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June 1, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Stilbenic Optical Brightening Agents from Taiwan:
Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review; 2013-2014

SUMMARY

The Department of Commerce (the Department) is conducting this administrative review of the antidumping duty (AD) order on certain stilbenic optical brightening agents (OBAs) from Taiwan.¹ The review covers one producer/exporter of the subject merchandise, Teh Fong Ming International Co., Ltd. (TFM). The period of review (POR) is May 1, 2013, through April 30, 2014. We preliminarily find that TFM has sold subject merchandise at less than normal value (NV). Interested parties are invited to comment on these preliminary results.

BACKGROUND

On May 31, 2014, pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b)(1), TFM, a producer and exporter of merchandise subject to the order, timely requested an administrative review of the AD order on OBAs from Taiwan with respect to TFM.² This was the only company for which the Department received a request for review. On June 27, 2014, in accordance with 19 CFR 351.221(c)(1)(i), we published in the *Federal Register* a notice of initiation of administrative review of the AD order on OBAs from Taiwan.³

¹ See *Certain Stilbenic Optical Brightening Agents From Taiwan: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 77 FR 27419 (May 10, 2012) (*Order*).

² See Letter to the Secretary of Commerce from Teh Fong Ming International Co., Ltd., dated May 31, 2014.

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 79 FR 36462 (June 27, 2014).



On July 17, 2014, we issued an AD questionnaire to TFM. On January 13, 2015, we extended the time period for issuing the preliminary results of this review by 120 days, to June 1, 2015.⁴

SCOPE OF THE ORDER

The stilbenic OBAs covered by this order are all forms (whether free acid or salt) of compounds known as triazinylaminostilbenes (*i.e.*, all derivatives of 4,4'-bis [1,3,5- triazin-2-yl]⁵ amino-2,2'-stilbenedisulfonic acid), except for compounds listed in the following paragraph. The stilbenic OBAs covered by this order include final stilbenic OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of stilbenic OBA products.

Excluded from this order are all forms of 4,4'-bis[4-anilino-6-morpholino-1,3,5-triazin-2-yl]⁶ amino-2,2'-stilbenedisulfonic acid, C₄₀H₄₀N₁₂O₈S₂ ("Fluorescent Brightener 71"). This order covers the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active stilbenic OBA ingredient, as well as any compositions regardless of additives (*i.e.*, mixtures or blends, whether of stilbenic OBAs with each other, or of stilbenic OBAs with additives that are not stilbenic OBAs), and in any type of packaging.

These stilbenic OBAs are classifiable under subheading 3204.20.8000 of the Harmonized Tariff Schedule of the United States (HTSUS), but they may also enter under subheadings 2933.69.6050, 2921.59.4000 and 2921.59.8090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

DISCUSSION OF THE METHODOLOGY

Comparisons to Normal Value

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

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In antidumping investigations, the Department examines whether to use the average-to-transaction method as an alternative comparison method using an analysis consistent with section

⁴ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations "Certain Stilbenic Optical Brightening Agents from Taiwan: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2013-2014" dated January 13, 2015.

⁵ The brackets in this sentence are part of the chemical formula.

⁶ *Id.*

777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in antidumping investigations.⁷ In recent investigations, pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act, the Department has applied a "differential pricing" analysis for determining whether application of average-to-transaction comparisons is appropriate in a particular situation.⁸ The Department finds the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, as well as the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs or CEPs for comparable merchandise that differs significantly among purchasers, regions, or time periods. 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 differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether there is a pattern of prices that differ significantly. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer names. Regions are defined using the reported destination code (*i.e.*, U.S. state name) 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 period of review being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number (CONNUM) and any characteristics of the sales, other than purchaser, region and time period, that the Department 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* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* test is applied when the test and comparison groups of data 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 calculated to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed

⁷ 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 Issues and Decision Memorandum at Comment 1.

⁸ See, *e.g.*, *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013), and the accompanying Issues and Decision Memorandum at Comment 3.

thresholds defined by the Cohen's *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant 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 accounts for 66 percent or more of the value of total sales, then the identified pattern of EPs or CEPs 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 EPs or CEPs that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative 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, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative 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 margin between the average-to-average method and the appropriate alternative method, or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

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

B. Results of the Differential Pricing Analysis

For TFM, based on the results of the differential pricing analysis, the Department finds that 40.69 percent of TFM's CEP sales confirm the existence of a pattern of CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. This finding supports consideration of the application of an average-to-transaction method to those sales

identified as passing the Cohen's *d* test and application of the average-to-average methodology to those sales identified as not passing the Cohen's *d* test. Further, the Department determines that the average-to-average method cannot appropriately account for such differences, because the resulting weighted-average dumping margin moves across the *de minimis* threshold when calculated using the average-to-average method and an alternative method based on the average-to-transaction method only for those U.S. sales that passed the Cohen's *d* test. Accordingly, the Department has determined to use the average-to-transaction method for U.S. sales passing the Cohen's *d* test and the average-to-average method for U.S. sales not passing the Cohen's *d* test to calculate the preliminary weighted-average dumping margin for TFM.⁹

Product Comparisons

In accordance with section 771(16) of the Act, we compared products produced by TFM and sold in the U.S. and comparison markets on the basis of the comparison product which was either identical or most similar in terms of the physical characteristics to the product sold in the United States. For instances in which there was neither an identical nor similar comparison product, we compared to constructed value. In the order of importance, these physical characteristics are category, stage, state, and range of concentration of active ingredients.

Date of Sale

Section 351.401(i) of the Department's regulations states that we normally will use, as the date of sale, the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business. The regulation provides further that we may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. We have a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.¹⁰

Based on record evidence, the date of invoice occurs on or after the time of shipment, while all material terms of sale are established at the time of shipment and do not change after shipment.¹¹ Based upon these facts, and in accordance with our regulation and practice, we preliminarily determine that shipment date is the appropriate date of sale for all sales to the United States.

⁹ See the "Differential Pricing" section of the Memorandum to the File "Preliminary Results of the Administrative Review of Certain Stilbenic Optical Brightening Agents from Taiwan: Analysis Memorandum for Teh Fong Ming Co., Ltd." dated concurrently with this memorandum and hereby incorporated by reference (TFM Analysis Memo) and attached margin-calculation program log and output.

¹⁰ See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

¹¹ For more details, see TFM Analysis Memo at 4.

Constructed Export Price

For TFM's sales to the United States, the Department calculated CEP in accordance with section 772(b) of the Act because the merchandise was sold, before importation, by a U.S. based seller affiliated with the producer to unaffiliated purchasers in the United States. We calculated CEP based on the delivered or ex-works price to unaffiliated purchasers in the United States adjusted for early payment discounts and rebates where applicable.

Where appropriate, we made deductions, consistent with section 772(c)(2)(A) of the Act, for the following movement expenses: inland freight from the plant to the port of exportation, brokerage and handling in Taiwan, harbor construction fee, trade promotion fee, international freight, marine insurance, brokerage and handling in the United States, U.S. customs duties, inland freight from port to warehouse, warehousing fee incurred in the United States, inland freight for transportation between warehouses in the United States, inland freight from the U.S. warehouse to the customer as offset by freight expenses reimbursed by the customer at cost.

In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting credit expenses, selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses and those indirect selling expenses associated with economic activities occurring in the United States. In accordance with section 772(d)(3) of the Act, we also deducted the profit allocated to expenses deducted under section 772(d)(1) of the Act. Pursuant to section 772(d)(2) of the Act, we also deducted the cost of further manufacturing in the United States.

Pursuant to section 772(f) of the Act, we computed profit based on the total revenues realized on sales in both the U.S. and comparison markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity based on the ratio of total U.S. expenses to total expenses for both the U.S. and comparison markets. No other adjustments were claimed or applied.

Normal Value

A. Home Market Viability and Comparison-Market Selection

To determine whether there was a sufficient volume of sales of OBAs 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 compared the respondent's volume of home-market sales of foreign like product to its volume of U.S. sales of the subject merchandise during the POR.¹² Based on this comparison, we determined that TFM did not have a viable home market during the POR.¹³

TFM sold comparable merchandise to more than one third-country market at volumes greater than five percent of the aggregate U.S. sales during the POR. Of these viable third country markets, we chose Finland as the comparison market because, of all the viable third-country

¹² See section 773(a)(1)(B) of the Act.

¹³ See TFM Analysis Memo at 2.

markets, TFM sold the highest volume of comparable merchandise during the POR to customers in Finland.¹⁴ In addition, the merchandise TFM sold to the United States and to Finland was of the same chemical structure.¹⁵ Consequently, we based NV on TFM's third-country sales to Finland in accordance with section 773(a)(1)(C) of the Act.

B. Level of Trade

To the extent practicable, the Department will calculate NV based on sales of foreign like products at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).¹⁶ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.¹⁷ To determine whether the third-country-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.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale. To determine whether third-country-market sales are at a different LOT than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.

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.¹⁸ When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. When this occurs and available data make it practicable, 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, the Department grants a CEP offset, as provided in section 773(a)(7)(B) of the Act.¹⁹

During the POR, TFM reported that it sold OBAs in the comparison market through a single channel of distribution and that the selling activities associated with all sales through the single channel of distribution did not differ. We found no evidence on the record to contradict TFM's statements. Accordingly, we found that TFM's single comparison-market channel of distribution constituted a single level of trade. TFM also reported that, during the POR, it sold OBAs in the United States through a single channel of distribution and that the selling activities associated with all sales through the single channel of distribution did not differ. Again, we found no evidence on the record to contradict TFM's statements. Accordingly, we found that TFM's single U.S. channel of distribution constituted a single level of trade.

¹⁴ See section 773(a)(1)(C) of the Act. See also 19 CFR 351.404(e)(2).

¹⁵ See 19 CFR 351.404(e)(1) and 19 CFR 351.404(e)(3).

¹⁶ See 19 CFR 351.412(c)(2).

¹⁷ *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), and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*).

¹⁸ See *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

¹⁹ See *Plate from South Africa*, 62 FR at 61732-33.

We examined the selling activities performed for CEP sales from TFM to its affiliate in the United States and to its third-country market customers.²⁰ Because we found that TFM performed the same or similar selling functions at the same relative level of intensity for both markets, we determine the CEP LOT was similar to the third-country market LOT in terms of selling activities. Accordingly, we consider the CEP LOT to be similar to the third-country market LOT. Therefore, we matched CEP sales to the sales at the same LOT in the third country market and no LOT adjustment under section 773(a)(7)(A) of the Act was warranted.

C. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on the price TFM reported for third-country market sales to unaffiliated customers. We made adjustments for differences in domestic and export packing expenses in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act. We also made adjustments, consistent with section 773(a)(6)(B)(ii) of the Act, for inland freight from the plant to the port of exportation in Taiwan, brokerage and handling in Taiwan, harbor construction fee in Taiwan, trade promotion fee in Taiwan, international freight from Taiwan to Finland, marine insurance, brokerage and handling in the Finland, Finnish customs duties, inland freight from port to warehouse in Finland, and inland freight from the Finnish warehouse to the customer. Adjustments were also made for a warehouse tank charge that was passed to the customer at cost.

Finally, we made adjustments for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made these adjustments, where appropriate, by deducting direct selling expenses that capture further processing in Finland incurred in Finland prior to sale to the customer, imputed credit expenses incurred on comparison market sales to NV.²¹

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the 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 the subject merchandise.²²

D. Calculation of Normal Value Based on Constructed Value

In accordance with 773(e) of the Act, we used CV as the basis for normal value for the U.S. sales for which we could not find comparison market sales of similar or identical merchandise. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the cost of materials and fabrication, selling, general and administrative expenses, U.S packing expenses, and profit. We relied on information submitted by the respondent for materials and fabrication costs, selling general and administrative expenses, and U.S. packing costs.²³

²⁰ See TFM Analysis Memo at 3.

²¹ See TFM Analysis Memo.

²² See 19 CFR 351.411(b).

²³ See Memorandum to the File “Constructed Value Calculation Adjustments for the Preliminary Results – Teh Fong Min International Co., Ltd. (“TFM”)” dated concurrently with this memorandum and hereby incorporated by

In accordance with 773(e)(2)(A) of the Act and 19 CFR 351.405(b)(1), we based selling expenses and profit on the amounts TFM incurred and realized in connection with the production and sale of the foreign like product in the ordinary course of trade in the foreign market, *i.e.*, the third-country market, Finland.²⁴

Currency Conversion

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

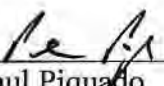
RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

✓

Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

29 May 2015

(Date)

reference.

²⁴ See TFM Analysis Memo at 5.