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Administrative Review
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May 4, 2020

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:
Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review; 2018-2019

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. 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, 2018, through April 30, 2019. We preliminarily find that TFM has sold subject merchandise at less than normal value (NV).

II. BACKGROUND

On May 10, 2012, we published in the *Federal Register* an antidumping duty order on OBAs from Taiwan.¹ On May 1, 2019, we published in the *Federal Register* a notice of opportunity to request an administrative review of the order.² On July 15, 2019, based a timely request for administrative review with respect to itself by TFM, a producer and exporter of merchandise subject to the order, we initiated an administrative review of TFM.³

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 *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 84 FR 18479 (May 1, 2019).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 33739, 18782 (July 15, 2019).



On November 8, 2019, and on January 13, 2020, TFM submitted letters requesting to withdraw its request for an administrative review due to the apparent lack of activity in the proceeding and in the interest of saving interested parties' resources.⁴ On November 15, 2019, and on January 14, 2020, the petitioner, Archroma U.S., Inc. (Archroma), submitted letters objecting to TFM's withdrawal requests, because the requests were untimely and, if granted, would significantly prejudice Archroma and the domestic OBA industry.⁵

On January 14, 2020, we extended the due date for the preliminary results of this review from January 31, 2020 to May 22, 2020. On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until July 13, 2020.⁶

III. 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.

⁴ See TFM's Letters, "Certain Stilbenic Optical Brightening Agents (CSOBA) from Taiwan," dated November 8, 2019, and "Certain Stilbenic Optical Brightening Agents (CSOBA) from Taiwan," dated January 13, 2020, respectively.

⁵ See Archroma's Letters, "Petitioner's Opposition to Respondent's Request to Withdraw the Administrative Review; Certain Stilbenic Optical Brightening Agents from Taiwan: Preliminary Results of Administrative Review; 2018-2019," dated November 15, 2019, and "Petitioner's Second Opposition to Respondent's Request to Withdraw the Current Administrative Review; Certain Stilbenic Optical Brightening Agents from Taiwan: Preliminary Results of Administrative Review; 2018-2019," dated January 14, 2020, respectively. Commerce determined that TFM's request to withdraw its request for review was 26 days past the 90-day deadline to withdraw a request for review pursuant to 19 CFR 351.213(d)(1). Moreover, the reasons for requesting a withdrawal of its request for review were unpersuasive, as TFM did not identify any extraordinary circumstances that should excuse its late filing.

⁶ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020. Commerce's practice dictates that, where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005). We note that 50 days after May 22, 2020, is July 11, 2020. However, because that date is a Saturday, the current deadline is Monday, July 13, 2020.

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

⁸ *Id.*

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. DISCUSSION OF THE METHODOLOGY

We are conducting this administrative review of the order in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213.

A. Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether the respondent's sales of the subject merchandise to unaffiliated U.S. customers were made at less than NV, Commerce compared the export price (EP) or constructed export price (CEP) to NV as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or CEPs (*i.e.*, the average-to-average (A-A) method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales (*i.e.*, the average-to-transaction (A-T) 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

In numerous investigations and the last completed administrative review of this order, Commerce applied a "differential pricing" analysis for determining whether application of the A-A method is appropriate in a particular situation, pursuant to section 777A(d)(1)(B) of the Act and 19 CFR 351.414(c)(1) and 19 CFR 351.414(c)(1).¹⁰ Commerce finds that the differential

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 accompanying Issues and Decision Memorandum (IDM) at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

¹⁰ See, e.g., *Certain Tool Chests and Cabinets from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 82 FR 53456 (November 16, 2017), and accompanying Preliminary Decision Memorandum (PDM) at 21-24, unchanged in *Certain Tool Chests and Cabinets from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 15365 (April 10, 2018); see also *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 10670 (March 12, 2018), and the accompanying PDM at 3-6, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 32629 (July 13, 2018).

pricing analysis used in recent investigations and reviews 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 A-A method in calculating a weighted-average dumping margin for each respondent.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of U.S. prices 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 A-A 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 codes) 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 POR 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 EP or CEP and NV to determine 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 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 A-T method to all sales as an alternative to the A-A 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 A-T method to those sales identified as passing the Cohen's *d* test as an alternative to the A-A method, and application of the A-A 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 A-A 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 A-A 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 A-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-A 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 A-A 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 A-A 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.

2. Results of the Differential Pricing Analysis

For TFM, based on the results of the differential pricing analysis, Commerce preliminarily finds that 67.28 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, Commerce preliminarily determines that the A-A method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the A-A method and when calculated using an alternative comparison method based on applying the A-T method to all U.S. sales. Thus, for these preliminary results, Commerce is applying the A-T method to all U.S. sales to calculate the weighted-average dumping margin for TFM.

B. Date of Sale

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, Commerce normally will use the date of invoice, as

¹¹ See Memorandum, "Administrative Review of the Antidumping Duty Order on Stilbenic Optical Brightening Agents from Taiwan; 2018-2019: Preliminary Results Analysis Memorandum for Teh Fong Min International Co., Ltd.," dated concurrently with this Preliminary Decision Memorandum (TFM Preliminary Analysis Memo).

recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.¹² Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.¹³

TFM reported that the shipment date is the date on which the price and quantity are set with its customer for all sales in the comparison market and in the United States because, although prices might be initially set in long-term contracts or mutual commitments of supply, the quantity of sale is not finalized and is subject to change until shipment to unaffiliated customers.¹⁴ Therefore, we preliminarily used the earlier of the invoice date or the shipment date as the date of sale, in accordance with our regulations and practice.¹⁵

C. Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the "Scope of the Order" section above produced and sold by TFM in the comparison market during the POR to be foreign like product for the purposes of determining appropriate product comparisons to U.S. sales. As discussed in the "Normal Value" section below, we compared U.S. sales to sales made in the third-country market, Portugal, where appropriate. Where there were no sales of identical merchandise in the third-country market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making product comparisons, we matched foreign like products based on the physical characteristics reported by TFM.¹⁶

D. Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, for certain U.S. sales made by TFM, Commerce used the EP methodology because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States before the date of importation by the producer or exporter of the subject merchandise outside the United States, and the CEP methodology, as defined by section 772(b) of the Act, was not otherwise warranted based on the facts on the record.

¹² See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

¹³ See, e.g., *Certain Polyester Staple Fiber from the Republic of Korea: Preliminary Results of the 2007/2008 Antidumping Duty Administrative Review*, 74 FR 27281, 27283 (June 9, 2009), unchanged in *Certain Polyester Staple Fiber from the Republic of Korea: Final Results of the 2007-2008 Antidumping Duty Administrative Review*, 74 FR 65517 (December 10, 2009).

¹⁴ See TFM Letter, "Certain Stilbenic Optical Brightening Agents (CSOBA) from Taiwan: Response to Section A," dated August 26, 2019 (AQR) at A-16; see also TFM's Letter, "Certain Stilbenic Optical Brightening Agents (CSOBA) from Taiwan," dated March 13, 2020 at 2SE-2.

¹⁵ See TFM Preliminary Analysis Memo.

¹⁶ *Id.*

We calculated EP based on packed prices to unaffiliated purchasers in the United States. We made deductions for movement expenses, which included, where appropriate, foreign inland freight, foreign brokerage and handling, harbor service fees, trade promotion fees, insurance, and international freight, in accordance with section 772(c)(2)(A) of the Act.¹⁷

In accordance with section 772(b) of the Act, we used the CEP methodology for the remainder of TFM's U.S. sales because the subject merchandise was sold in the United States by TFM after the date of importation, and EP, as defined by section 772(a) of the Act, was not otherwise warranted.

For TFM's CEP sales, which were invoiced and sold by its affiliate TFM North America, Inc. (TFMNA), we calculated CEP based on the packed, delivered prices to unaffiliated purchasers in the United States. We made billing adjustments, as appropriate. We made deductions for movement expenses, which included, where appropriate, foreign inland freight, foreign brokerage and handling, harbor service fees, trade promotion fees, insurance, international freight, U.S. customs duties, U.S. inland freight, and warehousing expenses, in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which included, where appropriate, direct selling expenses including imputed credit expenses, and indirect selling expenses including inventory carrying costs. Pursuant to section 772(d)(2) of the Act, we also deducted the cost of further manufacturing in the United States. Finally, we further reduced the starting price by an amount for profit to arrive at CEP, in accordance with section 772(d)(3) of the Act. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by TFM on its sales of the subject merchandise in the United States and the profit associated with those sales.¹⁸

E. Normal Value

1. Home Market Viability and Comparison Market Selection

In order to determine whether there is a sufficient volume of sales 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, Commerce normally compares the respondent's volume of home-market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third-country market as the basis for comparison-market sales, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404(c)(1)(ii).

In this review, Commerce determined that the aggregate volume of home-market sales of the foreign like product for TFM was less than five percent of the aggregate volume of its U.S. sales of the subject merchandise.¹⁹ Therefore, TFM's home market, Taiwan, is not viable as a

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See AQR at A-3 – A-4 and Exhibits A-1-1 and A-1-2.

comparison market. 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 POI. Of these viable third-country markets, we chose Portugal as the comparison market because, of all the viable third-country markets: (i) TFM sold the highest volume of comparable merchandise during the POI to customers in Portugal,²⁰ and (ii) the types of merchandise TFM sold to the United States and to Portugal had the same chemical structures and provided a better match.²¹ Accordingly, consistent with the previously-completed administrative review,²² we used TFM's sales to a third country, Portugal, as the basis for NV, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404(c)(1)(ii).²³

2. 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).²⁴ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.²⁵ 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.

Pursuant to section 19 CFR 351.412(c)(1), in identifying LOTs for EP and comparison-market sales (*i.e.*, NV based on either home-market or third-country prices), 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.²⁶ Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling, general, and administrative (SG&A) expenses, and profit for CV, where possible.²⁷

When Commerce is 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

²⁰ See *id.*; see also section 773(a)(1)(C) of the Act and 19 CFR 351.404(e)(2).

²¹ See 19 CFR 351.404(e)(1) and 19 CFR 351.404(e)(3).

²² See *Certain Stilbenic Optical Brightening Agents from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018*, 84 FR 9292 (March 14, 2019), unchanged in *Certain Stilbenic Optical Brightening Agents from Taiwan: Final Results of Antidumping Duty Administrative Review; 2017–2018*, 84 FR 34860 (July 19, 2019).

²³ See TFM Preliminary Analysis Memo.

²⁴ See 19 CFR 351.412(c)(2).

²⁵ 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 IDM (*Orange Juice from Brazil*) at Comment 7.

²⁶ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314–16 (Fed. Cir. 2001).

²⁷ See 19 CFR 351.412(c)(1).

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, Commerce shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.²⁸

In this review, we obtained information from TFM regarding the marketing stages involved in making the reported third-country and U.S. sales, including a description of the selling activities performed for each channel of distribution.²⁹

With respect to the third-country market, Portugal, TFM reported that its affiliate in Europe, Teh Fong Min Europe B.V. (TFMEU) made sales only to unaffiliated end users through one channel of distribution.³⁰ According to TFM, for sales to all of its customers in the third-country sales channel, it performed the following selling activities at a low-level of intensity: sales support, training services and technical support.³¹ Further, it provided the following selling activities at a medium-level of intensity: logistical services and sales-related administrative services.³² Because there is only one channel of distribution, we preliminarily determine that there is one LOT in the third-country market for TFM.

With respect to the U.S. market, TFM reported that it made sales through two channels of distribution, *i.e.*, EP sales directly from Taiwan to one distributor (US Channel 1), and CEP sales by its affiliate TFMNA to unaffiliated end users and distributors (US Channel 2).³³ TFM reported that TFMNA did not conduct different sales activities or offer different services by distribution channel in the United States, with the exception of certain training services and technical support for CEP sales, and that the selling functions that TFM Taiwan performs as to TFMNA are similar as to TFMEU, with the exception of certain training services for CEP sales.³⁴ According to TFM, for sales made by TFM to the United States directly from Taiwan, it performed the following sales-related activities at a low-level of intensity: sales support.³⁵ Further, it provided the following selling activities at a medium-level of intensity: logistical services and sales-related administrative services.³⁶

TFM reported that, although the selling functions TFMNA performed for CEP sales were similar to the selling functions it performed for EP sales, with the exception of certain training services and technical support, it performed these functions for CEP sales at an overall higher intensity.³⁷ According to TFM, for sales made by TFMNA to unaffiliated end users and distributors, it performed the following sales-related activities at a medium-level of intensity: sales support and

²⁸ See, *e.g.*, *Orange Juice from Brazil* at Comment 7.

²⁹ See AQR at A-14 – A-15 and Exhibit A-3-c.

³⁰ See TFM's Letter, "Certain Stilbenic Optical Brightening Agents (CSOBA) from Taiwan: Response to Sections B-D," dated September 16, 2019 (BCDQR) at B-13 and B-20.

³¹ See AQR at Exhibit A-3-c.

³² *Id.*

³³ See AQR at A-14 – A-15 and Exhibit A-3-c; see also BCDQR at C-12 and C-21.

³⁴ See AQR at A-14 – A-15.

³⁵ See AQR at Exhibit A-3-c.

³⁶ *Id.*

³⁷ See AQR at A-14 and Exhibit A-3-c.

sales-related administrative activities.³⁸ Further, it provided the following selling activities at a low-level of intensity: training services and technical support.³⁹ Finally, it provided the following selling activities at a high-level of intensity: logistical services.⁴⁰

Selling activities can be generally grouped into four selling function categories for analysis: (1) sales and marketing; (2) freight and delivery; (3) inventory maintenance and warehousing; and (4) warranty and technical support.⁴¹ Based on these selling function categories, we find that TFM performed sales and marketing, freight and delivery, and inventory maintenance and warehousing for its third-country sales channel and both U.S. sales channels, and the only significant difference between the two U.S. channels is the degree of intensity at which TFM performed these services.

According to 19 CFR 351.412(c)(2), Commerce will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). In this case, although there is a difference in the type of selling functions performed by TFM for EP and CEP sales, *i.e.*, TFM performed certain training services and technical support only for CEP sales, and the degree of intensity in the performance of selling functions overall differs among the two U.S. sales channels, we do not find that these differences are significant enough to warrant finding that the two U.S. sales channels constitute different LOTs. The training services and technical support performed for CEP sales were only performed at a low-level of intensity, and sales and marketing, freight and delivery, and inventory maintenance and warehousing were performed for both EP and CEP sales, just at a higher level of intensity for CEP sales. Therefore, we preliminarily determine that substantial differences in TFM's selling activities do not exist between the two U.S. sales channels, we preliminarily find that TFM's EP and CEP sales to the U.S. market during the POI were made at the same LOT.

We compared the U.S. LOT with the NV LOT and found that the selling functions TFM performed for its U.S. and TC market customers do not differ. Specifically, with respect to all the selling functions, TFM performed the same activities in the TC market, which are grouped in one LOT, as it performed in the U.S. market, which are also grouped in one LOT. Although there are no differences in type of selling functions performed overall by TFM in both markets, there is a difference in the level of intensity at which sales and marketing, freight and delivery, inventory maintenance and warehousing, and technical support were performed in the U.S. market for CEP sales. Because we find this difference is not significant to warrant finding different LOTs, we preliminarily determine that sales to the United States and Portugal during the POI were made at the same LOT.

³⁸ See AQR at Exhibit A-3-c.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See *Orange Juice from Brazil* and accompanying IDM at Comment 7; and *Certain Frozen Warmwater Shrimp from India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 9991, 9996 (March 9, 2009), unchanged in *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 33409 (July 13, 2009); see also *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Less Than Fair Value*, 81 FR 49953 (July 29, 2016) and accompanying IDM at Comments 9 and 18.

Finally, in response to our request to provide a quantitative analysis showing how the expenses assigned to POI sales made at different claimed LOTs impact price comparability, TFM reported that prices are determined based on quantity of demand, contract term, raw material cost during the initial negotiation, and taking references from competition of other local producers, and do not vary by channel of distribution to the end user or distributor.⁴² Further, TFM reported that negotiation of sales terms in the United States and Portugal are handled by the same person and prices are negotiated on a case-by-case basis.⁴³ TFM did not provide any quantification of expenses assigned to the POI sales at different LOTs. Also TFM stated that it is not claiming either a LOT adjustment or CEP offset.⁴⁴ Thus, we preliminarily find that there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability. Moreover, as discussed above, because the selling functions TFM performed for its U.S. and comparison-market customers do not differ significantly, we therefore find that TFM's sales to the United States and comparison market were made at the same LOT, *i.e.*, the NV LOT is not at a more advanced stage of distribution than the LOT of the CEP. Accordingly, we preliminarily determine that no LOT adjustment or CEP offset is warranted.

3. Cost of Production

In accordance with section 773(b)(2)(A) of the Act, we requested constructed value and cost of production (COP) information from TFM to determine if there were reasonable grounds to believe or suspect that sales of foreign like product had been made at prices less than the COP of the product.

a. Cost Averaging Methodology

Commerce's normal practice is to calculate an annual weighted-average cost for the POR. However, we recognize that possible distortions may result if we use our normal annual-average cost method during a time of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted-average cost, we evaluate the case-specific record evidence by examining two primary criteria: (1) the change in the cost of manufacturing (COM) recognized by the respondent during the POR must be deemed significant; and (2) the record evidence must indicate that sales during the shorter cost-averaging periods could be reasonably linked with the COP or CV during the same shorter cost-averaging periods.⁴⁵ Based on the record evidence, we have used an alternative quarterly cost methodology for the preliminary results.

i. Significance of Cost Changes

⁴² See AQR at A-14 – A-15.

⁴³ See AQR at A-15.

⁴⁴ *Id.*

⁴⁵ See *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010) (SSSSC Mexico Final), and accompanying IDM at Comment 6; see also *Stainless-Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008) (SSPC Belgium Final), and accompanying IDM at Comment 4.

In prior cases, we established 25 percent as the threshold (between the high- and low-quarter COM) during a period of 12 months for determining that the changes in COM are significant enough to warrant a departure from our standard annual-average cost approach.⁴⁶ In the instant case, record evidence shows that TMF experienced significant cost changes between the high and low quarterly COM during the POR.⁴⁷

ii. Linkage Between Sales and Cost Information

Consistent with past precedent, because we found the changes in costs to be significant, we evaluated whether there is evidence of a linkage between the cost changes and the sales prices during the POR.⁴⁸ Absent a surcharge or other pricing mechanism, Commerce may alternatively look for evidence of a pattern showing that changes in selling prices reasonably correlate to changes in unit costs.⁴⁹ To determine whether a reasonable correlation existed between the sales prices and underlying costs during the POR, we compared weighted-average quarterly prices to the corresponding quarterly COM for the control numbers with the highest volume of sales. Our comparison revealed that sales and costs for TMF showed reasonable correlation.⁵⁰

After reviewing this information and determining that changes in selling prices correlate reasonably to changes in unit costs, we preliminarily determine that there is linkage between TMF's changing sales prices and costs during the POR.⁵¹ As such, we preliminarily determine that a shorter cost period approach, based on a quarterly-average COP, is appropriate for TMF because we found significant cost changes in COM as well as reasonable linkage between costs and sales prices.

b. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses and interest expenses. As explained above, we examined the cost data and preliminarily determined that our quarterly cost methodology is warranted.⁵² Therefore, the COP is based on a quarterly average COP rather than an annual average COP. *See* the "Cost Averaging Methodology" section, above, for further discussion. We relied on the quarterly COP data submitted by TMF.⁵³

c. Test of Comparison of Market Sales Prices

⁴⁶ *See SSPC Belgium Final IDM* at Comment 4.

⁴⁷ *See* TFM Letter, "Certain Stilbenic Optical Brightening Agents (CSOBA) from Taiwan: Response to Section D Supplemental Questionnaire," dated October 10, 2019 at Exhibits SD 2-1, SD 2-2 and SD 2-3.

⁴⁸ *See SSSSC Mexico Final IDM* at Comment 6; *see also SSPC Belgium Final IDM* at Comment 4.

⁴⁹ *See SSPC Belgium Final IDM* at Comment 4.

⁵⁰ *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Teh Fong Min International Co., Ltd.," dated concurrently with this Preliminary Decision Memorandum (TFM Preliminary Cost Calculation Memo).

⁵¹ *See id.*; *see also SSSSC Mexico Final IDM* at Comment 6; and *SSPC Belgium Final IDM* at Comment 4.

⁵² *See* TMF Preliminary Cost Calculation Memo.

⁵³ *Id.*

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product to determine whether the sale prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

d. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of a respondent's home market sales of a given product are at prices less than the COP, we do not disregard any of the below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: (1) the sales were made within an extended period of time in accordance with sections 773(b)(2)(B) of the Act; and (2) based on our comparison of prices to the weighted-average COPs for the POR, the sales 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 certain products, although more than 20 percent of TMF's home market sales were at prices less than the COP, such sales provided for the recovery of costs within a reasonable period of time. We therefore did not disregard these sales and used all sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.⁵⁴

4. 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.⁵⁵

⁵⁴ See TFM Preliminary Analysis Memo.

⁵⁵ *Id.*

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 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.⁵⁶

5. 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 TFM for materials and fabrication costs, selling general and administrative expenses, and U.S. packing costs. 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.⁵⁷

V. 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 website at <http://enforcement.trade.gov/exchange/index.html>.

⁵⁶ See 19 CFR 351.411(b).

⁵⁷ See TFM Prelim Analysis Memo.

VI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree



Disagree

X



Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance