differential pricing analysis, Commerce preliminarily finds that 100 percent of the value of U.S. sales pass the Cohen's *d* test, and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for SNCZ.<sup>34</sup>

### **VI. DATE OF SALE**

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the merchandise under consideration 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.<sup>35</sup> 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.<sup>36</sup>

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<sup>33</sup> The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1337 (CAFC 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.

<sup>34</sup> See Memorandum, "Preliminary Determination Margin Calculation for Société Nouvelle des Couleurs Zinciques," dated concurrently with this memorandum (Preliminary Calculation Memo), at 3-4.

<sup>35</sup> See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

<sup>36</sup> See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007) (*Shrimp from Thailand*), and accompanying Issues and Decision Memo at Comment 11; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002) (*Steel Beams from Germany*), and accompanying Issues and Decision Memo at Comment 2.

### *Non-consignment Sales in U.S. Market and All Sales in Home Market*

For non-consignment EP sales in the U.S. market and for all sales in the home market, SNCZ reported the order confirmation date as the date of sale.<sup>37</sup> However, SNCZ reported that the price changes for certain sales up until the issuance of the sales invoice. Thus, because record evidence demonstrates that the material terms of sale can change prior to issuance of the sales invoice, and consistent with our regulatory presumption of invoice date as the date of sale,<sup>38</sup> we preliminarily determine that invoice date is the appropriate date of sale for all home market and EP sales.

### *Consignment Sales*

SNCZ reported that certain strontium chromate sales to the United States were made on a consignment basis.<sup>39</sup> SNCZ reported that it ships the subject merchandise to the consignee which inventories it at a warehouse. SNCZ issues an invoice for these goods in the aggregate at the end of each month based on a single monthly report of consumption by the consignee.<sup>40</sup> SNCZ stated that the sales price can and does change from the sales order date to the invoice date for U.S. sales although the quantity, price and product are all initially agreed upon prior to shipment and sale to the ultimate third party.<sup>41</sup> SNCZ supported its claim by providing documentation showing that the material terms of sale changed from the date of the order confirmation to the date of the sales invoice.<sup>42</sup> SNCZ also reported that it maintains title to the subject merchandise until it is withdrawn from the warehouse.<sup>43</sup> Therefore, because the material terms of sale may change until the invoice date, we find it appropriate to use the commercial invoice date as the date of sale for all of SNCZ's sales to the consignee, which is the first unaffiliated party to which the subject merchandise is sold in the United States.<sup>44</sup>

## **VII. PRODUCT COMPARISONS**

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent, SNCZ, in France during the POI that fit the description in the "Scope of the Investigation" section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. In making product comparisons, we matched foreign like products based on the physical characteristics reported by SNCZ in the following order of importance: oil absorption rate, form, percentage of strontium chromate in the final dispersion product, and solvent type.

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<sup>37</sup> See December 7 AQR at 13.

<sup>38</sup> See 19 CFR 351.401(i).

<sup>39</sup> See December 7 AQR at Exhibit A-3-a.

<sup>40</sup> *Id.* at 15.

<sup>41</sup> See April 1 SBCQR at 13.

<sup>42</sup> *Id.* at Exhibit SBC1-6.

<sup>43</sup> See December 7 AQR at 15.

<sup>44</sup> See *Certain Stilbenic Optical Brightening Agents from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 26950 (June 11, 2018), and accompanying Issues and Decision Memorandum at "Date of Sale" (*Taiwan OBAs 2016 – 2017 Preliminary Results*); unchanged in *Certain Stilbenic Optical Brightening Agents from Taiwan: Final Results of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 49360 (October 1, 2018) (*Taiwan OBAs 2016 – 2017 Final Results*).



## VIII. EXPORT PRICE

Section 772(a) of the Act defines EP as “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c)” of section 772 of the Act. In accordance with section 772(a) of the Act, for certain U.S. sales made by SNCZ, we used the EP methodology because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States before the date of importation by the producer or exporter of the subject merchandise outside the United States.

We calculated EP based on packed prices to unaffiliated purchasers in the United States. We made deductions for movement expenses which included, where appropriate, domestic inland freight, international freight, and marine insurance, in accordance with section 772(c)(2)(a) of the Act.<sup>45</sup>

## IX. CONSTRUCTED EXPORT PRICE

Section 772(b) of the Act defines CEP as “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States to an unaffiliated purchaser 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 subsections (c) and (d)” of section 772 of the Act. Therefore, although SNCZ reported consignment sales as EP sales, we determine that these sales are CEP because the subject merchandise is first sold (or agreed to be sold) in the United States to an unaffiliated purchaser in the United States after the date of importation for the account of the producer (*i.e.*, SNCZ).<sup>46</sup>

We calculated CEP based on packed prices to the first unaffiliated purchaser in the United States. We also made deductions, where appropriate, for movement expenses (*i.e.*, domestic inland freight from the plant to the port of exportation, international freight, and marine insurance), consistent with section 772(c)(2)(A) of the Act.<sup>47</sup> In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we calculated CEP by deducting selling expenses associated with economic activities occurring in the United States, which included direct selling expenses (*i.e.*, bank charges and imputed credit expenses) and indirect selling expenses (including inventory carrying costs). Finally, we made an adjustment for profit allocated to these expenses, in accordance with section 772(d)(3) of the Act. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by SNCZ on its sales of the subject merchandise in the United States and the profit associated with those sales.

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<sup>45</sup> See Preliminary Calculation Memo at Attachment 1.

<sup>46</sup> See April 1 SBCQR at 13.

<sup>47</sup> See Preliminary Calculation Memo at Attachment 2.

## X. NORMAL VALUE

### A. 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(c)(1)(ii).

In this investigation, we determined that the aggregate volume of home market sales of the foreign like product for SNCZ was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise.<sup>48</sup> Therefore, we used home market sales as the basis for NV for SNCZ, in accordance with section 773(a)(1)(B) of the Act.

### B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>49</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>50</sup> In order to determine whether the home market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market, *i.e.*, the chain of distribution, including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and home market sales, *i.e.*, NV based on either home market or third country prices,<sup>51</sup> 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.<sup>52</sup>

When Commerce is unable to match sales of the foreign like product in the home market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the home market. In comparing EP or CEP sales to sales at a different LOT in the home

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<sup>48</sup> See Comparison Market Selection Memo.

<sup>49</sup> See 19 CFR 351.412(c)(2).

<sup>50</sup> See *id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (*OJ from Brazil*), and accompanying Issues and Decision Memorandum at Comment 7.

<sup>51</sup> Where NV is based on 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).

<sup>52</sup> See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (CAFC 2001).

market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability, *i.e.*, no LOT adjustment is possible, Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>53</sup>

In this investigation, we obtained information from SNCZ regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution.<sup>54</sup> Our LOT findings are summarized below.

With respect to the home market, SNCZ reported that it made sales through one channel of distribution, *i.e.*, sales to distributors and end-users on an ex-works basis (Home market (HM) channel 1).<sup>55</sup> According to SNCZ, it performed packing services, and freight and delivery services for all customers in the HM channel.<sup>56</sup> In addition, SNCZ's response indicates that it performed order input/processing and inventory maintenance.<sup>57</sup> Furthermore, SNCZ initially reported that it had certain selling activities relating to the European Union regulation, Registration, Evaluation, Authorization and Restriction of Chemicals (REACH).<sup>58</sup> However, SNCZ later clarified that it had not incurred any selling expenses relating to REACH during the POI.<sup>59</sup>

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support.<sup>60</sup> Based on these selling function categories, we find that SNCZ performed sales and marketing, freight and delivery, and inventory maintenance and warehousing for all home market sales. Because SNCZ only has one channel of distribution (*i.e.*, direct delivery to customers or distributor warehouse), we preliminarily determine that there is one LOT in the home market.

With respect to the U.S. market, SNCZ reported that it made CEP sales through an unaffiliated customer using one channel of distribution, *i.e.*, sales made from the unaffiliated consignee's warehouse to distributors and end-users. SNCZ also reported that it made EP sales as direct shipments to its U.S. customer.<sup>61</sup> According to SNCZ, it performed packing services, order input/processing, and freight and delivery services at the same levels of intensity for sales to all customers in both U.S. distribution channels. In addition, SNCZ's response indicates that it

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<sup>53</sup> See, e.g., *OJ from Brazil* Issues and Decision Memorandum at Comment 7.

<sup>54</sup> See December 7 AQR at 10; see also February 7 SAQR at Exhibit 11a.

<sup>55</sup> See December 7 AQR at Exhibit A-3-a.

<sup>56</sup> See February 7 SAQR at Exhibit 11a.

<sup>57</sup> See March 22 BCQR at B-24 and Exhibits B-6.

<sup>58</sup> See February 7 SAQR at Exhibit 11a.

<sup>59</sup> See March 20 SSAQR at 6.

<sup>60</sup> See *OJ from Brazil* at Comment 7; see also *Certain Frozen Warmwater Shrimp from India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 9991, 9996 (March 9, 2009), unchanged in *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 33409 (July 13, 2009).

<sup>61</sup> See December 7 AQR at Exhibit A-3-a.

performed order input/processing and inventory maintenance at the same levels of intensity for sales to all customers in both U.S. distribution channels.<sup>62</sup>

Based on the selling function categories noted above, we find that SNCZ performed sales and marketing, freight and delivery, and inventory maintenance and warehousing for both U.S. sales channels. According to 19 CFR 351.412(c)(2), Commerce will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Therefore, because we do not find that there are any differences in selling functions between the two U.S. sales channels, we determine that SNCZ's EP and CEP sales to the U.S. market during the POI were made at the same LOT.

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions SNCZ performed for its U.S. and home market customers do not differ significantly. Specifically, SNCZ performed the same selling functions (*e.g.*, packing and freight and delivery) in the home market, which are grouped in one LOT, as it performed in the U.S. market, which are also grouped in one LOT. Furthermore, we only noticed a slight difference in the level of intensity for U.S. sales related to the arrangement of shipments and the tracking of consignee sales in the United States.<sup>63</sup> For all other selling functions the level of intensity is the same in both markets. Therefore, we preliminarily determine that sales to the United States and home market during the POI were made at the same LOT and, as a result, no LOT adjustment or CEP offset is warranted.

### *C. Cost of Production Analysis*

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

#### 1. Calculation of COP

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

#### 2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the 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, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

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<sup>62</sup> See March 22 BCQR at C-31 and Exhibit B-7.

<sup>63</sup> See December 7 AQR at Exhibits A-4-d.i and A-4-d.iii; *see also* April 16 SABCQR at Exhibit S4-1.

### 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 home 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 when: 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 POI, 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.

In this case, we found that less than 20 percent of SNCZ's sales were at prices less than the COP. Therefore, we used all of SNCZ's home market sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

#### *D. Calculation of NV Based on Comparison Market Prices*

We calculated NV based on delivered prices to unaffiliated customers in the home market. We made a deduction, consistent with section 773(a)(6)(B)(ii) of the Act, for inland freight from the plant to the unaffiliated customers.<sup>64</sup>

For comparisons made to EP sales, we made adjustments for differences in circumstances of sale pursuant to section 773(a)(6)(C)(iii) of the Act. We made circumstance-of-sale adjustments by deducting home market direct selling expenses (*i.e.*, imputed credit) and adding U.S. direct selling expenses (*i.e.*, bank charges and imputed credit), where appropriate. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

For comparisons to CEP sales, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we deducted from NV direct selling expenses (*i.e.*, imputed credit). We also deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

Because SNCZ only reported sales of identical merchandise in both markets, we made no adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

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<sup>64</sup> See Preliminary Calculation Memo at Attachment 1.

## **XI. CURRENCY CONVERSION**

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415(a), based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

## **XII. CRITICAL CIRCUMSTANCES**

On April 12, 2019, the petitioner alleged that critical circumstances exist with respect to imports of subject merchandise, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1).<sup>65</sup> In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, Commerce must issue a preliminary finding of whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination.

### **A) Legal Framework**

Section 733(e)(1) of the act provides that Commerce, upon receipt of a timely allegation of critical circumstances, will determine whether critical circumstances exist in an LTFV investigation if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been “massive imports” of the subject merchandise over a relatively short period. Further, 19 CFR 351.206(h)(2) provides that, in determining whether imports of the subject merchandise have been “massive,” Commerce normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, “{i}n general, unless the imports during the ‘relatively short period’ have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.” Under 19 CFR 351.206(i), Commerce defines “relatively short period” generally as the period starting on the date the proceeding begins *i.e.*, the date the petition is filed and ending at least three months later. This section of the regulations further provides that, if Commerce “finds that imports, or exporters or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely,” then Commerce may consider a period of not less than three months from that earlier time.

### **B) Critical Circumstances Allegation**

The petitioner alleged that section 733(e)(1)(A) of the Act is met by virtue of the dumping margin alleged in the Petition, 51.89 percent.<sup>66</sup> Thus, the petitioner asserted that the dumping margin alleged in the Petition, exceeds the 15 percent threshold used by Commerce to impute

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<sup>65</sup> See Critical Circumstances Allegation.

<sup>66</sup> See Petition.

knowledge of dumping in CEP transactions and the 25 percent threshold in EP transactions.<sup>67</sup> Further, the petitioner argued that importers of strontium chromate from France have been on notice that dumped imports are likely to cause injury since the ITC's October 22, 2018, preliminary affirmative injury determination.

The petitioner argued that a comparison of USITC DataWeb import statistics for imports of strontium chromate over the three-month period from July 2018 to September 2018 (base period) to imports of such merchandise during the three-month period from October 2018 through December 2018 (comparison period) indicates that shipments of subject merchandise during the comparison period increased significantly in terms of volume (21.40 percent) between the base period and the comparison period, and as a result, exceeded the threshold for "massive" imports of strontium chromate from France, as provided under 19 CFR 351.206(h) and (i).

### C) Analysis

Commerce's normal practice in determining whether critical circumstances exist pursuant to the statutory criteria under section 733(e) of the Act has been to examine evidence available to Commerce, such as: (1) the evidence presented in the petitioner's critical circumstances allegation; (2) import statistics released by the ITC; and (3) shipment information submitted to Commerce by the respondents selected for individual examination.

In determining whether a history of dumping and material injury exists, Commerce generally considers current and previous AD orders on subject merchandise from the country in question in the United States and current orders in any other country on imports of subject merchandise.

Because there is no prior history of injurious dumping, we next examine whether the person by whom, or for whose account, the merchandise was imported knew, or should have known, that the exporter was selling the subject merchandise at LTFV, and whether there was likely to be material injury by reason of such sales. When evaluating whether such imputed knowledge exists, Commerce normally considers margins of 25 percent or more for EP sales or 15 percent or more for CEP sales sufficient to meet the quantitative threshold to impute knowledge of dumping. For purposes of this investigation, Commerce preliminarily determines that the knowledge standard is met because SNCZ's preliminary margin is greater than 15 percent for CEP sales and greater than 25 percent for EP sales.

Accordingly, because the statutory criteria of section 733(e)(1)(A) of the Act have been satisfied, we examined whether imports from SNCZ were massive over a relatively short period, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(h). It is Commerce's practice to base its critical circumstances analysis on all available data, using the base and comparison periods of no less than three months. Based on this practice, Commerce compared import data for the period October 2018 through March 2019 (the last month for which import data is currently available) with the preceding six-month period of April through September 2018. Consistent with 19 CFR 351.206(i), we preliminarily find that imports based on SNCZ's reported shipments of subject merchandise in the comparison period did not increase by more than 15 percent over its

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<sup>67</sup> See Critical Circumstances Allegation at 7.

respective imports in the base period.<sup>68</sup> Therefore, we preliminarily find that imports from SNCZ are not massive, pursuant to section 773(e)(1)(B) of the Act and 19 CFR 351.206(h).

For companies subject to the all others rate, we are determining the all others rate based on the margin calculated for SNCZ,<sup>69</sup> the only known producer/exporter of the subject merchandise.<sup>70</sup> As stated above, this rate exceeds the threshold to impute knowledge of dumping. Because SNCZ is the only known producer/exporter of the subject merchandise,<sup>71</sup> we based our massive imports analysis for all others on the experience of SNCZ. Therefore, we preliminarily that imports from all others are not massive, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i).

Based on the foregoing analysis, we are preliminarily making a negative finding of critical circumstances for all imports of strontium chromate from France.

### **XIII. CONCLUSION**

We recommend applying the above methodology for this preliminary determination.

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\_\_\_\_\_  
Agree

☐

\_\_\_\_\_  
Disagree

5/13/2019

X



Signed by: JEFFREY KESSLER