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Administrative Review
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June 4, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of 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; 2016-2017

SUMMARY

The Department of Commerce (Commerce) 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, 2016, through April 30, 2017. We preliminarily find that TFM has sold subject merchandise at less than normal value (NV). Interested parties are invited to comment on these preliminary results.

BACKGROUND

On May 31, 2017, pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b)(1), TFM, a producer and exporter of merchandise subject to the order, timely requested an administrative review of the AD order on OBAs from Taiwan with respect to itself.² This was the only company for which Commerce received a request for review. On July 6, 2017, 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

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 TFM, dated May 31, 2017.

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 31292 (July 6, 2017).



by 120 days, to May 31, 2017.⁴ Commerce subsequently exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018.⁵ Accordingly, the revised deadline for the preliminary results of this review is June 4, 2018.⁶

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]⁷ 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]⁸ amino-2,2'-stilbenedisulfonic acid, C₄₀H₄₀N₁₂O₈S₂ ("Fluorescent Brightener 71"). This order covers the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active stilbenic OBA ingredient, as well as any compositions regardless of additives (*i.e.*, mixtures or blends, whether of stilbenic OBAs with each other, or of stilbenic OBAs with additives that are not stilbenic OBAs), and in any type of packaging.

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

DISCUSSION OF THE METHODOLOGY

Comparisons to Normal Value

Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether TFM's sales of the subject merchandise from Taiwan to the United States were made at less than NV, Commerce 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), Commerce calculates weighted-average dumping margins by comparing weighted-average normal values to weighted-average export prices (or constructed export prices) (*i.e.*, the average-to-average method) unless the Secretary determines that another

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 See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

⁶ *Id.*

⁷ The brackets in this sentence are part of the chemical formula.

⁸ *Id.*

method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average normal values with the export prices (or constructed export prices) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.⁹

Commerce has applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.¹⁰ Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of export prices (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of review based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that Commerce uses in making comparisons between export price (or constructed export price) and normal value for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the

⁹ 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 the accompanying Issues and Decision Memorandum at comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (Ct. Int'l Trade 2014).

¹⁰ See, e.g., *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

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

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in 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, we preliminarily find that 92.26 percent of the value of U.S. sales pass the Cohen's *d* test,¹¹ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, we preliminarily determine that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, we are applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for TFM.

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 the produce sold in the United States 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 Commerce's regulations states that we normally will use, as the date of sale, the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business. The regulation provides further that we may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. We have a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.¹²

Non-consignment Sales

For non-consignment sales in the United States market and for all sales in the comparison market, TFM reported that the date of shipment and date of invoice are identical.¹³ Thus,

¹¹ See TFM Analysis Memo, U.S. margin program output at 84.

¹² 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.

¹³ See TFM's initial questionnaire response sections B through D, dated September 6, 2017 (QRBD) at B-15 through

because the evidence does not demonstrate that the material terms of sale were established on another date, consistent with our regulatory presumption of invoice date as the date of sale,¹⁴ we preliminarily determine that invoice date is the appropriate date of sale for all comparison-market sales and non-consignment sales in the United States.¹⁵

Consignment Sales

TFM reported that certain sales in the United States were sold on a consignment basis.¹⁶ TFM reported that it ships multiple times per month to maintain stock levels of consigned goods for these sales, and that it invoices for these goods in the aggregate at the end of each month based on a single monthly report of consumption by the consignee.¹⁷ TFM also reported that the title does not transfer to the customer until the commercial invoice is issued.¹⁸ Because quantity is not known until the invoice date, the material terms of sale are not set until that point. Therefore, consistent with previous reviews, it is appropriate to use the commercial invoice date as the date of sale for all TFM's sales to the first unaffiliated party in the United States including consignment sales.

Constructed Export Price

For TFM's sales to the United States, we 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.

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, harbor construction and trade promotion fees, international freight, marine insurance, customs duties, inland freight from port to warehouse, between warehouses, and from warehouse to customer, as well as, warehousing expense in the United States.¹⁹

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.²⁰

16, and C-12 through 13.

¹⁴ See 19 CFR 351.401(i).

¹⁵ See QRBD at B-15.

¹⁶ *Id.* at C-10, and C-13.

¹⁷ *Id.* at C-13.

¹⁸ *Id.*

¹⁹ See TFM Analysis Memo at 9.

²⁰ *Id.*

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.²¹

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.²² Based on this comparison, we determined that TFM did not have a viable home market during the POR.²³

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 largest volume of comparable merchandise during the POR to customers in Portugal.²⁴ In addition, the types of merchandise TFM sold to the United States and to Portugal had the same chemical structures.²⁵ 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

Section 773(b)(2)(A)(ii) of the Act requires Commerce to request cost information from respondent companies in all antidumping proceedings.²⁶ Thus, we requested this information from TFM and it submitted timely responses.²⁷ We examined TFM's 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.

1. Calculation of Cost of Production

We calculated the cost of production (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

²¹ *Id.*

²² See section 773(a)(1)(B) of the Act.

²³ See TFM Analysis Memo at page 2.

²⁴ See TFM's initial questionnaire section A response, dated August 21, 2017 (QRA) at Exhibit A-1. See also section 773(a)(1)(C) of the Act and 19 CFR 351.404(e)(2).

²⁵ See 19 CFR 351.404(e)(1) and 19 CFR 351.404(e)(3).

²⁶ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 6794-95 (August 6, 2015).

²⁷ See letter accompanying the July 17, 2018, initial questionnaire at 1-2, and section D.

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.

Our cost tests for TFM indicated that, for comparison 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

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. Sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).²⁸ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.²⁹ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

²⁸ See 19 CFR 351.412(c)(2).

²⁹ See *id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999, 51001 (August 18, 2010), and accompanying Issues and Decision Memorandum (Orange Juice from Brazil) at Comment 7.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for export price (EP) and comparison market sales (i.e., NV based on either home market or third country prices),³⁰ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.³¹

When we are unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, we may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales, to sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (i.e., no LOT adjustment is possible), we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.³²

We examined the differences in selling functions reported in TFM's responses to our requests for information. TFM reported that its affiliate in Europe, Teh Fong Min Europe B.V. (TFMEU), utilized two channels of distribution in the comparison market: (1) direct sales to unaffiliated end users and (2) direct sales to distributors.³³ TFM reported that the selling activities associated with selling to each of these two channels of distribution do not differ. Based on a lack of meaningful differences in selling functions, we found that there is a single LOT in the comparison market.

All TFM's U.S. sales were CEP sales through its affiliate Teh Fong Min North America, Inc. (TFMNA). Most of the selling activities related to sales in the United States are performed by TFMNA, and the expenses associated with the selling activities performed by the U.S. affiliate are deducted under section 772(d) of the Act.

We found that, for CEP sales, the selling functions performed by TFM for the sales to its U.S. affiliate TFMNA are minimal. For these sales, TFM performs substantially similar selling activities compared to those activities performed in its comparison market LOT. TFM reported activity in eight selling functions for its sales to TFMNA in the United States and TFMEU's sales to the unaffiliated customers in the comparison market.³⁴ TFM also reported the provision of minimal inventory maintenance in the comparison market and no service of this type to its U.S. affiliate.³⁵

³⁰ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

³¹ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

³² See, e.g., *Orange Juice from Brazil*, at Comment 7.

³³ See TFM Letter, "Certain Stilbenic Optical Brightening Agents (CSOBA) from Taiwan," dated August 21, 2017 (AQR) at Exhibit A-3-a.

³⁴ See AQR at Exhibit A-3-c.

³⁵ *Id.*

³⁶ *Id.*

Of the eight activities provided in both markets, TFM and TFMEU performed only three selling functions, sales forecasting, strategic/economic planning, and procurement/sourcing services, at substantially higher levels of intensity for its comparison market sales than for its sales to the U.S. affiliate.³⁶ With respect to the provision of procurement/sourcing services provided in the comparison market, we preliminarily attribute less weight to this selling function because performing procurement/sourcing functions does not require specific expertise typically involved in functions such as sales forecasting, strategic and economic planning, personnel training, engineering services, sales promotion, market research, technical assistance, *etc.*³⁷ The remaining five services, order/input processing, direct sales personnel, sales/marketing support, technical assistance, and the provision of freight and delivery, are performed at the same level of intensity. On balance, we preliminarily find that the provision of sales forecasting and strategic/economic planning, as well as, of procurement/sourcing services, at higher levels of intensity in the comparison market is insufficient to determine that the comparison market LOT is substantially different from the CEP LOT. Accordingly, we preliminarily determine that the comparison market sales were not made at a LOT that was at a more advanced stage of distribution than the CEP LOT. On the basis of this discussion, for these preliminary results, we did not make an LOT adjustment or grant a CEP offset to NV.

D. Calculation of Normal Value Based on Comparison Market Prices

For those comparison products for which there were sales at prices above the COP, we based NV on comparison market prices. We calculated NV based on prices to unaffiliated customers in the third-country market. 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, incurred in Portugal, that capture further processing in Portugal prior to sale to the customer, and imputed credit expenses incurred on comparison market sales to NV.

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

³⁷ See *Ball Bearings and Parts Thereof from France, et.al.: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part*, 72 FR 58053 (October 12, 2007) and accompanying Issues and Decision Memorandum at Comment 11; see also *Non-Oriented Electrical Steel from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 61612 (October 14, 2014) and accompanying Issues and Decision Memorandum at Comment 1 (finding that the performance of the aforementioned selling functions “requires sales personnel to possess specific expertise, thus directly affecting the extent of sales personnel involvement in the provision of these functions”).

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.³⁸

E. 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.³⁹ 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.⁴⁰

Denial of Request to Reconsider Rejection of Late Submission

On April 30, 2018, TFM filed a request for us to reconsider our April 27, 2018, rejection of its April 16, 2018, sections A and C supplemental questionnaire responses which were untimely filed.⁴¹ As explained in our April 27, 2018, letter, both its supplemental questionnaire response and its extension request concerning the submission were untimely filed.⁴² We considered TFM's subsequent request to accept the untimely filed submissions and the untimely extension request, and for the reasons stated below, continue to reject TFM's untimely submission.

Pursuant to 19 CFR 351.302(c), untimely filed extension requests will not be considered absent a showing of an extraordinary circumstance. The regulation specifies that an extraordinary circumstance, among other things, "precludes a party or its representative" from timely-filing an extension request "through all reasonable means."

In the *Federal Register* notice announcing the final rule concerning extensions of time limits, Commerce stated that in determining whether extraordinary circumstances exist, we will take into account whether reasonable means could have been used to file a timely request.⁴³ As an initial matter, we find that nothing precluded another member of the law firm⁴⁴ representing TFM from timely filing an extension request and, therefore, there are reasonable means that could have been, but were not, used to file a timely request.

³⁸ See 19 CFR 351.411(b).

³⁹ 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.

⁴⁰ See TFM Analysis Memo at 10.

⁴¹ See TFM Letter, "Certain Stilbenic Optical Brightening Agents (CSOBA) from Taiwan," dated April 30, 2018.

⁴² See Commerce Letter, "Certain Stilbenic Optical Brightening Agents from Taiwan: Reject and Delete Untimely Supplemental Questionnaire Response," dated April 27, 2018.

⁴³ See *Extension of Time Limits*, 78 FR 57790, 57793 (September 20, 2013).

⁴⁴ *i.e.*, Squire Patton Boggs (US) LLP.

On November 21, 2014, in the context of another proceeding,⁴⁵ TFM's current counsel met with Commerce officials to discuss the law firm's history of late filings.⁴⁶ At that time, we explained that, going forward, all late submissions by that firm in any proceeding before Commerce would be rejected, unless it requested extensions of time in the manner prescribed by our regulations. As such, it is the responsibility of the law firm to request extensions of time in the manner prescribed by our regulations. Given the aforementioned history of late filings, not having provisions in place for an alternative member of the law firm to handle an unexpected circumstance involving a single individual is unreasonable.

Despite the November 2014 meeting with Commerce officials, and despite the January 2014 letter that the law firm subsequently filed to the record of the relevant proceeding,⁴⁷ the law firm representing TFM has continued to make untimely submissions, including untimely extension requests, in numerous proceedings, including this case and in other cases.⁴⁸

In light of the above, and in accordance with our November 2014 position concerning these types of matters, and our regulations, we continue to reject TFM's April 16, 2018, sections A and C supplemental questionnaire response.

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.⁴⁹

⁴⁵ That proceeding involved the antidumping duty order on solid urea from the Russian Federation.

⁴⁶ See Commerce Memorandum, "Antidumping Duty Administrative review of Solid Urea from the Russian Federation: Ex parte Meeting with Representative from Squire Patton Boggs LLP, Counsel to Respondent MCC EuroChem," dated November 24, 2014, available as an attachment to the Commerce Memorandum, "Certain Stilbenic Optical Brightening Agents from Taiwan: Placing Items Cited in the Section in the Preliminary Results Titled Denial of Request to Reconsider Rejection of Late Submission," (Memorandum Placing Items Cited in Preliminary Results) dated concurrently with this memorandum.

⁴⁷ See Squire Patton Boggs' Letter, "Solid Urea from Russia," dated January 7, 2015, available as an attachment to Memorandum Placing Items Cited in Preliminary Results.

⁴⁸ See, e.g., Commerce Letter to TFM dated November 10, 2015, and Commerce Letter, "Antidumping Duty Investigation of Stainless Steel Flanges from India: Rejection of Supplemental Section D Questionnaire Responses," dated March 1, 2018, both available as attachments to Memorandum Placing Items Cited in Preliminary Results.

⁴⁹ These exchange rates are available on the Enforcement and Compliance's website at <http://enforcement.trade.gov/exchange/index.html>.

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree



Disagree

6/4/2018

X

Gary Taverman

Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance