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Investigation
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DATE: June 18, 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: Issues and Decision Memorandum for the Final Affirmative
Determination in the Less-Than-Fair-Value Investigation of Low
Melt Polyester Staple Fiber from Taiwan

I. Summary

The Department of Commerce (Commerce) finds that low melt polyester staple fiber (low melt PSF) from Taiwan is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is April 1, 2016, through March 31, 2017.

After analyzing the comments submitted by interested parties, we have made changes to the *Preliminary Determination*.¹ We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

Comment 1: Treatment of Far Eastern New Century Corporation’s (FENC’s) Corrections Presented Prior to Verification

Comment 2: Revising FENC’s Major Input Adjustment to Reflect Cost Verification Findings

¹ See *Low Melt Polyester Staple Fiber from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 4903 (February 2, 2018) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).



II. Background

On February 2, 2018, Commerce published the *Preliminary Determination* of sales of low melt PSF from Taiwan at LTFV. We invited parties to comment on the *Preliminary Determination*. On April 12, 2018, Nan Ya Plastics Corporation, America (the petitioner), submitted a case brief.² We did not receive a rebuttal brief from any interested party.

From January 2018 to February 2018, we conducted verification of the sales and cost of production (COP) data reported by the respondent, FENC, in accordance with section 782(i) the Tariff Act of 1930, as amended (the Act). Subsequently, in April 2018, we requested and FENC submitted a revised U.S. sales database.

Based on our analysis of the comments received, as well as our verification findings, we have made changes from our *Preliminary Determination*.

III. Scope of the Investigation

We modified the scope language preliminarily to eliminate the overlap in product coverage with a pre-existing PSF Taiwan AD order.³ Commerce subsequently completed a changed circumstances review that eliminated that overlap,⁴ so we are removing our preliminary modification and using the scope language as it appeared in the *Initiation Notice*.⁵ See the revised scope in Appendix I of the accompanying *Federal Register* notice.

IV. Margin Calculations

We calculated export price, normal value, and COP for FENC using the same methodology as stated in the *Preliminary Determination*,⁶ except as follows:⁷

1. FENC submitted a revised U.S. sales database at our request reflecting corrections noted at the sales verification regarding bank charges, credit insurance expenses, and indirect

² See Petitioner's Case Brief, "Low Melt Polyester Staple Fiber from Taiwan: Petitioner's Case Brief on Far Eastern New Century Corporation," dated April 12, 2018 (Petitioner Case Brief).

³ See *Preliminary Determination*, and accompanying PDM at 4.

⁴ See *Polyester Staple Fiber from the Republic of Korea and Taiwan: Final Results of Changed Circumstances Reviews, and Revocation of Antidumping Duty Orders, in Part*, 83 FR 23253 (May 18, 2018).

⁵ See *Low Melt Polyester Staple Fiber from the Republic of Korea and Taiwan: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 34277 (July 24, 2017) (*Initiation Notice*).

⁶ See Memorandum, "Preliminary Determination Margin Calculation for Far Eastern New Century Corporation (FENC)," dated January 23, 2018.

⁷ See Memorandum, "Antidumping Duty Investigation of Low Melt Polyester Staple Fiber from Taiwan: Final Determination Margin Calculation for Far Eastern New Century Corporation," dated June 18, 2018 (FENC Final Sales Calculation Memorandum), and Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Far Eastern New Century Corporation," dated June 18, 2018 (FENC Final Cost Calculation Memorandum); see also Memorandum, "Verification of Far Eastern New Century Corporation in the Antidumping Duty Investigation of Low Melt Polyester Staple Fiber from Taiwan," dated March 14, 2018 (FENC Cost Verification Report); and Memorandum, "Verification of the Sales Response of Far Eastern New Century Corporation (FENC) in the Antidumping Investigation of Low Melt Polyester Staple Fiber from Taiwan," dated April 2, 2018 (FENC Sales Verification Report).

selling expenses incurred in Taiwan.⁸ We used this revised U.S. sales database in our margin calculations. *See* Comment 1.

2. We adjusted FENC's reported containerization costs to reflect our findings at verification.⁹
3. We adjusted FENC's reported direct material costs to reflect the higher of transfer, market price, or the affiliated supplier's COP, in accordance with the major input rule. *See* Comment 2.

V. Discussion of the Issues

Comment 1: Treatment of FENC's Corrections Presented Prior to Verification

The Petitioner's Case Brief:

- FENC failed to cooperate and significantly impeded this investigation by withholding information related to its credit insurance expenses, so Commerce should apply partial facts available, with an adverse inference (AFA), and reject FENC's April 9, 2018, U.S. sales database.¹⁰
- FENC should have reported its bank charges incurred in U.S. dollars (BANKCHAR2U) and credit insurance expenses (CREINSU) in its response to section C of Commerce's antidumping duty (AD) questionnaire, not at verification.¹¹
- FENC's proposed changes were untimely because: 1) the need for that information was evident previously; 2) the information makes significant corrections to information on the record; and 3) it does not corroborate, support, or clarify information already on the record.¹²
- FENC bears the burden of creating an accurate record and had sufficient opportunities to correct its errors prior to the *Preliminary Determination*. Commerce explicitly asked FENC to clarify its reporting of BANKCHAR2U in a supplemental questionnaire, but FENC failed to make any changes.¹³
- The new information regarding bank charges demonstrates that the proposed revisions are not reliable because FENC reported its U.S. sales in U.S. dollars and should have incurred its credit insurance expenses in U.S. dollars, as well. Therefore, FENC should not have had to make any adjustment to its bank charges, unless FENC made undisclosed currency conversions. Specifically, the petitioner argues that, for SEQU 173 and 344,

⁸ *See* Memorandum, "Antidumping Duty Investigation of Low Melt Polyester Staple Fiber from Taiwan: Far Eastern New Century Corporation Corrected Database Deadline," dated April 2, 2018; and FENC's April 9, 2018 U.S. Sales Database.

⁹ *See* FENC Sales Verification Report at 12-13; and Memorandum, "Final Determination Margin Calculation for Far Eastern New Century Corporation (FENC), dated June 18, 2018.

¹⁰ *See* Petitioner Case Brief at 1-2.

¹¹ *Id.* at 4-5.

¹² *Id.* at 4.

¹³ *Id.* at 7 (citing *Fujian Lianfu Forestry Co. v. United States*, 638 F. Supp. 1325,1340 (CIT 2009); and *Tung Mung Dev., Co. v. United States*, 25 CIT 752, 758 (2001)).

FENC failed to report its bank charges for these sales in the currency in which they were incurred.¹⁴

- At verification, FENC stated that it mistakenly included credit insurance expenses denominated in new Taiwan dollars in the BANKCHAR2U field and the BANKCHAR2U amount would decrease when these expenses were reported separately in the field CREINSU. However, for several U.S. sales where FENC reported reduced amounts in the field BANKCHAR2U in the revised U.S. sales database, it did not report associated credit insurance expenses in the CREINSU field. Thus, it appears that FENC was not correcting a minor error through its revisions, but instead attempting to lower its preliminary margin.¹⁵
- The proposed changes are not minor because they include reporting a new direct selling expense and making substantial changes, with no consistent pattern, to FENC's previously-reported bank charges.¹⁶
- FENC's proposed minor corrections are not supported by the record because: 1) the sales verification exhibits show additional expenses that FENC incurred, but did not report; 2) FENC failed to report its bank charges in the currency in which they were incurred; and 3) FENC failed to provide complete documentation for each U.S. sale that Commerce examined at verification.¹⁷

FENC did not comment on this issue.

Commerce's Position: We disagree that we should apply partial AFA to FENC by rejecting the corrections to its U.S. sales database presented at verification. Section 776(a) of the Act provides that Commerce shall apply "facts otherwise available" if, inter alia, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information by the submission deadlines or in the form and manner requested by Commerce; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified. Furthermore, section 776(b) of the Act states that an adverse inference may be applied if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

FENC timely provided complete responses to Commerce's AD questionnaire and supplemental questionnaires, and we verified FENC's reported information. Furthermore, FENC presented its corrections at the beginning of verification, the timing envisioned in Commerce's sales verification agenda. We examined these corrections at verification, tied them to supporting documentation, and found no discrepancies with FENC's revised data. Thus, we find no basis to conclude that these verification corrections demonstrate that FENC submitted deficient responses

¹⁴ *Id.* at 6 and 9.

¹⁵ *Id.* at 11.

¹⁶ *Id.* at 5. The petitioner makes additional arguments that contain business proprietary information (BPI) and cannot be discussed here. These arguments are discussed and analyzed in a separate BPI memorandum. See Memorandum, "Proprietary Information for the Final Determination of the Antidumping Duty Investigation of Low Melt Polyester Staple Fiber from Taiwan," dated concurrently with this memorandum (BPI Notes Memorandum).

¹⁷ *Id.* at 8-10. See the BPI Notes Memorandum for a discussion of the petitioner's arguments that contain BPI information.

and failed to act to the best of its ability such that its dumping margin should be based on partial AFA.

Further, we find that the information FENC provided at verification makes minor corrections to information already on the record. The corrections in question involve revisions to credit insurance expenses and bank charges incurred in U.S. dollars for FENC's U.S. sales¹⁸ to correct clerical errors in FENC's existing calculations. The corrections at issue here simply fix clerical errors; they do not make extensive changes to FENC's reporting or its calculation methodology and they do not affect the validity of FENC's submissions. Commerce examined these corrections at verification and accepted them only after tying them to FENC's sales records and other supporting documentation.¹⁹ Thus, we disagree with the petitioner's contention that FENC failed to support its revisions to its bank charges or credit insurance expenses.²⁰

Regarding the petitioner's argument that FENC's reported BANKCHAR2U amounts included undisclosed currency conversions, we note that this is precisely the error FENC presented at verification. We noted in the verification report that "while FENC incurred and paid its the {sic} credit insurance expenses in U.S. dollars, company officials erroneously calculated credit insurance amounts in New Taiwan Dollars and added them to FENC's U.S. dollar bank charges."²¹ Commerce's questionnaire requires that respondents report prices and expenses in the currency in which they were originally denominated.²² Therefore, FENC corrected its reporting of its credit insurance expenses as U.S. dollar amounts in accordance with the directions in Commerce's questionnaire.

Regarding the bank charge expense amounts reported for SEQU 173 and 344, the petitioner does not specify how the documentation it cites demonstrates that FENC made inappropriate currency conversions in reporting its revised bank charges. Commerce verified that FENC reported its revised bank charge expenses for these sales in the currency in which FENC incurred them.²³ Therefore, we find no basis to determine that FENC misreported its revised bank charges by including currency conversions for these sales.

Moreover, we disagree with the petitioner's argument that FENC is manipulating its margin because it did not report an amount in the field CREINSU in each instance where it reported a revised BANKCHAR2U. As noted in our verification report, FENC corrected an additional clerical error in its reported U.S. bank charges beyond the inclusion of credit insurance expenses. Specifically, FENC had allocated some of its U.S. dollar bank charges based on the number of associated transactions, rather than the value of these transactions. We verified the revised

¹⁸ See FENC Sales Verification Report and Sales Verification Exhibit 1.

¹⁹ See FENC Sales Verification Report at 2-3, 11-12, Sales Verification Exhibits 1, 20-23, 26-27, and 29.

²⁰ See BPI Notes Memorandum.

²¹ See FENC Sales Verification Report at 2.

²² See Initial Questionnaire at G-4 ("All monetary amounts should be shown in the currency in which they were originally denominated, and in the currency in which they are registered in your accounts (if the two are different).").

²³ See FENC Sales Verification Report at Sales Verification Exhibits 27 and 28.

BANKCHAR2U amount for SEQU 128, a sale for which FENC did not report associated credit insurance expenses, and found no discrepancies with the revised BANKCHAR2U amount.²⁴

Therefore, because the corrections FENC presented at verification corrected information already on the record, they do not represent new information which we would consider untimely. Moreover, we found that, at both the sales and cost verifications, FENC's reported data was accurate, usable, and reliable because we were able to tie FENC's reported data to its sales and accounting records.²⁵ Consequently, we find that FENC did not provide new, inaccurate, or incomplete information at verification and, as a result, the application of AFA to FENC's U.S. sales is unwarranted.

Comment 2: Revising FENC's Major Input Adjustment to Reflect Cost Verification Findings

The Petitioner's Case Brief:

- Commerce should revise FENC's reported costs for purified terephthalic acid (PTA) to reflect Commerce's cost verification findings.

FENC did not comment on this issue.

Commerce's Position: We agree with the petitioner and, for the *Final Determination*, made an adjustment for the major input, PTA.

Pursuant to section 773(f)(3) of the Act, we may value major inputs purchased from affiliated parties at the higher of the market value, transfer price, or the affiliated supplier's COP. We will determine the value of the major input purchased from an affiliated person based on the higher of: 1) the price paid by the exporter or producer to the affiliated person for the major input; 2) the amount usually reflected in sales of the major input in the market under consideration between unaffiliated parties; or 3) the cost to the affiliated person of producing the major input.²⁶ Moreover, the CIT has upheld our application and interpretation of this statutory provision.²⁷

FENC incorporated major input adjustments for inputs of PTA and monoethylene glycol provided by FENC's affiliated suppliers in the cost database used in our *Preliminary Determination*. For the *Final Determination*, we revised FENC's reported costs to reflect our findings at verification regarding the appropriate major input adjustment for PTA. Specifically, as a result of our analysis, we adjusted FENC's reported direct material costs to reflect the higher of transfer price, market price, or the affiliated supplier's COP.²⁸

²⁴ *Id.* at Sales Verification Exhibit 20.

²⁵ See generally, FENC Cost Verification Report and FENC Sales Verification Report.

²⁶ See 19 CFR 351.407(b).

²⁷ See *Mannesmann v. United States*, 77 F. Supp. 2d 1302 (CIT 1999).

²⁸ See FENC Final Cost Calculation Memorandum.

VI. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, then we will publish the final determination in the investigation and the final, estimated weight-average dumping margins in the *Federal Register*.



Agree

Disagree

6/18/2018

X 

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