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International Trade Administration
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Administrative Review

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May 31, 2017

MEMORANDUM TO: Ronald Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
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; 2015-2016

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, 2015, through April 30, 2016. We preliminarily find that TFM has not sold subject merchandise at less than normal value (NV). Interested parties are invited to comment on these preliminary results.

BACKGROUND

On May 27, 2016, Archroma U.S., Inc., a domestic interested party, and on May 31, 2016, TFM, a producer and exporter of merchandise subject to the order, pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b)(1), timely requested an administrative review of the AD order on OBAs from Taiwan with respect to TFM.² This was

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 Archroma U.S., Inc., dated May 27, 2016.

See also Letter to the Secretary of Commerce from Teh Fong Ming International Co., Ltd., dated May 31, 2016.



the only company for which the Department received a request for review. On July 7, 2016, 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 On January 12, 2017, we extended the time period for issuing the preliminary results of this review by 120 days, to May 31, 2017.⁴

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.

VERIFICATION

As provided in section 782(i) of the Act, we verified information provided by TFM in the administrative review of OBAs from Taiwan using standard verification procedures, including on-site inspection of the producer's facilities and examination of relevant sales and financial records. Our verification results are outlined in the verification reports for TFM.⁷

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 44260 (July 7, 2016).

⁴ See Memorandum, "Certain Stilbenic Optical Brightening Agents from Taiwan: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2015-2016," dated January 12, 2017.

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

⁶ *Id.*

⁷ See Memorandum, "Taiwan Verification of the Sales Response of Teh Fong Ming International Co., Ltd., in the Antidumping Duty Review of Certain Stilbenic Optical Brightening Agents from Taiwan," dated concurrently with this memorandum. See also Memorandum, "CEP Verification of the Sales Response of Teh Fong Ming International Co., Ltd., in the Antidumping Duty Review of Certain Stilbenic Optical Brightening Agents from Taiwan," dated concurrently with this memorandum (TFM CEP Sales Verification Report); Memorandum, "Netherlands Verification of the Sales Response of Teh Fong Ming International Co., Ltd., in the Antidumping Duty Review of Certain Stilbenic Optical Brightening Agents from Taiwan," dated concurrently with this Memorandum.

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 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.⁸

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.⁹ 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

⁸ 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.

⁹ 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.

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 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 74.30 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 all sales as an alternative to the average-to-average method. Further, the Department 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 because both rates are above the *de minimis* threshold and there is less than a relative 25 percent change in the rates. Accordingly, the Department has determined to use the average-to-average method for all U.S. sales to calculate the preliminary weighted-average dumping margin for TFM.¹⁰

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

¹⁰ See the "Differential Pricing" section of the Memorandum, "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.

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.¹¹

Based on record evidence, we find that the invoice date is the same as the shipment date, and all material terms of sale are established at the time of shipment and do not change after shipment.¹² Based upon these facts, and in accordance with our regulations and practice, we preliminarily determine that invoice date is the appropriate date of sale for all sales to the United States.

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 from the starting price, 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.¹³

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.

¹¹ 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.

¹² For more details, see TFM Analysis Memo at page 5.

¹³ For more details, see TFM Analysis Memo at pages 6 and 18.

Partial Use of Adverse Facts Available

For the reasons discussed below, we determine that the use of partial facts available with an adverse inference (AFA) is appropriate for these preliminary results with respect to the warehousing expenses for certain U.S. sales.

A. Background

TFM stated in its questionnaire response that “{w}arehousing expenses are calculated based on the total expenses that the warehouses in the same sales region charged for the POR divided by the total quantity of products shipped from that region for the POR.”¹⁴ The Department requested in a supplemental questionnaire that TFM provide additional clarification with respect to its distribution process.¹⁵ TFM stated in its supplemental questionnaire response that “{t}he shipments to the U.S. are cleared at U.S. ports of entry. All shipments from Taiwan are delivered to unaffiliated 3rd party warehouses or make down stations. When TFMNA receives orders from unaffiliated end users, TFMNA notifies the unaffiliated 3rd party warehouses or make down stations with release documents.”¹⁶ Additionally, for each of the sales transactions in its U.S. sales database, TFM reported a warehousing expense and a warehouse or make down station where the merchandise was stored prior to its sale to the unaffiliated customer.¹⁷

The information submitted by TFM indicated that all merchandise under review that TFM sold in the United States during the POR was stored at a warehouse or make down station prior to its sales to the unaffiliated customer and, therefore, incurred a warehousing expense. Accordingly, TFM’s warehousing expense allocation methodology (*i.e.*, allocating the total warehousing expense incurred in a region over all sales shipped from that region) initially appeared to be reasonable given the information TFM reported.

At verification, however, we found that TFM had provided incorrect information in its response and that not all sales shipped from a specific region (region A)¹⁸ are stored at a warehouse or make down station prior to shipment to the customer. We found that certain sales from region A are shipped to the customer directly from the U.S. port.¹⁹ Therefore, although TFM reported a warehousing expense for all sales shipped from region A, it did not incur a warehousing expense on some of those sales.²⁰ TFM also allocated the warehousing expense over all sales that it shipped from that region.²¹ In light of the fact that not all sales from region A were stored at a warehouse or a make down station prior to their shipment to the unaffiliated customer, TFM’s

¹⁴ See TFM’s questionnaire response, dated October 2, 2016, (QRBCD) at page C-25.

¹⁵ See supplemental questionnaire, dated November 22, 2016, at page 7.

¹⁶ See TFM’s supplemental questionnaire response, dated December 19, 2016, (SQR1) at page SE-12.

¹⁷ See QRBCD at U.S. Sales Database. See also SQR1, at exhibit 78 – U.S. Sales Database.

¹⁸ We refer to the specific region as region A for the purposes of this discussion because this information is business proprietary. See TFM Analysis Memo at pages 14 - 15 and TFM CEP Verification Report at pages 13-14 and Exhibit VE-8.

¹⁹ *Id.*

²⁰ See QRBCD at U.S. Sales Database. See also SQR1, at exhibit 78 – U.S. Sales Database; TFM CEP Verification Report at pages 13-14 and Exhibit VE-8.

²¹ See QRBCD at page C-25 and at U.S. Sales Database. See also SQR1 at exhibit 78 – U.S. Sales Database; TFM CEP Verification Report at pages 13-14 and exhibit VE-8.

warehousing expense allocation methodology is distortive because it allocates the warehousing expense over a larger pool of sales than it was incurred on.

At verification, TFM acknowledged that the information it provided in its response for the sales that were not stored at a warehouse was incorrect.²² TFM also acknowledged that the allocation methodology for the warehousing for the sales shipped from region A was distortive. At verification, the Department requested that TFM identify the sales it shipped from that region that were not stored in a warehouse or make down station. TFM chose not to identify the sales it shipped from that region that were not stored in a warehouse or make down station during verification because it claimed that doing so would require TFM employees to manually examine all source documents for its sales that it shipped from that region which, they contended, would have been burdensome.

B. Application of Facts Available with an Adverse Inference

Section 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that if necessary information is not available on the record or if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.²³

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is

²² See TFM CEP Verification Report at pages 13-14 and exhibit VE-8.

²³ On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act. See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015). The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015. Therefore, the amendments apply to this investigation.

not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

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, and 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. Section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. In addition, the SAA explains 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."²⁴ Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.²⁵

Pursuant to section 776(a)(2)(D) of the Act the Department will apply facts otherwise available if an interested party provides information that cannot be verified. As detailed above, TFM failed to provide correct information in its questionnaire and supplemental questionnaire responses regarding the warehousing expense for certain sales. The Department discovered at verification that the information TFM reported concerning warehousing expenses for region A and TFM's allocation methodology was incorrect and asked TFM to identify which of the sales shipped from region A had not been stored at a warehouse or make down station, but TFM did not identify the sales, claiming that it would be burdensome. Because TFM chose not to identify these sales, the Department could not verify the warehousing expense for that subset of U.S. sales. Thus, under Section 776(a)(D), the Department finds that it is necessary to apply facts otherwise available for the warehousing expense for the sales shipped from that region.²⁶

The Department also determines that it is appropriate to use an adverse inference in selecting the facts otherwise available pursuant to 776(b) of the Act. TFM did not act to the best of its ability to comply with a request for information because it did not comply with the Department's requests at verification to identify the sales from region A that had not been warehoused, despite having access to the information. The "best of its ability" standard requires a party to "do the maximum it is able to do."²⁷ As is clear from TFM's U.S. sales database, TFM shipped a very small number of sales from region A. Manually reviewing the source documents for this small number of sales would not be burdensome. Therefore, by choosing to not review the source

²⁴ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. 1, 103d Cong, at 870 (1994) (SAA).

²⁵ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan, 65 FR 42985 (July 12, 2000); Antidumping Duties, Countervailing Duties, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) (*Nippon Steel*).

²⁶ See TFM CEP Verification Report at pages 13-14 and exhibit VE-8..

²⁷ See SAA at 870. See also *Nippon Steel*.

documents for this small number of sales in order to provide the Department with accurate information on its warehousing expenses, TFM did not do the maximum it was able to do.²⁸

Accordingly, the Department will apply partial facts available with an adverse inference to the warehousing expense for all sales that shipped from region A. As partial facts available with an adverse inference, the Department will apply the highest warehousing expense that TFM reported for sales that were shipped from the only other U.S. region in which TFM made shipments of merchandise from a warehouse or make down station as well as directly from the port to the customer.²⁹

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.³⁰ Based on this comparison, we determined that TFM did not have a viable home market during the POR.³¹

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 Portugal as the comparison market because, of all the viable third-country markets, TFM sold the highest volume of comparable merchandise during the POR to customers in Portugal.³² In addition, the merchandise TFM sold to the United States and to Portugal was of the same chemical structure.³³ Consequently, we based NV on TFM's third-country sales to Portugal in accordance with section 773(a)(1)(C) of the Act.

B. Cost of Production

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), Public Law No. 114-27, which made numerous amendments to the antidumping and countervailing duty law, including amendments to section 773(b)(2)(A) of the Act.³⁴ The 2015 law does not specify dates of application for those amendments. On August

²⁸ See *Certain Carbon and Alloy Steel Cut-To-Length Plate from Taiwan: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 82 FR 16372 (April 4, 2017). See also *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 49953 (July 29, 2016); *Certain Corrosion-Resistant Steel Products from Taiwan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, in Part, 81 FR 35313 (June 2, 2016).

²⁹ See TFM Analysis Memo at pages 14 and 15.

³⁰ See section 773(a)(1)(B) of the Act.

³¹ See TFM Analysis Memo at page 2.

³² See section 773(a)(1)(C) of the Act. See also 19 CFR 351.404(e)(2).

³³ See 19 CFR 351.404(e)(1) and 19 CFR 351.404(e)(3).

³⁴ See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015).

6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments to section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission.³⁵ Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request cost information from respondent companies in all antidumping proceedings.³⁶ Because these amendments apply to this review, the Department requested cost information from TFM and it submitted timely responses.³⁷ We examined the respondents' cost data and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.³⁸

1. Calculation of Cost of Production

We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative and financial expenses, in accordance with section 773(b)(3) of the Act. We relied on the COP data submitted by TFM in its questionnaire responses for the COP calculation.

2. Test of Comparison Market Sales Prices

As required under sections 773(b)(1) and (2) of the Act, we compared the weighted average of the COP for the POR to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below cost test by subtracting from the gross unit price any applicable movement charges, discounts, billing adjustments, direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of a respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because (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 of the COPs, 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.

³⁵ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015).

³⁶ *Id.* at 46794-95.

³⁷ See TFM's questionnaire response, dated October 2, 2016, at section D.

³⁸ See TFM Analysis Memo.

Our cost tests for TFM indicated that, for home market sales of certain products, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales to determine NV.

C. 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).³⁹ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁴⁰ 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.⁴¹ 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.⁴²

During the POR, TFM reported that it sold OBAs in the comparison market through two channels of distribution and that the selling activities associated with all sales through the two channels of distribution did not differ.⁴³ We found no evidence on the record to contradict TFM's statements. Accordingly, we found that both of TFM's comparison-market channels of distribution constituted a single level of trade. TFM also reported that, during the POR, it sold OBAs in the United States through two channels of distribution and that the selling activities associated with all sales through both channels of distribution did not differ.⁴⁴ Again, we found

³⁹ See 19 CFR 351.412(c)(2).

⁴⁰ *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*).

⁴¹ See *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

⁴² See *Plate from South Africa*, 62 FR at 61732-33.

⁴³ See TFM's questionnaire response to section A, dated September 6, 2016, (QRA) at pages A-14 through A-22 and exhibits A-3-a and A-3-c. See also QRBCD at pages B-12, B-20, C-10, and C-18; SQR1 at pages SE-12, SE-14, SE-15, and exhibit SE-24.

⁴⁴ *Id.*

no evidence on the record to contradict TFM's statements. Accordingly, we found that both of TFM's U.S. channels of distribution constituted a single level of trade.

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.⁴⁵ 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, strategic/economic planning, procurement/sourcing services, packing, inventory maintenance, direct sales personnel, and sales/marketing support performed at the CEP level were significantly different than those performed at the comparison-market level.⁴⁶ Therefore, 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.

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 adjusted 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 Portugal, marine insurance, brokerage and handling in the Portugal, European Union customs duties, inland freight from port to warehouse in Portugal, and inland freight from the Portuguese warehouse to the customer.

Finally, we adjusted 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 Portugal incurred in Portugal prior to sale to the customer, imputed credit expenses incurred on comparison market sales to NV.⁴⁷

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

⁴⁵ See TFM Analysis Memo at page 3.

⁴⁶ See SQR1 at exhibit SE-24 .

⁴⁷ See TFM Analysis Memo.

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.⁴⁸

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.⁴⁹ 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, Portugal.⁵⁰

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>.

⁴⁸ See 19 CFR 351.411(b).

⁴⁹ 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 reference.

⁵⁰ See TFM Analysis Memo at 5.

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree



Disagree

5/31/2017

X *Ronald K. Lorentzen*

Signed by: RONALD LORENTZEN
Ronald Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance