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Administrative Review
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June 12, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Stilbenic Optical Brightening Agents from Taiwan: Issues
and Decision Memorandum for Final Results of Antidumping Duty
Administrative Review; 2017-2018

I. 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 Min International Co., Ltd. (TFM). The period of review (POR) is May 1, 2017 through April 30, 2018.

Commerce analyzed the comments submitted by TFM,² the sole mandatory respondent in this administrative review, and the rebuttal brief filed by Archroma U.S., Inc. (Archroma),³ a domestic producer of the merchandise. We continue to find that TFM has sold subject merchandise at less than normal value (NV). We revised the weighted-average margin for TFM from the *Preliminary Results*.⁴ We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

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 TFM’s Letter, “Certain Stilbenic Optical Brightening Agents from Taiwan,” dated April 15, 2019 (TFM Case Brief).

³ See Archroma’s Letter, “Rebuttal Brief by Archroma U.S., Inc.; Certain Stilbenic Optical Brightening Agents from Taiwan: Preliminary Results of Administrative Review; 2017-2018,” dated April 30, 2019 (Archroma Rebuttal Brief).

⁴ See *Certain Stilbenic Optical Brightening Agents from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 9292 (March 14, 2019) (*Preliminary Results*) and its accompanying decision memorandum (Preliminary Decision Memorandum).



Below is the list of issues for which we received comments from interested parties in this administrative review:

TFM-Specific Issues

- Comment 1: Certain U.S. Sales Incorrectly Excluded from Margin Calculation
- Comment 2: Correction of Clerical Error
- Comment 3: Commerce Should Not Use the Tetra Control Number (CONNUM) as a Surrogate for the Hexa CONNUM
- Comment 4: Commerce Should Deduct Indirect Selling Expenses Incurred in the Comparison Market

II. BACKGROUND

On March 12, 2019, Commerce published the *Preliminary Results* in the administrative review of *Order*. In accordance with 19 CFR 351.309, we invited parties to comment on the *Preliminary Results*.⁵

On April 15, 2018, TFM submitted a case brief, which Commerce rejected because it contained new factual information and was therefore untimely filed.⁶ On April 19, 2019, TFM submitted a redacted case brief, which Commerce rejected because it contained new factual information and was therefore untimely filed.⁷ Subsequently, on April 25, 2019, TFM submitted a revised case brief. On April 30, 2019, Archroma submitted a rebuttal brief. No other party submitted case or rebuttal briefs. Based on our analysis of the comments received, we have revised the weighted-average margin for TFM from the *Preliminary Results*.

III. SCOPE OF THE ORDER

The stilbenic OBAs covered by the *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]⁸ amino-2,2'-stilbenedisulfonic acid), except for compounds listed in the following paragraph. The stilbenic OBAs covered by the *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 the *Order* are all forms of 4,4'-bis[4-anilino-6-morpholino-1,3,5-triazin-2-yl]⁹ amino-2,2'-stilbenedisulfonic acid, C₄₀H₄₀N₁₂O₈S₂ ("Fluorescent Brightener 71"). The *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

⁵ See *Preliminary Results*, 84 FR at 9293.

⁶ See Commerce's Letter to TFM, "Certain Stilbenic Optical Brightening Agents from Taiwan," dated April 18, 2019.

⁷ See Commerce's Letter to TFM, "Certain Stilbenic Optical Brightening Agents from Taiwan," dated April 24, 2019.

⁸ The brackets in this sentence are part of the chemical formula.

⁹ *Id.*

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.

IV. MARGIN CALCULATIONS

For the final results of this review, Commerce based the margin calculations for TFM on constructed export price (CEP), Export Price (EP), and constructed value (CV), where appropriate. We used the same methodology as stated in the *Preliminary Results*, with the exception of the following changes:

1. We deactivated the erroneous level of trade adjustment in the margin calculation program.¹⁰
2. We created a conversion factor for further-processed sales to accurately determine the sales quantities in the comparison market.¹¹

V. DISCUSSION OF THE ISSUES

Comment 1: Certain U.S. Sales Incorrectly Excluded from Margin Calculation

TFM's Comments

- The dumping margin calculation should be based on all reported U.S. sales.¹²
- The *Preliminary Results* were erroneously only based on some sales, while other sales were omitted.
- Commerce used only 486 observations out of TFM's 619 reported U.S. sales. Commerce should use all 619 of TFM's reported observations to calculate the dumping margin accurately.

Archroma's Comments

- The SAS program used to calculate the margin for the *Preliminary Results* contained a programming error.¹³ Specifically, U.S. sales that had no contemporaneous matches in the third-country market (Portugal) were excluded from the calculation instead of matched to

¹⁰ See Comment 1.

¹¹ See Comment 2.

¹² See TFM Case Brief at 2-3.

¹³ See Archroma Rebuttal Brief at 2-3.

constructed value. Archroma agrees that the straightforward correction of this programming error is a warranted adjustment.¹⁴

Commerce's Position: We agree with TFM and Archroma and have used all 619 of TFM's reported U.S. sales for the dumping margin calculation. As shown in our Final Analysis Memo,¹⁵ this was an inadvertent error resulting from a level of trade (LOT) adjustment string of code being activated when it should have been inactivated. As a result, the program mistakenly omitted 133 of TFM's reported U.S. sales. All 619 of TFM's reported sales are now properly included in the margin calculation program.

Comment 2: Correction of Clerical Error

TFM's Comments

- The "FIMPORTQTY" (powder import quantity for a liquid sale) figure, of a single third-country comparison market sale (sequence sale number 51), was erroneously keyed in by TFM.¹⁶
- TFM claims this is a typographical error when its staff keyed in the requested powder import quantity manually based on the certificate of analysis issued by an unaffiliated make-down company (where the powder form of the product is diluted to liquid form), which indicated the correct figure.
- TFM argues that, both mathematically and according to record evidence, the figure in sequence sale number 51 could not be what was erroneously reported. TFM states, citing *Certain Pasta from Italy*,¹⁷ that Commerce's practice and articulated decisions are that where the narrative and exhibits of questionnaire responses provide a different figure than a database figure, Commerce corrects the database to reflect the figure indicated by the narrative and exhibits.
- TFM,¹⁸ citing *Timken*, notes that the Court of Appeals for the Federal Circuit (CAFC) states that "Commerce is free to correct any type of (respondent) error – clerical, methodology, substantive, or one in judgment – in the context of making an antidumping duty determination, provided that the (respondent) seeks correction before Commerce issues its final results and adequately proves the need for the requested corrections."¹⁹
- TFM points out that it is unfortunate that this lone key-in error here, of just one figure, could so hugely distort the dumping margin calculation as it did – *i.e.*, generating ten percentage points of the dumping margin. TFM argues that the error should be corrected, and that doing

¹⁴ *Id.* at 3.

¹⁵ See Memorandum to the File, "Final Results of the Administrative Review of Certain Stilbenic Optical Brightening Agents from Taiwan: Analysis Memorandum for Teh Fong Min International Co., Ltd." dated concurrently with this Memorandum (Final Analysis Memorandum).

¹⁶ See TFM Case Brief at 4-6.

¹⁷ See *Notice of Final Results of Antidumping Duty Administrative Review: Certain Pasta from Italy*, 65 FR 7349, 7356 (February 14, 2000) (*Certain Pasta from Italy*).

¹⁸ See TFM's Case Brief at 7.

¹⁹ See *Timken U.S. Corp. v. United States*, 434 F.3d 1345, 1353 (Fed. Cir. 2006) (*Timken*).

so complies with Commerce's statutory mandate to accurately calculate the dumping margin.²⁰

Archroma's Comments

- TFM's proposed correction renders this sale below cost, and therefore, removes the sale from the margin calculation while leaving other lower-priced Portugal sales to compare to U.S. sales.²¹
- TFM goes on to cherry-pick data from the record in an attempt to write a mathematical proof in support of its claim, while noting that the data from the record is solely based on TFM's own documentation with no third-party sources or other verifiable information.²²
- Before TFM's April 15, 2019, case brief, TFM never attempted to file the referenced certificate of analysis (COA) on the record of this case. TFM's untimely attempt to supplement the record also comes without any justification or showing that it could not have taken steps to place such information on the record before filing its case brief.²³
- Commerce should reject TFM's argument and not adjust the final results.

Commerce's Position: As affirmed in *Timken* by the CAFC, "Commerce is free to correct any type of importer error--clerical, methodology, substantive, or one in judgment--in the context of making an antidumping duty determination, provided that the importer seeks correction before Commerce issues its final results and adequately proves the need for the requested corrections."²⁴ We agree that TFM, in this instance, sufficiently cited record evidence to demonstrate that an error existed in the *Preliminary Results*, and therefore, following *Timken*, we will correct this error. We disagree with Archroma's argument that TFM is "cherry-picking" the data, as TFM is simply using the data on the record of this review to clarify its manual entry error. While Archroma believes that TFM has never attempted to file the certificate of analysis (COA) for the sale in question, TFM has provided a COA for a different sale with the same CONNUM in its Section A response.²⁵ It is not our standard practice to require a COA for each and every sale, as implied by Archroma. For the final results of this review, we will use a conversion factor in the comparison market margin program for further-processed sales. We note that errors in the FIMPORTQTY variable column of TFM's comparison market database are corrected through information available on the record of this instant review when using the conversion factor.²⁶ The conversion factor formula, as outlined in the Final Analysis Memorandum, does not rely on manual data entry for the FIMPORTQTY variable which may be susceptible to errors, as seen in this case.

²⁰ See TFM's Case Brief at 8.

²¹ See Archroma Rebuttal Brief at 3.

²² *Id.*

²³ *Id.* at 4.

²⁴ See *Timken*, 434 F. 3d at 1353.

²⁵ See TFM's Case Brief at 8.

²⁶ See TFM's Letter, "Certain Stilbenic Optical Brightening Agents from Taiwan," dated November 28, 2018, at TFM-Exhibit SE-27.

Comment 3: Commerce Should Not Use the Tetra CONNUM as a Surrogate for the Hexa CONNUM

TFM's Comments

- When Commerce compares the comparison market (Portugal) net price with the U.S. net price, Tetra CONNUMs should not be used as the comparison product for Hexa CONNUMs.²⁷
- According to TFM, section 773(a)(6)(C)(ii) of the Tariff Act of 1930, as amended, states that “{w}here identical products are not sold in the U.S. and the comparison market or otherwise cannot be compared, we will compare the subject merchandise sold in the United States to the foreign like product sold in the comparison market that is most similar in physical characteristics.”²⁸
- A Tetra CONNUM is not a similar product to a Hexa CONNUM.²⁹ TFM explains that Hexa is a total of six sulfonate groups, has the highest solubility in water and is used exclusively in the size press and coatings. Hexa is used to build the highest brightness and whiteness levels.
- In contrast, and according to TFM, Tetra is a total of four sulfonate groups and can be used at the size press but will not build to very high brightness when applied there.
- Tetra and Hexa are not substitutable by the user.
- Commerce should use constructed value (CV) as the normal value for the Hexa CONNUM.

Archroma's Comments

- For the first time, TFM claims that Commerce should not follow its longstanding practice by matching (by CONNUM) the most similar non-identical product to compare prices where no contemporaneous prices exist for the identical product.³⁰
- TFM's position to use CV for calculating the margin for U.S. Hexa products is unfounded.³¹
- Commerce first matched Portugal net prices and U.S. net prices for identical products, as defined by the CONNUM, but where no contemporaneous comparison prices existed for the identical product, the SAS program selected the most similar non-identical product to compare prices, again based on the CONNUM.
- For certain U.S. sales of Hexa products for which no identical match existed, the most similar non-identical products based on CONNUM are Tetra products. The comparison prices were then adjusted by the difference in merchandise (DIFMER) for purposes of calculating the margin.
- Commerce has used this methodology for decades, including in this case, since the original investigation.
- Other than stating the accepted truth that Hexa and Tetra are different products as evidenced by different CONNUMs, TFM does not even attempt to explain why Commerce's

²⁷ See TFM Case Brief at 7.

²⁸ *Id.* at 8.

²⁹ *Id.* at 9.

³⁰ See Archroma Rebuttal Brief at 4.

³¹ *Id.*

longstanding practice of matching of non-identical products by CONNUM with a DIFMER is not adequate or correct in this case.

- Commerce should not stray from its longstanding past practice.

Commerce's Position: We find TFM's argument to use constructed value as the normal value for the Hexa CONNUM unfounded, contrary to our normal practice, and inconsistent with past decisions in this case. Our normal practice for identifying similar comparison-market merchandise for merchandise sold in the U.S. market is guided by section 771(16)(B) and (C) of the Act. We followed this framework in making comparisons between comparison-market prices and U.S. prices of subject merchandise. Specifically, in our margin calculation program, we match comparison market net prices with U.S. market net prices for identical products. When no contemporaneous net prices exist for certain products to compare to U.S. sales, we follow the physical product characteristics to choose the next most similar non-identical products for comparison. Therefore, while the category of products may be different according to the physical product characteristics between Hexa and Tetra products, we can find a Tetra product that has a similar stage, state, range of concentration of active ingredients, and concentration of active ingredients as a Hexa product (these being the other physical product characteristics which create the CONNUMs). As noted in the previous review of this case, our practice is that “{w}hen comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also {make} adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We {base} this adjustment on the difference in the variable cost of manufacturing for the foreign like products and the subject merchandise.”³² We will continue our practice of matching, by CONNUM, the most similar non-identical product to compare prices where no contemporaneous prices exist for the identical product for the final results. Consistent with our methodology, we will make a DIFMER adjustment with a reasonable allowance for variable costs associated with the physical differences in the products.³³ As a result, we have not changed our methodology with regards to comparing products by CONNUM for the final results.

Comment 4: Commerce Should Deduct Indirect Selling Expenses Incurred in the Comparison Market

TFM's Comments

- In the *Preliminary Results*, Commerce deducted indirect selling expenses incurred in the U.S. (INDIRSU) from the U.S. price to obtain the U.S. net price.
- To be consistent, and for a fair, apples-to-apples comparison, Commerce should also deduct indirect selling expenses incurred in the comparison market by TFM's EU affiliate TFMEU (INDIRS1T), to calculate net price.³⁴

³² See *Certain Stilbenic Optical Brightening Agents from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 26950 (June 11, 2018) (*2016-2017 Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM) at 10-11, unchanged in *Certain Stilbenic Optical Brightening Agents from Taiwan: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 49360 (October 1, 2018) (*2016-2017 Final Results*).

³³ See 19 CFR 351.411(a)-(b).

³⁴ See TFM Case Brief at 10.

- TFMEU plays the same role in the sales process as TFM's U.S. affiliate TFMNA does in the U.S. sales – *i.e.*, importer of record, communications with customer on delivery schedule, sales documentation, receipt of payment, *etc.* TFM maintains that they have the same level of selling activity for the Portugal sales done by TFMEU as with U.S. sales done by TFMNA.
- TFM argues that it expends substantially higher levels of activity as to the comparison market in Portugal than to the U.S. sales with regards to sales forecasting, strategic/economic planning and procurement/servicing, and inventory.³⁵
- Indirect selling expenses incurred in the Portugal comparison market (by TFMEU, INDIRSIT) should be deducted to calculate the net price. TFM contends that only then is there a fair comparison to the U.S. net price, where the deduction has already been made in the *Preliminary Results*.
- TFM claims that particular market situations (PMS) have been used as of late to increase dumping margins. TFM argues that to be fair and consistent, PMS should also be used to reduce dumping margins, as appropriate, for example, to reflect the higher indirect selling expenses in the comparison market.³⁶

Archroma's Comments

- TFM's proposal to deduct indirect selling expenses in the comparison market is unsupported in this case and contrary to Commerce's longstanding practice.³⁷
- For U.S. CEP sales (sales made through TFM's U.S. affiliates), Commerce deducted from the gross U.S. price the indirect selling expenses incurred in the United States.³⁸
- Commerce did not make this deduction for comparison market sales because it concluded in the *Preliminary Results* that a CEP offset is not warranted.
- Without a finding that a CEP offset is warranted, there is no other authority that calls for Commerce to offset indirect selling expenses for the Portugal sales in this case.
- TFM's request should be rejected.³⁹

Commerce's Position: We understand TFM to be requesting a CEP offset. To determine a CEP offset, we use the lesser of (1) the indirect selling expenses incurred on the third country sales, or (2) the indirect selling expenses deducted from the starting price in calculating CEP.⁴⁰ However, as we stated in the *Preliminary Results*, we did not find that an LOT adjustment or CEP offset is warranted. In the *Preliminary Results*, we explained 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

³⁵ *Id.* at 10-11.

³⁶ *Id.* at 12.

³⁷ See Archroma Rebuttal Brief at 5.

³⁸ *Id.*

³⁹ *Id.* at 6.

⁴⁰ See, e.g., *Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 65 FR 30068 (May 10, 2000), and accompanying Issues and Decision Memorandum at Comment 6.

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 a LOT adjustment or grant a CEP offset to NV.⁴¹

TFM has provided no basis for us to reconsider this decision in our *Preliminary Results*. Further, we agree with Archroma and note that without a finding that a CEP offset is warranted, there is no other authority that allows Commerce to offset indirect selling expenses for the Portugal sales in this case, nor has TFM identified any such basis. We note that we declined to grant TFM a CEP offset or LOT adjustment in the most recently-completed administrative review, which had the same levels of selling activities for each selling activity/function as found in the instant review.⁴² Since we continue to find that neither an LOT adjustment nor CEP offset are warranted for the final results, we will not be deducting indirect selling expenses in the comparison market. We also find TFM's arguments pertaining to PMS to be irrelevant; we have not found that a PMS exists in this review.

VI. RECOMMENDATION

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

☒

Agree

☐

Disagree

7/12/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

⁴¹ See Preliminary Decision Memorandum at 10-11.

⁴² See 2016-2017 *Preliminary Results* PDM at 9-10; unchanged in the 2016-2017 *Final Results*, 83 FR at 49360; see also *Corus Eng'g Steels LTD. v. United States*, 27 C.I.T. 1286, 1289-96 (2003) (explaining CEP offsets).