



A-583-848

Administrative Review

POR: 05/01/2019-04/30/2020

Public Document

E&C/OI: DV

July 12, 2021

MEMORANDUM TO: Christian Marsh
Acting 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 the Preliminary Results of
Antidumping Duty Administrative Review; 2019-2020

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 covering the period of review (POR) May 1, 2019, through April 30, 2020. This review covers one producer/exporter of the subject merchandise, Teh Fong Min International Co., Ltd. (TFM). We preliminarily find that TFM has sold subject merchandise at prices below normal value (NV) during the POR.

II. BACKGROUND

On May 10, 2012, we published in the *Federal Register* an AD order on OBAs from Taiwan.¹ On May 1, 2020, we published in the *Federal Register* a notice of opportunity to request an administrative review of the *Order*.² On July 10, 2020, based on timely requests for administrative review submitted on behalf of Archroma, U.S., Inc., a U.S. producer of OBAs, and TFM, a Taiwanese producer and exporter of OBAs, 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*, 85 FR 25394 (May 1, 2020).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 41450, 41544 (July 10, 2020).



On July 21, 2020, Commerce tolled all deadlines in administrative reviews by 60 days.⁴ On March 12, 2021, we extended the due date for the preliminary results of this review from April 1, 2021 to July 30, 2021.⁵

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]⁶ 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]⁷ 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 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. 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.

⁴ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

⁵ See Memorandum, “Stilbenic Optical Brightening Agents from Taiwan: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review, 2019-2020,” dated March 12, 2021.

⁶ The brackets in this sentence are part of the chemical formula.

⁷ *Id.*

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.⁸

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).⁹ Commerce finds that the differential 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

⁸ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum (IDM) at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

⁹ 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); *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); and *Stilbenic Optical Brightening Agents from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2018-2019*, 85 FR 27361 (May 8, 2020), and accompanying PDM at 3-5, unchanged in *Certain Stilbenic Optical Brightening Agents from Taiwan: Final Results of Antidumping Duty Administrative Review; 2018-2019*, 85 FR 42350 (July 14, 2020) (*OBAs from Taiwan AR18-19 Final*).

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 59.71 percent of the value of U.S. sales pass the Cohen's *d* test,¹⁰ 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 those U.S. sales which passed the Cohen's *d* test and the A-A method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, Commerce is applying the A-T method to those U.S. sales which passed the Cohen's *d* test and the A-A method to those sales which did not pass the Cohen's *d* test 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 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.¹¹ 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.¹²

¹⁰ See Memorandum, "Administrative Review of the Antidumping Duty Order on Stilbenic Optical Brightening Agents from Taiwan; 2019-2020: Preliminary Results Analysis Memorandum for Teh Fong Min International Co., Ltd.," dated concurrently with this Preliminary Decision Memorandum (TFM Preliminary Analysis Memorandum).

¹¹ 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)).

¹² 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).

TFM reported that the shipment date is the date on which the material terms of sale are finalized with its customers for all sales in the comparison market and in the United States.¹³ TFM explained that, 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; in addition, initial contract prices may thereafter change per agreement.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 of subject merchandise. As discussed in the “Normal Value” section below, we compared U.S. sales to sales made in the third-country market, Finland, 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 in the following order of importance: molecular structure category, processing stage, product state, and a range of concentration of active ingredients.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.

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, foreign harbor service and trade promotion fees, marine 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’s U.S. affiliate after the date of importation, and EP, as defined by section 772(a) of the Act, was not otherwise warranted.

¹³ See TFM’s Letter, “Certain Stilbenic Optical Brightening Agents (CSOBA) from Taiwan,” dated August 21, 2020 (submitting Section A questionnaire response) (AQR) at A-16.

¹⁴ *Id.*

¹⁵ See TFM Preliminary Analysis Memorandum.

¹⁶ *Id.*

¹⁷ *Id.*

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 adjusted starting U.S. prices for billing adjustments, where appropriate. We made deductions for movement expenses, which included, where appropriate, foreign inland freight, foreign brokerage and handling, foreign harbor service and trade promotion fees, U.S. brokerage and handling, marine 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 U.S. price by an amount for profit to arrive at the 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 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 POR. Of these viable third-country markets, we chose Finland as the comparison market because, of all the viable third-country markets: (i) TFM sold the highest volume of comparable merchandise during the POR to customers in Finland,²⁰ (ii) the types of OBAs that TFM sold to the United States and to Finland had the same molecular structures and, thus, provide a better match,²¹ and (iii) OBAs

¹⁸ *Id.*

¹⁹ See AQR at A-1 – A-5 and Exhibits A-1-1 and A-1-2.

²⁰ *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).

that TMF sold to the United States and to Finland were to end-users.²² Accordingly, and consistent with the previously-completed administrative review,²³ we used TFM's sales to a third country as the basis for NV, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404(c)(1)(ii).²⁴

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).²⁵ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.²⁶ 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 773(a)(1)(B)(i) of the Act, 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.²⁷ 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.²⁸

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 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.²⁹

In this review, we obtained certain 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.³⁰

²² See 19 CFR 351.404(e)(3).

²³ See *OBAs from Taiwan AR18-19 Prelim PDM* at 7-8, unchanged in *OBAs from Taiwan AR18-19 Final*.

²⁴ See TFM Preliminary Analysis Memorandum.

²⁵ See 19 CFR 351.412(c)(2).

²⁶ *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.

²⁷ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

²⁸ See 19 CFR 351.412(c)(1).

²⁹ See, e.g., *Orange Juice from Brazil* at Comment 7.

³⁰ See AQR at A-14 – A-15 and Exhibit A-3-c.

With respect to the third-country market, Finland, 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.³¹ According to TFM, for sales to all of its customers in the third-country sales channel, it performed the selling activities in the following categories at a low-level of intensity: sales support and technical support; and it did not provide selling activities in the training services category.³² Further, it performed the selling activities in the following categories at a medium-level of intensity: logistical services and sales-related administrative services.³³ 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).³⁴ TFM reported that it did not conduct different sales activities or offer different services by distribution channel in the United States, and that the selling functions that TFM performs as to both TFMNA and TFMEU are the same; both TFMNA and TFMEU perform selling efforts that relieve TFM from doing so.³⁵ According to TFM, for US Channel 1 sales, it performed the selling activities in the sales support category at a low-level of intensity, in the logistical services and sales-related administrative-services categories at a medium-level of intensity, and it did not provide selling activities in the training services and technical support categories.³⁶ For US Channel 2 sales, TFM reported the same information, with the exception that it performed the selling activities in the technical support category at a low-level of intensity.³⁷

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 technical support only for CEP sales, this sole factor is not significant enough to warrant a finding that the two U.S. sales channels constitute different LOTs. The selling activities in the technical support category were performed for CEP sales at a low-level of intensity. Therefore, because 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 POR 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 third-country market customers do not differ. Specifically, TFM performed the selling activities in the following categories at substantially the same levels of intensity concerning both U.S. and third country markets: sales support, training services, technical support, logistical services, and sales-related administrative activities categories.

³¹ *Id.*; see also TFM's Letter, "Certain Stilbenic Optical Brightening Agents (CSOBA) from Taiwan," dated September 14, 2020 (submitting Sections B and C questionnaire responses) (BCQR) at B-13 and B-21.

³² See AQR at Exhibit A-3-c.

³³ *Id.*

³⁴ See AQR at A-14 – A-15 and Exhibit A-3-c; see also BCDQR at C-11 and C-20.

³⁵ See AQR at A-14 – A-15 and Exhibit A-3-c.

³⁶ See AQR at Exhibit A-3-c.

³⁷ *Id.*

Further, although requested by Commerce in the initial questionnaire, TFM did not provide a quantitative analysis, substantiated with source documents, that shows how: (1) the expenses for sales made at different claimed LOTs impact price comparability; or (2) the claimed levels of intensity for the selling activities reported in the selling functions chart are quantitatively supported. Commerce recently explained the significance of the quantitative analysis as essential in supporting the claimed differences in selling functions and determining whether such differences are substantial in warranting a finding of sales being made at different LOTs.³⁸ Due to the absence of requested quantitative analysis, the record lacks any means for Commerce to make such a determination. Accordingly, we preliminarily determine that sales to the United States and Finland during the POR were made at the same LOT.

Finally, TFM reported that prices do not vary by channel of distribution and that it is not claiming either a LOT adjustment or CEP offset.³⁹ Moreover, as discussed above, because we preliminarily find that TFM's sales to the United States and the comparison market were made at the same LOT, neither an LOT adjustment nor a CEP offset is warranted.

3. Cost of Production

In accordance with section 773(b)(2)(A) of the Act, we requested CV 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.⁴⁰ Based on the record evidence, we used an alternative quarterly cost methodology for the preliminary results.

1. Significance of Cost Changes

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

³⁸ See *Polyethylene Terephthalate Sheet from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 85 FR 44276 (July 22, 2020), and accompanying IDM at Comment 4.

³⁹ See AQR at A-14 – A-16.

⁴⁰ 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.

enough to warrant a departure from our standard annual-average cost approach.⁴¹ In the instant case, record evidence shows that TMF experienced significant cost changes between the high and low quarterly COM during the POR.⁴²

2. 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.⁴³ 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.⁴⁴ 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.⁴⁵

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.⁴⁶ 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.⁴⁷ 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.⁴⁸

⁴¹ *See SSPC Belgium Final IDM* at Comment 4.

⁴² *See* TFM's Letter, "Certain Stilbenic Optical Brightening Agents (CSOBA) from Taiwan," dated January 7, 2021 at SD-1 and Exhibits SD-1 and SD-2; *see also* TFM's Letter, "Certain Stilbenic Optical Brightening Agents (CSOBA) from Taiwan," dated January 18, 2021 at 2SD-1 and Exhibit SD-2.

⁴³ *See SSSSC Mexico Final IDM* at Comment 6; *see also SSPC Belgium Final IDM* at Comment 4.

⁴⁴ *See SSPC Belgium Final IDM* at Comment 4.

⁴⁵ *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Teh Fong Min (TFM) International Co., Ltd.," dated concurrently with this Preliminary Decision Memorandum (TFM Preliminary Cost Calculation Memo).

⁴⁶ *Id.*; *see also SSSSC Mexico Final IDM* at Comment 6; and *SSPC Belgium Final IDM* at Comment 4.

⁴⁷ *See* TMF Preliminary Cost Calculation Memo.

⁴⁸ *Id.*

c. Test of Comparison of Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the weighted-average COPs to the comparison 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 comparison 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 test for TFM indicated that, for all products, less than 20 percent of TMF's comparison market sales were at prices less than the COP. Accordingly, it was not necessary to determine whether sales provided for the recovery of POR costs within a reasonable period of time. We therefore used all sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.⁴⁹

4. Calculation of Normal Value Based on Comparison Market Prices

For all comparison products, 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 adjusted the starting price, 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 and trade promotion fees in Taiwan, international freight, marine insurance, brokerage and handling in Finland, European Union customs duties, inland freight from port to warehouse in Finland, warehousing costs in Finland, and inland freight from the Finnish warehouse to the customer.⁵⁰

⁴⁹ See TFM Preliminary Analysis Memorandum.

⁵⁰ *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 to NV, where appropriate, by deducting direct selling expenses incurred in Finland, that capture further processing in Finland prior to sale to the customer, and imputed credit expenses incurred on comparison market sales.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also adjusted 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.⁵¹

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, Finland.⁵²

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>.

⁵¹ See 19 CFR 351.411(b).

⁵² See TFM Prelim Analysis Memo.

VI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree



Disagree

X



Signed by: CHRISTIAN MARSH
Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance