




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

A-583-848  
Administrative Review  
POR: 05/01/2014-04/30/2015  
Public Document  
AD/CVD I: CC

February 19, 2016

MEMORANDUM TO: Ronald K. Lorentzen  
Acting 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; 2014-2015

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## SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty (AD) order on certain stilbenic optical brightening agents (OBAs) from Taiwan.<sup>1</sup> 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, 2014, through April 30, 2015. 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 30, 2015, 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 order with respect to itself.<sup>2</sup> On June 1, 2015, Archroma, a domestic producer of merchandise, also timely requested an administrative review of TFM.<sup>3</sup> This was the only company for which the Department received a request for review.

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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) (*Order*).

<sup>2</sup> See Letter to the Secretary of Commerce from Teh Fong Ming International Co., Ltd., dated May 30, 2015.

<sup>3</sup> Because May 31, 2015, was a Sunday, Archroma's request for a review, which was filed on Monday, June 1, 2015, was timely filed. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 80 FR 24898, (May 1, 2015) in which the Department states that requests for a review are due not later than the last day of May 2015 or the next business day if the deadline falls on a weekend. Because May 31, 2015, was a Sunday, Archroma's request for a review which was filed on Monday,



On July 1, 2015, 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.<sup>4</sup>

As explained in the memorandum from the Acting Assistant Secretary for Enforcement & Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government during Snowstorm Jonas. All deadlines in this segment of the proceeding have been extended by four business days. As a result, the revised deadline for the preliminary results of this review was February 5, 2016.<sup>5</sup> On February 4, 2016, we extended the revised deadline by fourteen days.<sup>6</sup>

## 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>7</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>8</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.

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June 1, 2015 was timely filed.

<sup>4</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 37588 (July 1, 2015).

<sup>5</sup> See Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas" dated January 27, 2016.

<sup>6</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding "Certain Stilbenic Optical Brightening Agents from Taiwan: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2014-2015" dated February 4, 2015.

<sup>7</sup> The brackets in this sentence are part of the chemical formula.

<sup>8</sup> *Id.*

## DISCUSSION OF THE METHODOLOGY

### Use Of Facts Otherwise Available

For the reasons discussed below, we determine that the use of adverse facts available (AFA) is appropriate for these preliminary results with respect to the weighted-average dumping margin for TFM.

#### A. Background

On August 7, 2015, we issued an AD questionnaire to TFM. TFM's response to section A of the questionnaire (QRA) was due by the close of business on August 27, 2015.<sup>9</sup> TFM's response to sections B, C, D, and E of our questionnaire (QRB-E) was initially due by the close of business on September 13, 2015. In the cover letter to the questionnaire, we stated the following: "If the Department does not receive the requested information or a written extension request by before 5 p.m. ET on the established deadline, we may conclude that your company has decided not to cooperate in this proceeding. The Department will not accept any requested information submitted after the deadline. As required by Section 351.302(d) of our regulations, we would reject such submissions as untimely. Failure to properly request extensions for all or part of a questionnaire response may result in the application of partial or total facts available, pursuant to Section 776(a) of the Act, which may include adverse inferences, pursuant to Section 776(b) of the Act."

On August 25, 2015, TFM requested its first extension of time to submit its QRA and QRB-E.<sup>10</sup> On August 25, 2015, the Department granted TFM a partial extension of time to file its QRA and QRB-E. Accordingly, TFM's QRA was due on September 3, 2015, and QRB-E was due by the close of business on September 28, 2015.<sup>11</sup>

On September 2, 2015, TFM requested a second extension of time to submit its QRA.<sup>12</sup> On September 2, 2015, the Department granted TFM a full extension of time to file its QRA. Accordingly, TFM's QRA was due by the close of business September 8, 2015.<sup>13</sup>

On September 8, 2015, TFM requested a third extension of time to submit its QRA.<sup>14</sup> On September 8, 2015, the Department granted TFM a full extension of time to file its QRA. Accordingly, TFM's QRA was due by the close of business September 9, 2015.<sup>15</sup>

TFM filed the business-proprietary version of its QRA on September 9, 2015.<sup>16</sup>

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<sup>9</sup> See Letter from Minoo Hatten to TFM dated August 7, 2015 (Questionnaire).

<sup>10</sup> See Letter from TFM to the Secretary of Commerce dated August 25, 2015. (First Extension Request).

<sup>11</sup> See Letter from Minoo Hatten to TFM dated August 25, 2015 (First Extension).

<sup>12</sup> See Letter from TFM to the Secretary of Commerce dated September 2, 2015 (Second Extension Request).

<sup>13</sup> See Letter from Minoo Hatten to TFM dated September 2, 2015 (Second Extension).

<sup>14</sup> See Letter from TFM to the Secretary of Commerce dated September 8, 2015 (Third Extension Request).

<sup>15</sup> See Letter from Minoo Hatten to TFM dated September 8, 2015 (Third Extension).

<sup>16</sup> In a Memorandum to the File from Catherine Cartsos dated September 18, 2015, the Department stated that it told TFM that the QRA that had been filed was incomplete.

Because TFM filed its business proprietary version of section A on September 9, 2015, under the one-day lag rule,<sup>17</sup> the public version was due on the following day, September 10, 2015. On September 10, 2015, TFM requested a fourth extension of time to submit its public version of the QRA.<sup>18</sup> The Department granted TFM a full extension of time to file the public version of its QRA.<sup>19</sup> Accordingly, TFM's public version of its QRA was due by the close of business on September 11, 2015.

On September 11, 2015, after 5:00 p.m. and, therefore, after the deadline, TFM filed the public version of its QRA. On September 13, 2015, two days after the deadline, TFM filed a different version of the public version of its QRA. On September 13, 2015, TFM also filed a letter in which it acknowledged that both public versions of its QRA were untimely filed, but requested that the Department accept the corrected public version filed on September 13, 2015.<sup>20</sup> In its September 13, 2015, letter, TFM stated that it filed its responses after the deadline because counsel to TFM was traveling in a remote location on another antidumping case when there was an unexpected communication failure regarding access to the Internet and email.<sup>21</sup>

Section 351.303(b)(1) of the Department's regulations states that an electronically filed document must be received successfully in its entirety by the Department's electronic system, ACCESS, by 5 p.m. Eastern Time on the due date. Because both public versions of TFM's QRA were filed after the deadline, they were both untimely. As detailed above, TFM failed to respond in a timely manner to section A of the Department's questionnaire, despite having received four extensions of time to do so.

Pursuant to 19 CFR 351.302(c), an extension request will be considered untimely if it is received after the applicable time limit expires and an untimely filed extension request will not be considered unless the requesting party is able to claim an extraordinary circumstance. The Department does not consider communication and technology issues to be extraordinary circumstances under 19 CFR 351.302(c)(2): "Examples of extraordinary circumstances include a natural disaster, riot, war, force majeure, or medical emergency. Examples that are unlikely to be considered extraordinary circumstances include insufficient resources, inattentiveness, or the inability of a party's representative to access the Internet on the day on which the submission was due."<sup>22</sup> Because TFM's September 13, 2015, letter was filed after the September 11, 2015, 5 p.m. deadline expired, and attributed the untimeliness of its filings to communication and technology failure that do not qualify as extraordinary circumstances, we did not consider the September 13, 2015, letter requesting us to accept the untimely filed public versions of the response to section A of the questionnaire.

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<sup>17</sup> See 19 CFR 351.303(c).

<sup>18</sup> See Letter from TFM to the Secretary of Commerce dated September 10, 2015 (Fourth Extension Request).

<sup>19</sup> See Letter from Minoo Hatten to TFM dated September 11, 2015 (Fourth Extension).

<sup>20</sup> See Letter from TFM to the Secretary of Commerce dated September 13, 2015. This letter was also rejected and removed from the record when the Department rejected TFM's section A.

<sup>21</sup> *Id.*

<sup>22</sup> See *Extension of Time Limits*, 78 FR 57790, 57793 (September 20, 2013).

Pursuant to 19 CFR 351.302(d), the Secretary will not consider or retain in the official record of the proceeding untimely filed factual information, written argument or other material that the secretary rejects. In addition, 19 CFR 351.104(a)(2)(iii) states that in no case will the official record include any document that the Secretary rejects as untimely filed. Because both of TFM's public versions of the response to section A of the questionnaire were untimely, we rejected them and removed them from the record on September 16, 2015.<sup>23</sup>

Pursuant to section 777(b)(1)(B) of the Act and 19 CFR 351.304(c) and (d), a person filing a submission that contains information for which business proprietary treatment is claimed must file a public version of the submission, and non-conforming submissions will be rejected.<sup>24</sup> Because the untimely public version was no longer part of the record, TFM's QRA was non-conforming in its entirety and, therefore, we rejected the business proprietary version of TFM's QRA from the record.<sup>25</sup>

The Department sent TFM a letter stating its reasons for rejecting TFM's QRA from the record.<sup>26</sup> The Department attached to the Rejection Letter a memorandum memorializing a November 21, 2014 meeting with Squire Patton Boggs LLP, current counsel to TFM, at which the "Department officials discussed Squire Patton's history of late filings with Mr. Koenig and stressed the need to adhere strictly to submission deadlines. Department officials informed Mr. Koenig that from this point forward, all late submissions by Squire Patton in this or any other proceeding before the Department would be rejected, unless Squire Patton contacted the Department in accordance with the Department's regulations or requested extensions of time in the proper manner. (...) Mr. Koenig acknowledged that he understood the Department's requirements with respect to the timely submission of requested information in all proceedings before the Department, (...) and that we would not be accepting late submissions in the future unless Squire Patton contacted the Department in a timely manner."<sup>27</sup>

On September 18, 2015, we responded to a voicemail message from TFM's counsel requesting a meeting. We informed TFM's counsel that the Department was declining TFM's request for a meeting because there was nothing further to discuss on the issue and, as we stated in our Rejection Letter, the public version of TFM's response to section A was untimely and as such rejected, and the business proprietary version of the section A response was also rejected because, without an accompanying public version, it did not conform with our regulations.<sup>28</sup>

On September 23, 2015, TFM submitted a letter in which it again requested a meeting and requested that the Department reconsider its decision and accept its QRA.<sup>29</sup>

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<sup>23</sup> See Letter from Thomas Schauer to TFM dated September 16, 2015 (Rejection Letter).

<sup>24</sup> See also 19 CFR 351.303(C)(2)(ii) ("Simultaneously with the filing of the final business proprietary document under {the one day lag rule}, a person also must file the public version of such document ... with the Department.").

<sup>25</sup> See Rejection Letter.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at attachment.

<sup>28</sup> See Memorandum to the File from Catherine Cartsos dated September 18, 2015.

<sup>29</sup> See Letter from TFM to the Secretary of Commerce dated September 23, 2015.

On November 10, 2015, the Department once again declined TFM's request for a meeting restating that the public version of the QRA was untimely filed, was rejected, and, therefore, the QRA in its entirety was non-conforming to the Department's regulations and, as such, was rejected and removed from the record.<sup>30</sup> The Department reiterated its regulations as stated in the questionnaire cover letter and noted that the Department had granted TFM all four of its timely requests for extensions of time to file its complete QRA.

On November 23, 2015, TFM submitted a letter in which it requested once again a meeting and generally reiterated its arguments from its letter dated September 23, 2015.<sup>31</sup>

On December 2, 2015, in light of arguments in TFM's November 23, 2015, letter, the Department held an *ex parte* meeting with TFM's counsel.<sup>32</sup> TFM's counsel reiterated the arguments stated in its letters dated September 23, 2015, and November 23, 2015.

### *B. Application of Facts Available With an Adverse Inference*

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of Section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by Section 782(i) of the Act.

Section 776(b) of the Act provides that if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.<sup>33</sup> In addition, the SAA<sup>34</sup> provides that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>35</sup> The "best of its ability" standard requires a party to "do the maximum it is able to do."<sup>36</sup> Evidence of "bad faith, or willfulness" on the part of the respondent is not required for the Department to make an adverse inference.<sup>37</sup>

As detailed above, TFM's QRA was untimely filed and, accordingly, rejected from the record. Section A of our questionnaire requests information necessary to complete an administrative

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<sup>30</sup> See Letter from Minoo Hatten to TFM dated November 10, 2015.

<sup>31</sup> See Letter from TFM to the Secretary of Commerce dated November 23, 2015.

<sup>32</sup> See Memorandum from Catherine Cartos to the file dated December 2, 2015.

<sup>33</sup> See *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005), and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

<sup>34</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. 1, 103d Cong. (1994) (SAA).

<sup>35</sup> See SAA at 870; see also, e.g., *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663 (December 10, 2007).

<sup>36</sup> See SAA at 870.

<sup>37</sup> See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1382-3 (Fed. Cir. 2003) (*Nippon Steel*).

review. The QRA contains important information that serves as the basis for information that is provided in response to other sections of the questionnaire. According to the Department's practice, the QRA is due before the responses to the other sections of the questionnaire.<sup>38</sup> The reason the Department sets an earlier deadline for the QRA is because the Department relies on a company's QRA to determine important facts regarding the company and its sales during the POR which determine the future development of the case and provide information relevant to the contents of the responses to the remaining sections of the questionnaire. Examples of such crucial information contained exclusively in the QRA are:

1. The total quantity and value of sales which the Department uses to determine the appropriate comparison market (*i.e.*, whether the home market is viable and, if not, whether there is a suitable third country market). The determination of the comparison market designates what sales the respondent will be reporting in its response to section B of our questionnaire.
2. The respondent's corporate structure, ownership (operational and legal structures) and affiliations, which provide the Department with an understanding of the company and its role in the manufacture, sale, and distribution of the merchandise under review. The Department requests information about affiliates, because it may be necessary to use information gathered from affiliated parties to establish prices, selling and general expenses, and production costs.
3. A thorough description of the distribution and sales process which provides the Department with the information necessary to make appropriate comparisons of sales at the same level of trade or to make a level of trade adjustment, if appropriate, when sales are compared at different levels of trade.
4. The date of sale for the company's sales to the United States and in the comparison market as it will determine which sales records ought to be reported in response to sections B and C of our questionnaire.
5. A detailed description of the types of merchandise under review the company produced and/or sold and the differences between merchandise sold in the comparison market and the U.S. market.
6. Information on whether the merchandise was assembled or further manufactured in the United States which is important information required to determine whether a response to Section E of our questionnaire will be necessary.
7. Whether the company exported merchandise under consideration to the United States through intermediary countries.
8. Whether the company is a reseller of merchandise produced by an unaffiliated company.

According to section 776(a)(1) of the Act, the Department shall apply "facts otherwise available" if necessary information is not on the record. The QRA is necessary to understand the information reported in TFM's responses to sections B, C, and D of the questionnaire and confirm that TFM has reported the correct information in its response to section B, C, and D of the questionnaire. For example, in the less-than-fair-value (LTFV) investigation and all completed administrative reviews, TFM had demonstrated in its responses to section A of our questionnaires that it did not have a viable home market and provided in its section A responses the information necessary for the Department to determine whether there was a suitable third

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<sup>38</sup> See Questionnaire at cover page (page 5 of the PDF document).

country market that could be used as a comparison market or whether the normal value would have to be based on constructed value.<sup>39</sup> Therefore, the lack of the QRA renders the information in the response to sections B, C, and D unusable as they are without context that the information in the Section A provides and, therefore are unreliable for purposes of calculating a weighted-average dumping margin. The QRA contains important information and several crucial decisions are made based on the information reported in the QRA; it is necessary information that is not on the record of the current review. Therefore, the absence of the QRA from the record requires the use of facts otherwise available according to section 776(a)(1) of the Act.

As detailed above, TFM failed to respond section A of our questionnaire within the established deadlines, in accordance with section 776(a)(2) (B) of the Act. Because TFM failed to provide requested information by the requested date and necessary information is not on the record, the Department finds that it must rely on the facts otherwise available to determine the margin for TFM in accordance with sections 776(a)(1) and (2) of the Act.<sup>40</sup>

The Department determines that by failing to timely respond to section A of the Department's questionnaire after having been granted four extensions of the deadline, TFM has failed to cooperate by not acting to the best of its ability in providing the requested information. Accordingly, pursuant to sections 776(a)(1) and (2)(B) and 776(b) of the Act, we find it appropriate to apply a margin to TFM based entirely on the facts available, and to apply an adverse inference.<sup>41</sup> Adverse inferences are appropriate to "ensure that the party does not obtain a more favorable result by failing to cooperate than it if it had cooperated fully."<sup>42</sup> In selecting an adverse inference, the Department may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.<sup>43</sup>

The Department establishes deadlines so that it can conduct this (and all other trade remedy proceedings) in an efficient manner within its statutory and regulatory deadlines. Therefore, it is critical that parties file documents by the established deadline or timely request an extension of such deadline. Timely filings and timely extension requests contribute to the Department's efficient administration of the numerous cases before it and the antidumping duty laws. Conversely, untimely filings and untimely extension requests detract from the efficient conduct of our proceedings, and lead to the Department devoting time to addressing such untimely filings

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<sup>39</sup> See *Certain Stilbenic Optical Brightening Agents From Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 76 FR 68154, 68157 (November 3, 2011), unchanged in *Certain Stilbenic Optical Brightening Agents From Taiwan: Final Determination of Sales at Less Than Fair Value*, 77 FR 17027, 17028 (March 23, 2012), and in *Order*.

<sup>40</sup> See *Furniture 2013*, 78 FR at 8494. See also *Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 69546 (December 1, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>41</sup> See *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review*, 72 FR 10689, 10692 (March 9, 2007), unchanged in *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the First Administrative Review and First New Shipper Review*, 72 FR 52052 (September 12, 2007).

<sup>42</sup> *Id.*

<sup>43</sup> See section 776(b) of the Act.



and requests. Accordingly, for the efficient conduct of its proceedings, it is critical that parties adhere to the deadlines established by the Department.

In this case, in particular, TFM not only failed to provide information necessary to our proceeding to conduct the review, but the untimely filing and the resulting rejection led to many hours spent addressing the issue. In addition, internal discussions to address this matter involved multiple team members and substantial hours were expended discussing how the Department should proceed with the review with the severe lack of information on the record, hours that could have been better spent working on other cases with competing deadlines. If the Department is faced with similar circumstances in multiple cases, the additional discussions required to address late filings will place an inordinate amount of additional work on the Department during a time that it is conducting a record number of investigations and reviews.

The Department's practice is to select an AFA rate that is sufficiently adverse as to effectuate the purpose of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner and that ensures that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.<sup>44</sup> Specifically, the Department's practice in reviews, when selecting a rate as total AFA, is to use the highest rate on the record of the proceeding, which, to the extent practicable, can be corroborated.<sup>45</sup>

### *C. Selection and Corroboration of Information Used as Facts Available*

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act. The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this administrative review.

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final

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<sup>44</sup> See *Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8911 (February 23, 1998); see also *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review*; *Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005), and SAA at 870.

<sup>45</sup> See *Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 15930, 15934 (April 8, 2009), unchanged in *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 41121 (August 14, 2009); see also *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325, 1336 (CIT August 10, 2009) ("Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.")

determination from the LTFV investigation, a previous administrative review, or other information placed on the record.<sup>46</sup>

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise. However, pursuant to section 776(c)(2) as amended by the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

When assigning adverse rates in a review, the Department’s practice is to select as AFA the higher of: (a) The highest corroborated rate from the petition; or (b) the highest calculated rate for any respondent from any segment of the proceeding<sup>47</sup> which, under the TPEA, the Department is not required to corroborate.<sup>48</sup>

The Department is unable to corroborate the petition rates, and the rates calculated in this proceeding are 6.19 percent, from the LTFV, and zero percent from the previously completed administrative review.<sup>49</sup> Therefore, the Department is selecting the highest applied margin in a separate segment of the same proceeding, 6.19 percent, as the AFA rate.<sup>50</sup> According to 776(c)(2) of the Act, this rate does not require corroboration. Because TFM’s margin in the

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<sup>46</sup> See also 19 CFR 351.308(c) and SAA at 868-870.

<sup>47</sup> See *Diamond Sawblades and Parts Thereof From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 73420 (December 12, 2012), unchanged in *Diamond Sawblades and Parts Thereof From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 2010-2011*, 78 FR 36524 (June 18, 2013). See also *Administrative Review of Certain Frozen Warmwater Shrimp From the People’s Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 77 FR 53856 (September 4, 2012), *Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Final Determination of Sales at Less than Fair Value*, 65 FR 5554, 5567 (February 4, 2000), *Emulsion Styrene-Butadiene Rubber From the Republic of Korea: Final Determination of Sales at Less than Fair Value*, 64 FR 14865, 14866 (March 29, 1999), and *Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Final Determination of Sales at Less than Fair Value*, 64 FR 30664, 30687 (June 8, 1999).

<sup>48</sup> See 776(c)(2) of the Act.


<sup>49</sup> See *Certain Stilbenic Optical Brightening Agents From the People’s Republic of China and Taiwan: Initiation of Antidumping Duty Investigations*, 76 FR 23554 (April 27, 2011). See also *Order and Certain Stilbenic Optical Brightening Agents From Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2013-2104*, 80 FR 32085 (June 5, 2015), unchanged in *Certain Stilbenic Optical Brightening Agents from Taiwan: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61368 (October 13, 2015).

<sup>50</sup> See *Order*.


immediately preceding administrative review (2013- 2014) was zero percent, this rate achieves the purpose of applying an adverse inference, *i.e.*, it is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.<sup>51</sup>

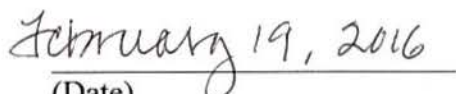
## RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

  
\_\_\_\_\_  
Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

  
\_\_\_\_\_  
(Date)

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<sup>51</sup> See *Gallant Ocean (Thailand) Co. v. United States*, 602 F.3d 1319 (CAFC 2010).