




UNITED STATES DEPARTMENT OF COMMERCE  
International Trade Administration  
Washington, D.C. 20230

A-583-848  
Administrative Review  
POR: 05/01/2013-04/30/2014  
Public Document  
AD/CVD I: CC

October 5, 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: Issues  
and Decision Memorandum for Final Results of Antidumping Duty  
Administrative Review; 2013-2014

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## SUMMARY

The Department of Commerce (the Department) analyzed the comments submitted by the sole mandatory respondent, Teh Fong Ming International Co., Ltd. (TFM), in this administrative review of the antidumping duty (AD) order on certain stilbenic optical brightening agents (OBAs) from Taiwan covering the period of review (POR) May 1, 2013, through April 30, 2014.<sup>1</sup> As a result of this analysis, we made changes to the margin calculation for TFM. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

Below is the complete list of the issues in this review on which we received a case brief from TFM.

Comment 1: Constructed Export Price (CEP) Offset

Comment 2: Cost Assigned to Merchandise Sold but Not Produced During the POR

## BACKGROUND

On June 5, 2015, the Department published the *Preliminary Results* in the administrative review of the AD order on OBAs from Taiwan.<sup>2</sup> After the *Preliminary Results*, we issued supplemental

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<sup>1</sup> 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).

<sup>2</sup> See *Certain Stilbenic Optical Brightening Agents From Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2013-2104*, 80 FR 32085 (June 5, 2015) (*Preliminary Results*).



questionnaires to TFM<sup>3</sup> and received responses from TFM.<sup>4</sup> We invited parties to comment on the *Preliminary Results*.<sup>5</sup> On July 20, 2015, TFM submitted a case brief. No other party submitted case or rebuttal briefs. No party requested a hearing. Based on our analysis of the comments received, we made certain revisions to the calculation of the weighted-average margin for TFM from the *Preliminary Results*.

## 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]<sup>6</sup> 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]<sup>7</sup> amino-2,2'-stilbenedisulfonic acid, C<sub>40</sub>H<sub>40</sub>N<sub>12</sub>O<sub>8</sub>S<sub>2</sub> ("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 ISSUES

### Comment 1: CEP Offset

TFM argues that the Department should reduce the comparison-market prices by the indirect selling expenses incurred in the comparison market by granting a level of trade (LOT) adjustment. TFM argues that the record shows and the *Preliminary Results* acknowledge that there were significant differences between significant selling activities (*i.e.*, sales forecasting, procurement/sourcing services, inventory maintenance and repacking services) as to sales involving the two respective TFM foreign subsidiaries in the U.S. and comparison market. TFM claims that the fact that other selling functions are at the same level does not belie the existence of these significant differences. TFM claims that according to 19 CFR 351.412(c)(2) all that is

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<sup>3</sup> See letters from Michael Martin to TFM dated June 8, 2015, and July 2, 2015. See also letter from Minoo Hatten to TFM dated July 29, 2015.

<sup>4</sup> See TFM's supplemental questionnaire responses dated June 22, 2015, and July 13, 2015.

<sup>5</sup> See letters from Minoo Hatten to interested parties dated July 2, 2015, and July 9, 2015, revising the briefing schedule.

<sup>6</sup> The brackets in this sentence are part of the chemical formula.

<sup>7</sup> *Id.*

required for a LOT adjustment is that there are significant differences in selling activities. TFM, citing *PRCBs Taiwan* and *Ball Bearing from Japan and the U.K.*, contends that according to Department practice, where a significant difference in several (*e.g.*, two to four) selling functions exists and all other functions are essentially the same, such differences suffice to support a LOT adjustment.<sup>8</sup> TFM also argues that, aside from LOT, in the *Preliminary Results*, the Department did not satisfy the statutory mandate to calculate accurately the dumping margin, because the same adjustments were not made in the U.S. market and the comparison market. Citing *Apex Exports*, TFM claims that, where sales to both U.S. and comparison markets are via foreign TFM affiliates, reducing the U.S. sales price by the indirect selling expenses incurred in the United States but not reducing the comparison-market sales price by the indirect selling expenses incurred in the comparison market does not render a fair apples-to-apples comparison.

Department's Position: In the *Preliminary Results*, we found that TFM's single comparison-market, *i.e.*, third-country market, channel of distribution constituted a single LOT and that TFM's single U.S. channel of distribution constituted a single LOT. In the *Preliminary Results*, we also determined that the CEP LOT was similar to the third-country market LOT in terms of selling activities.<sup>9</sup> Accordingly, for the *Preliminary Results*, we considered the CEP LOT to be similar to the third-country market LOT. Therefore, for the *Preliminary Results*, we matched CEP sales to the sales at the same LOT in the third-country market and determined that no LOT adjustment under section 773(a)(7)(A) of the Tariff Act of 1930, as amended (the Act) was warranted.

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate normal value (NV) based on sales at the same LOT as the CEP. "Sales are made at different levels of trade if they are made at different marketing stages (or their equivalent)."<sup>10</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>11</sup> To determine whether NV sales are at a different LOT than U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution.<sup>12</sup> If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based, we make a LOT adjustment pursuant to section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more

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<sup>8</sup> See *Polyethylene Retail Carrier Bags From Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 55183, 55189 (October 27, 2009) (*PRCBs Taiwan*) unchanged for final. See also *Ball Bearings and Parts Thereof From Japan and the United Kingdom: Preliminary Results of Antidumping Duty Administrative Review; 2010-2011*, 79 FR 56771 (September 23, 2014) (*Ball Bearing from Japan and the U.K.*), and accompanying Decision Memorandum at page 14.

<sup>9</sup> See 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." (TFM Prelim Analysis Memo), dated May 29, 2015, at page 3. See also memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Stilbenic Optical Brightening Agents from Taiwan: Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review; 2013-2014" (Preliminary Decision Memorandum) at pages 7 and 8.

<sup>10</sup> See 19 CFR 351.412(c)(2).

<sup>11</sup> *Id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*CTL Plate*).

<sup>12</sup> See 19 CFR 351.412(c)(2).

remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV pursuant to section 773(a)(7)(B) of the Act (the CEP-offset provision).<sup>13</sup>

For the final results, we continue to find that TFM's single comparison-market channel of distribution constituted a single LOT and that TFM's single U.S. channel of distribution constituted a single LOT. However, we further examined the stages in the marketing process and selling functions along the relevant chains of distribution in the comparison market. Based on our reevaluation, we determined that the third-country-market sales were at a different LOT than U.S. sales and that a LOT adjustment was necessary. Specifically, 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.<sup>14</sup>

When comparing the selling activities at the CEP LOT with the selling activities at the comparison-market LOT, after deducting selling functions performed by TFM's U.S. affiliate, we found that these levels were substantially dissimilar. For example, the sales forecasting, procurement/sourcing services, inventory maintenance, and repacking services performed at the CEP level were significantly different than those performed at the comparison-market level.<sup>15</sup> Therefore, for these final results, we determine that the comparison-market sales are at a different and more advanced LOT than the CEP LOT. Because the comparison-market LOT was different from the CEP LOT, we could not match sales at the same LOT in the U.S. and comparison markets; nor could we determine a LOT adjustment based on TFM's comparison-market sales of the foreign like product because TFM has a single LOT in the comparison market and, therefore, there is no basis to find a pattern of consistent price differences between sales at different levels of trade in that market. Furthermore, we have no other information that provides an appropriate basis for determining a LOT adjustment. To the extent practicable, we determined NV at the same LOT as the starting price for the CEP, which was the price to the unaffiliated customer, and made a CEP-offset adjustment in accordance with section 773(a)(7)(B) of the Act. For the CEP-offset adjustment, we deducted the indirect selling expenses incurred in the third country from the NV but not by more than the indirect selling expenses incurred in the United States, pursuant to section 772(d)(1)(D) of the Act.

#### Comment 2: Cost Assigned to Merchandise Sold but Not Produced During the POR

In the *Preliminary Results*, the Department assigned a cost to the two products sold, but not produced, during the POR (*i.e.*, control number (CONNUM) 11108 and CONNUM 41104), using the cost of the most similar product that was produced during the POR based on their physical characteristics.<sup>16</sup> TFM contends that in doing so, the Department assigned the wrong surrogate cost for CONNUM 41104. TFM explains that it had followed a reasonable approach of reporting the historical costs for the CONNUMs sold but not produced in the POR. In addition, TFM asserts that it demonstrated the methodology for computing its historical costs in

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<sup>13</sup> See *CTL Plate*, 62 FR at 61732, and *Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 67 FR 8781 (February 26, 2002).

<sup>14</sup> See TFM Final Analysis Memo at page 2.

<sup>15</sup> See TFM's QRA at exhibit A-3-c.

<sup>16</sup> See Memorandum to the File "Constructed Value Calculation Adjustments for the Preliminary Determination – Teh Fong Min International Co., Ltd. ("TFM")" dated May 29, 2015, (Preliminary Cost Memo).



its June 22, 2015, supplemental response to section D of the questionnaire at Exhibit 3SE-1.

TFM argues that the Department's surrogate cost for CONNUM 41104 is inappropriate because the difference between the variable cost of manufacturing (VCOM) of the two CONNUMs exceeds the Department's threshold for establishing similar matching products. TFM argues that the difference in the VCOM between CONNUM 41104 and the surrogate CONNUM 41112 is above 25 percent;<sup>17</sup> therefore, CONNUMs 41104 and 41112 are not similar. TFM asserts that the differences in the VCOM between CONNUM 41104 and the other CONNUMs in the Hexa molecular structure group (CONNUMs starting with "4") are all greater than 25 percent and, therefore, none of them should, or can, be used as a surrogate cost for CONNUM 41104 under Department practice. Further, TFM contends that CONNUMs starting with a 3 in the liquid Tetra molecular structure group cannot be used as a surrogate cost for CONNUM 41104 because they are of a different molecular structure, the first and most important characteristic in the Department's CONNUM methodology. In sum, TFM contends that the Department should use the historical cost of producing CONNUM 41104 which was sold, but not produced, during the POR.

Department Position: It is the Department's practice to rely on the reported costs of a similar product in instances where a respondent did not manufacture a product during the reporting period.<sup>18</sup> Although using the costs of the most similar product is our preference, in each instance, we analyze whether the cost of the most similar product reasonably reflects the cost of the product not produced during the POR. For the *Preliminary Results*, we used the Department's model match hierarchy to choose the most similar product produced during the POR to determine a surrogate cost.<sup>19</sup> For CONNUM 41104, upon further review, we have found that the next most similar product (*i.e.*, CONNUM 41112) produced during the POR is not a reasonable surrogate in light of the significant differences in the physical characteristics of the CONNUMs and the costs associated with those differences. In this instance, we found that the physical differences, *i.e.*, the concentration of active ingredients for these two CONNUMs, and the related cost differences, are of such significance that using CONNUM 41112 as the surrogate for CONNUM 41104 causes a distortion in our cost test and constructed value. Therefore, for CONNUM 41104, for these final results, we have used the reported historical cost of CONNUM 41104 as the surrogate cost of production during the POR.<sup>20</sup>

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<sup>17</sup> TFM incorrectly refers to a 25 percent threshold for establishing similar matching products. The threshold applied in the Department's practice is 20 percent. See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823 (September 11, 2008) and accompanying Issues and Decision Memorandum at Comment 2. Also, the 20 percent threshold applies to matching products that serve as the basis for export price (EP) and CEP with products that serve as the basis of NV. In other words, when we use the term DIFMER, we generally do so in the context of differences between products serving as the basis for NV and those serving as the basis for EP/CEP, *see e.g. id.*, and not in the context of comparing different products that serve as the basis of NV.

<sup>18</sup> See *Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 70 FR 12443 (March 14, 2005) and accompanying Issues and Decision Memorandum at Comment 5 ("We verified that Dongbu used the Department's hierarchy to choose the most similar product produced during the POR as a surrogate and found no evidence of distortion in this methodology").

<sup>19</sup> See Preliminary Cost Memo at page 1.

<sup>20</sup> See *Antifriction Bearings and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Reviews in Part*,

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of the review and the final dumping margin for TFM in the *Federal Register*.

Agree ✓

Disagree \_\_\_\_\_

Paul Piquado  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

5 OCTOBER 2015  
(Date)

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and Determination To Revoke Order in Part, 69 FR 55574 (September 15, 2004) and its accompanying Issues and Decision memorandum at Comment 28 ("In situations where a product is sold but not produced, the Department uses a variety of costing methods. For example, we have used the cost of a similar model produced during the POI or POR as a surrogate or we have used adjusted historical production cost."). See also *Ball Bearings and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Review in Part, and Determination Not to Revoke Order in Part*, 68 FR 35623 (June 16, 2003) and its accompanying Issues and Decision Memorandum at Comment 23.