751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: October 27, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–972]

Certain Stilbenic Optical Brightening Agents From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* November 3, 2011.

SUMMARY: The Department of Commerce (the ''Department'') preliminarily determines that certain stilbenic optical brightening agents (''OBA'') from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice.

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SUPPLEMENTARY INFORMATION:

Background

On March 31, 2011, the Department received an antidumping duty petition concerning imports of OBAs from the PRC and Taiwan filed in proper form by the Clariant Corporation (''Petitioner'').[1] On April 4, 2011, and April 5, 2011, the Department issued requests for information and clarification of certain areas of the petition, to which Petitioner timely filed responses on April 7, 2011, and April 8, 2011.[2]

The Department initiated an antidumping duty investigation of OBAs from the PRC on April 20, 2011.[3]

In the *Initiation Notice,* the Department stated that it intended to select PRC respondents based on quantity and value (''Q&V'') questionnaires.[4] On April 21, 2011, the Department requested Q&V information from 30 companies identified in the petition as potential producers and/or exporters of OBAs from the PRC.[5] The Department received timely responses to its Q&V questionnaire from two companies, Zhejiang Hongda Chemicals Co., Ltd. (''Hongda'') and Zhejiang Transfar Whyyon Chemical Co., Ltd. (''Transfar'').[6]

In the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in non-market economy (''NME'') investigations. The process requires exporters and producers to submit a separate-rate status application (''SRA'')[7] and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities. The SRA for this investigation was posted on the Department's Web site, *http://ia.ita.doc.gov/ia-highlights-and-news.html,* on April 21, 2011. The deadline for filing an SRA was June 26, 2011.[8]

On May 18, 2011, the Department issued antidumping questionnaires to Hongda and Transfar. In June and July 2011, Hongda and Transfar submitted timely responses to sections A, C, and D of the Department's antidumping questionnaire.

The Department issued supplemental questionnaires to Hongda and Transfar from June to October 2011. Hongda and Transfar submitted timely responses to the Department's supplemental questionnaires from July to October 2011. From June to September 2011, Petitioner submitted comments to the Department regarding the submissions and/or responses of Hongda and Transfar.

On May 27, 2011, the International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of OBAs from the PRC.[9]

On June 9, 2011, the Department issued a letter to all interested parties inviting comments regarding whether Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 2921.59.4000 and 2921.59.8090 are appropriate for inclusion in the scope of the investigation.[10] Petitioner submitted comments on June 16, 2011.[11] No other party submitted comments. On July 11, 2011, the Department issued a memorandum detailing its decision to continue to include HTSUS subheadings 2921.59.4000 and 2921.59.8090 in the scope of the investigation.[12]

On July 29, 2011, Petitioner made a timely request pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e) for a 50-day postponement of the preliminary determination. On August 10, 2011, the Department published a postponement of the preliminary determination on OBAs from the PRC.[13]

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2)(A) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise.

[1] *See* Antidumping Duty Petitions on Certain Stilbenic Optical Brightening Agents from the People's Republic of China and Taiwan (March 31, 2011).

[2] *See* Certain Stilbenic Optical Brightening Agents from the People's Republic of China and Taiwan; Amendment to Petitions (April 7, 2011); *see also* Certain Stilbenic Optical Brightening Agents from the People's Republic of China and Taiwan; Amendment to Petitions (April 8, 2011).

[3] *See Certain Stilbenic Optical Brightening Agents From the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations,* 76 FR 23554 (April 27, 2011) (''*Initiation Notice*'').

[4] *See Initiation Notice,* 76 FR at 23558.

[5] *See* Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to All Interested Parties, ''Antidumping Duty Investigation of Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Quantity and Value Questionnaire'' (April 21, 2011).

[6] *See* the Department's memorandum entitled, ''Respondent Selection in the Antidumping Duty Investigation of Certain Stilbenic Optical Brightening Agents from the People's Republic of China,'' dated May 18, 2011 (''Respondent Selection Memo'').

[7] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005) (''Policy Bulletin 05.1''), available at *http://ia.ita.doc.gov/policy/bull05–1.pdf.*

[8] No party submitted a SRA.

[9] *See Investigation Nos.* 731–TA–1186–1187 (Preliminary), 76 FR 30967 (Int'l Trade Comm'n May 27, 2011).

[10] *See* Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to All Interested Parties, (June 9, 2011).

[11] *See* Petitioner's June 16, 2011, submission.

[12] *See* Memorandum to Abdelali Elouaradia, Office Director, AD/CVD Operations, Office 4, ''Certain Harmonized Tariff Schedule Numbers in the Scope of Certain Stilbenic Optical Brightening Agents from the People's Republic of China and Taiwan'' (July 11, 2011).

[13] *See Certain Stilbenic Optical Brightening Agents From the People's Republic of China, and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 76 FR 49443 (August 10, 2011).

Section 351.210(e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months. We received a request to postpone the final determination from Transfar on October 19, 2011. Transfar consented to the extension of provisional measures from a four-month period to not longer than six months. Because this preliminary determination is affirmative, and the request for postponement was made by an exporter who accounts for a significant proportion of exports of the subject merchandise, and there is no compelling reason to deny the respondent's request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register** and have extended provisional measures to not longer than six months.

Period of Investigation

The period of investigation (''POI'') is July 1, 2010, through December 31, 2010. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was March 2011.[14]

Scope of the Investigation

The OBAs covered by this investigation 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] [15] amino-2,2′-stilbenedisulfonic acid), except for compounds listed in the following paragraph. The OBAs covered by this investigation include final OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of OBA products.

Excluded from this investigation are all forms of 4,4′-bis[4-anilino-6-morpholino-1,3,5-triazin-2-yl] [16] amino-2,2′-stilbenedisulfonic acid, $C_{40}H_{40}N_{12}O_8S_2$ (''Fluorescent Brightener 71''). This investigation covers the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active OBA ingredient, as well as any compositions regardless of additives (*i.e.,* mixtures or blends, whether of OBAs with each other, or of OBAs with additives that are not OBAs), and in any type of packaging.

These OBAs are classifiable under subheading 3204.20.8000 of the 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.

Non-Market Economy Country

For purposes of the initiation, Petitioner submitted an LTFV analysis for the PRC as an NME.[17] The Department's most recent examination of the PRC's market status determined that NME status should continue for the PRC.[18] In accordance with section 771(18)(C)(i) of the Act, the NME status remains in effect until revoked by the Department. The Department has not revoked the PRC's status as an NME country, and we have therefore treated the PRC as an NME in this preliminary determination and applied our NME methodology.

Surrogate Country

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs it to base normal value, in most circumstances, on the NME producer's factors of production (''FOPs'') valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the ''Normal Value'' section below.

The Department determined that Philippines, Indonesia, Ukraine, Thailand, Colombia, and South Africa are countries comparable to the PRC in terms of economic development.[19] Once the countries that are economically comparable to the PRC have been identified, we select an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether the data for valuing FOPs is both available and reliable.[20] Petitioner and Transfar submitted further comments regarding surrogate country selection on July 20, 2011. On July 27, 2011, Petitioner, Transfar and Hongda submitted rebuttal comments.

We have determined that it is appropriate to use Thailand as a surrogate country pursuant to section 773(c)(4) of the Act because we have found that: (1) It is at a similar level of economic development; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from Thailand that we can use to value the FOPs.[21] Thus, we have calculated normal value (''NV'') using Thailand prices when available and appropriate to value the FOPs of the OBA producers under investigation. We have obtained and relied upon contemporaneous publicly available information wherever possible.[22]

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to value the FOPs within 40 days after the date of publication of the preliminary determination.[23]

[14] *See* 19 CFR 351.204(b)(1).

[15] The brackets in this sentence are part of the chemical formula.

[16] *Id.*

[17] *See Initiation Notice,* 76 FR at 23557.

[18] *See* Memorandum for David M. Spooner, Assistant Secretary for Import Administration, Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China (''China'') China's Status as a Non-Market Economy (''NME'') (August 30, 2006) (memorandum is on file in the CRU on the record of case number A–570–901).

[19] *See* Memorandum from Carole Showers, Director, Office of Policy, to Robert Bolling, Program Manager, AD/CVD Operations, Office 4, ''Request for a List of Surrogate Countries for an Antidumping Duty Investigation of Certain Stilbenic Optical Brightening Agents from the People's Republic of China'' (June 23, 2011) (''Policy Memorandum''). The Department notes that these six countries are part of a non-exhaustive list of countries that are at a level of economic development comparable to the PRC.

[20] *See Id.*

[21] *See* Memorandum to Abdelali Elouaradia from Shawn Higgins, ''Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Surrogate Country Memorandum'' (October 27, 2011).

[22] *See* Memorandum to Abdelali Elouaradia through Robert Bolling re: Selection of Surrogate Values at 2, dated May 19, 2011 (''Surrogate Value Memorandum'').

[23] In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by any other interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information. *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and*

Continued

Surrogate Value Comments

Surrogate factor valuation comments and surrogate value information were filed on July 27, 2011, by Petitioner and Transfar. Petitioner, Transfar, and Hongda filed rebuttal surrogate value comments on August 10, 2011.[24]

Application of Adverse Facts Available

The PRC-Wide Entity and PRC-Wide Rate

The Department issued its request for Q&V information to 30 potential Chinese exporters of merchandise under consideration, in addition to posting the Q&V questionnaire on the Department's Web site.[25] While information on the record of this investigation indicates that there are numerous producers/exporters of OBAs in the PRC, we received two timely filed Q&V responses. Although all exporters were given an opportunity to provide Q&V information, not all exporters provided a response to the Department's Q&V questionnaire. Therefore, the Department has preliminarily determined that there were exporters/producers of the merchandise under consideration during the POI from the PRC that did not respond to the Department's request for information. We have treated these non-responsive PRC producers/exporters as part of the PRC-wide entity because they did not demonstrate their eligibility for a separate rate.[26]

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Information on the record of this investigation indicates that the PRC-wide entity was non-responsive. Specifically, certain companies did not respond to our questionnaire requesting Q&V information. Accordingly, we find that the PRC-entity: (i) Withheld information requested by the Department; (ii) failed to provide information in a timely manner and did not indicate that it was having difficulty providing the information nor requested that it be allowed to submit the information in an alternate form; and (iii) significantly impeded the proceeding by not submitting the requested information. As a result, pursuant to sections 776(a)(2)(A)–(C) of the Act, we find that the use of facts available is appropriate to determine the PRC-wide rate.[27] Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information.[28] We find that, because the PRC-wide entity did not respond to our requests for information, it has failed to cooperate to the best of its ability. Furthermore, the PRC-wide entity's refusal to provide the requested information constitutes circumstances under which it is reasonable to conclude that less than full cooperation has been shown.[29] Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

When employing an adverse inference, section 776 of the Act indicates that the Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for adverse facts available (''AFA''), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.[30] The highest margin alleged in the petition is 203.16 percent.[31] This rate is higher than any of the calculated rates assigned to individually examined companies. Thus, as AFA, the Department's practice would be to assign the rate of 203.16 percent to the PRC-wide entity.

Corroboration of Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning merchandise subject to this investigation, or any previous review under section 751 concerning the merchandise subject to this investigation.'' [32] To ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. Independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[33]

Final Rescission, in Part, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum (''IDM'') at Comment 2.

[24] *See* the ''Factor Valuation'' section below; *see also* Surrogate Value Memorandum.

[25] Petitioner identified 30 companies as potential producers/exporters of OBAs from the PRC. *See* Respondent Selection Memo.

[26] *See, e.g., Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 9591 (March 5, 2009), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 36656 (July 24, 2009).

[27] *See Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 4986 (January 31, 2003), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam,* 68 FR 37116 (June 23, 2003).

[28] *See* Statement of Administrative Action, accompanying the Uruguay Round Agreements Act (''URAA''), H.R. Rep. No. 103–316, 870 (1994) (''SAA''); *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation,* 65 FR 5510, 5518 (February 4, 2000).

[29] *See Nippon Steel Corporation* v. *United States,* 337 F.3d 1373, 1383 (Fed. Cir. 2003) (''*Nippon Steel*'') (noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a ''failure to cooperate to the best of a respondent's ability'' existed (i.e., information was not provided ''under circumstances in which it is reasonable to conclude that less than full cooperation has been shown'')).

[30] *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China,* 65 FR 34660 (May 31, 2000), and accompanying IDM, at ''Facts Available.''

[31] *See Initiation Notice,* 76 FR at 23558.

[32] *See Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China,* 73 FR 6479, 6481 (February 4, 2008), and accompanying IDM at Comment 2 (quoting SAA at 870).

[33] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this preliminary determination, we examined information on the record and found that we were unable to corroborate the highest margin in the petition. Therefore, the Department finds that the highest transaction-specific margin of the mandatory respondents is sufficiently adverse to act as the AFA rate. With respect to AFA, for the preliminary determination, we have assigned the PRC-wide entity the rate of 141.08 percent, the highest transaction-specific margin among the mandatory respondents.[34] No corroboration of this rate is necessary because we are relying on information obtained in the course of this investigation, rather than secondary information.[35]

Date of Sale

19 CFR 351.401(i) states that, ''in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business.'' In *Allied Tube & Conduit Corp.* v. *United States,* the Court of International Trade (''CIT'') noted that a ''party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisf{y}' the Department that 'a different date better reflects the date on which the exporter or producer establishes the material terms of sale.' '' [36] The date of sale is generally the date on which the parties agree upon all material terms of the sale. This normally includes the price, quantity, delivery terms and payment terms.[37]

For sales by Hongda and Transfar, we used the commercial invoice date as the sale date because record evidence indicates that the terms of sale were not set until the issuance of the commercial invoice.[38]

Fair Value Comparisons

To determine whether sales of OBAs to the United States by the respondents were made at LTFV, we compared export price (''EP'') to NV, as described in the ''Export Price,'' and ''Normal Value'' sections of this notice.

U.S. Price

Export Price

In accordance with section 772(a) of the Act, we used EP for all sales reported by Hongda and Transfar. We calculated EP based on the packed prices to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (*e.g.,* foreign inland freight from the plant to the port of exportation, domestic brokerage, international freight to the port of importation) in accordance with section 772(c)(2)(A) of the Act. Where foreign inland freight or foreign brokerage and handling fees were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate value rates.[39]

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. Therefore, for this preliminary determination we have calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include: (1) Hours of labor required; (2) quantities of raw materials employed; and (3) representative capital costs.[40] In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate surrogate value to value FOPs, but when a producer sources an input from a market economy (''ME'') and pays for it in a ME currency, the Department may value the factor using the actual price paid for the input.[41]

Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by respondents during the POI. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values (except as discussed below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data.[42] As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Thai import surrogate values a Thai surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997) (remanding to Commerce its freight expense calculation to avoid double-counting). A detailed description of all surrogate values used for Hongda and Transfar can be found in the Surrogate Value Memorandum.

For the preliminary determination, in accordance with the Department's practice, we used data from the Thailand Customs Department and other publicly available sources from Thailand in order to calculate surrogate values for Hongda and Transfar FOPs (direct materials and packing materials) and certain movement expenses.[43] In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values

(November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997).

[34] *See Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 76 FR 64318, 64322 (October 18, 2011).

[35] *See* 19 CFR 351.308(c) and (d) and section 776(c) of the Act; *see also Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China,* 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at 1.

[36] *See Allied Tube & Conduit Corp.* v. *United States* 132 F. Supp. 2d 1087, 1090 (CIT 2001).

[37] *See Carbon and Alloy Steel Wire Rod from Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review,* 72 FR 62824 (November 7, 2007), and accompanying IDM at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey,* 65 FR 15123 (March 21, 2000), and accompanying IDM at Comment 2.

[38] *See* Hongda's Preliminary Determination Analysis Memorandum, dated October 27, 2011; *see also* Transfar's Preliminary Determination Analysis Memorandum, dated October 27, 2011.

[39] *See* ''Factor Valuation'' section below for further discussion of surrogate value rates.

[40] *See* Section 773(c)(3)(A)–(D) of the Act.

[41] *See* 19 CFR 351.408(c)(1); *see also Shakeproof Assembly Components Div of Ill* v. *United States,* 268 F.3d 1376, 1382–83 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

[42] *See e.g., New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 40485 (July 15, 2008), and accompanying IDM at Comment 9.

[43] *See* Surrogate Value Memorandum at 2.

which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive.[44] The record shows that data in Thailand's Customs Department, as well as those from the other sources from Thailand, are contemporaneous with the POI, product-specific, and tax-exclusive.[45] In those instances where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using, where appropriate, the International Monetary Fund's Consumer Price Index for Thailand.[46]

Furthermore, with regard to Thailand's import-based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from India, Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.[47]

Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.[48] Rather, the Department bases its decision on information that is available to it at the time it makes its determination.[49] Therefore, we have not used prices from India, Indonesia or South Korea in calculating Thailand's import-based surrogate values. Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an ''unspecified'' country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.[50]

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.,* not insignificant quantities), we use the actual price paid by respondent for those inputs, except when prices may have been distorted by findings of dumping by the PRC and/or subsidies.[51] Where we find ME purchases to be of significant quantities (*i.e.,* 33 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs,*[52] we use the actual purchases of these inputs to value the inputs. Where the quantity of the reported input purchased from ME suppliers is below 33 percent of the total volume of the input purchased from all sources during the POI, and were otherwise valid, we weight-average the ME input's purchase price with the appropriate surrogate value for the input according to their respective shares of the reported total volume of purchases.[53] Where appropriate, we add freight to the ME prices of inputs. Transfar claimed that certain of its reported movement expenses were sourced from an ME country and paid for in U.S. dollars. However, the Department did not treat Transfar's ocean freight expenses as ME purchases because Transfar was unable to demonstrate that its PRC freight forwarder was an agent acting on behalf of a ME freight carrier. Specifically, information submitted by Transfar did not include full document traces that would show that the prices, including any agent fee or commission, paid by Transfar were set by the ME freight carrier. *See* Surrogate Value Memorandum at 7.

Section 773(c) of the Act provides that the Department will value FOP in NME cases using the best available information regarding the value of such factors in a ME country or countries considered to be appropriate by the administering authority. The Act requires that when valuing FOP, the Department utilize, to the extent possible, the prices or costs of factors of production in one or more ME countries that are (1) at a comparable level of economic development and (2) significant producers of comparable merchandise. *See* section 773(c)(4) of the Act.

Previously, the Department used regression-based wages that captured the worldwide relationship between *per capita* Gross National Income (''GNI'') and hourly manufacturing wages, pursuant to 19 CFR 351.408(c)(3), to value the respondent's cost of labor. However, on May 14, 2010, the Court of Appeals for the Federal Circuit (''CAFC''), in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372 (Fed. Cir. 2010) (''*Dorbest*''), invalidated 19 CFR 351.408(c)(3). As a consequence of the CAFC's ruling in *Dorbest,* the Department no longer relies on the regression-based wage rate methodology described in its regulations. On February 18, 2011, the Department published in the **Federal Register** a request for public comment on the interim methodology, and the data sources.[54]

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.[55] In *Labor Methodologies,* the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter

[44] *See e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004).

[45] *See* Surrogate Value Memorandum at 3.

[46] *See* Surrogate Value Memorandum at 2.

[47] *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China,* 69 FR 20594 (April 16, 2004), and accompanying IDM at Comment 7; *see also Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order,* 75 FR 13257 (March 19, 2010), and accompanying IDM at pages 4–5; *Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review,* 70 FR 45692 (August 8, 2005), and accompanying IDM at page 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009), and accompanying IDM at pages 17, 19–20; *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand,* 66 FR 50410 (October 3, 2001).

[48] *See* Omnibus Trade and Competitiveness Act of 1988, Conference Report to accompany H.R. Rep. 100–576 at 590 (1988) reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24; *see also Preliminary Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758 (June 4, 2007) unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007).

[49] *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039 (September 24, 2008).

[50] *Id.*

[51] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27366 (May 19, 1997).

[52] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717 (October 19, 2006) (''*Antidumping Methodologies: Market Economy Inputs*'').

[53] *See Antidumping Methodologies: Market Economy Inputs,* 71 FR at 61718.

[54] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, Request for Comment,* 76 FR 9544 (Feb. 18, 2011).

[55] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (''*Labor Methodologies*'').

6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of Labor Statistics (''Yearbook'').

In this preliminary determination, the Department calculated the labor input using the data on industry specific labor cost from the primary surrogate country (*i.e.,* Thailand), as described in *Labor Methodologies.* The Department relied on Chapter 6A labor cost data for Thailand from the International Labour Organization's (''ILO'') Yearbook of Labour Statistics (''Yearbook''). The Department used ILO Chapter 6A labor cost data for the year 2000 because this is the most recent Chapter 6A data available for Thailand. The Department further determined the two-digit description under ISIC–Revision 3–D (''Manufacture of Chemicals and Chemical Products'') to be the best available information because it is specific to the industry being examined and, therefore, is derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor input using labor cost data reported by Thailand to the ILO under Sub-Classification 24 of the ISIC–Revision 3–D, in accordance with section 773(c)(4) of the Act.[56] For this preliminary determination, the calculated industry-specific wage rate is 66.88 baht per hour. The Department inflated this value to the POI. For further information on the calculation of the wage rate, *see* Surrogate Value Memorandum at 5.

We valued truck freight expenses using a per-unit average rate for price data from the Thailand Board of Investment's 2006 publication, *Costs of Doing Business in Thailand.*[57]

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in Thailand for 20 and 40 foot containers published in the World Bank publication, *Doing Business 2011: Thailand.*[58]

We valued international freight using data obtained from the Descartes Carrier Rate Retrieval Database (''Descartes''), which can be accessed via *http://descartes.com/.*[59] The Descartes database is a web-based service, which publishes the ocean freight rates of numerous carriers. We find that this database is accessible to government agencies without charge, in compliance with Federal Maritime Commission regulations and, thus, is a publicly available source. In addition to being publicly available, the Descartes data reflect rates for multiple carriers, report rates on a daily basis, the price data obtained are based on routes that closely correspond to those used by respondents, and are similar to the merchandise subject to this segment. Therefore, the Descartes data is product-specific, publicly available, a broad-market average, and contemporaneous with the period of the segment. Accordingly, the Descartes data is the best available source for valuing international freight on the record because it provides rates that are representative of the entire period of the segment and a broader representation of product-specificity.

However, while the Department finds that the Descartes data is the most superior source for valuing international freight on the record, to make the source less impractical, the Department has had to make certain arbitrary calls. The Department has calculated the period-average international freight rate by obtaining rates from multiple carriers for a single day in each quarter of the period of the segment. For any rate that the Department determined was from a non-market economy carrier, the Department has not included that rate in the period-average international freight calculation. Additionally, any charges included in the rate that are covered by brokerage and handling charges that the respondent incurred and are valued by the reported market economy purchase or the appropriate surrogate value, the Department has not included these charges in the calculation.

We valued marine insurance using a rate from RJG Consultants.[60]

Regarding energy, we were unable to segregate and, therefore, were unable to exclude energy costs from the calculation of the surrogate financial ratios. Accordingly, for the preliminary determination, we have disregarded the respondents' energy inputs (electricity, water, and steam for both Hongda and Transfar) in the calculation of NV, in order to avoid double-counting energy costs that have necessarily been captured in the surrogate financial ratios.[61]

We valued railway freight using price data from the Thailand Board of Investment's 2011 publication, *Costs of Doing Business in Thailand.*[62]

To value factory overhead, selling, general, and administrative expenses, and profit, we used audited financial statements from the following producer of comparable merchandise in Thailand: PTT Chemical Public Co. Ltd., covering the fiscal year ending December 2010.[63] The Department may consider other publicly available financial statements for the final determination, as appropriate.

Currency Conversion

Where necessary, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.[64]

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information from Hongda and Transfar.

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation.[65] This practice is described in Policy Bulletin 05.1.

Preliminary Determination

The weighted-average dumping margins are as follows:

Exporter	Producer	Weighted average margin
Zhejiang Hongda Chemicals Co., Ltd	Zhejiang Hongda Chemicals Co., Ltd	106.22
Zhejiang Transfar Whyyon Chemical Co., Ltd	Zhejiang Transfar Whyyon Chemical Co., Ltd	126.25
PRC-wide Entity		141.08

[56] The Department preliminarily determined that there is no evidence on the record demonstrating that the cost of labor is overstated. Therefore, the Department did not make any adjustments to the calculation of the surrogate financial ratios.

[57] *See* Surrogate Value Memorandum at 6.

[58] *See id.*

[59] *See id.*

[60] *See id.* at 7.

[61] *See e.g. Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value,* 74 FR 16838 (April 13, 2009) and accompanying IDM at Comment 2.

[62] *See* Surrogate Value Memorandum at 7.

[63] *See id.* at 5–6.

[64] *See id.* at 2.

[65] *See Initiation Notice,* 76 FR at 23559.

Disclosure

We will disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all appropriate entries of OBAs from the PRC as described in the ''Scope of Investigation'' section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds U.S. price, as follows: (1) The rate for the exporter/producer combinations listed in the chart above will be the rate we have determined in this preliminary determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the PRC-wide rate; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of OBAs, or sales (or the likelihood of sales) for importation, of the merchandise under consideration within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[66] A table of contents, list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, within 30 days after the date of publication of this notice.[67] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we intend to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230, at a time and location to be determined.[68] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date. Case briefs, rebuttal briefs and hearing requests should be submitted to the Department electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA Access''). Access to IA Access is available in the Central Records Unit, room 7046 of the main Department of Commerce building.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: October 27, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–28537 Filed 11–2–11; 8:45 am]

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[66] *See* 19 CFR 351.309.

[67] *See* 19 CFR 351.310(c).

[68] *See* 19 CFR 351.310.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–848]

Certain Stilbenic Optical Brightening Agents From Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (the Department) preliminarily determines that certain stilbenic optical brightening agents (stilbenic OBAs) from Taiwan are being, or are likely to be, sold in the United States at less than fair value (LTFV) as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated margin of sales at LTFV is listed in the ''Suspension of Liquidation'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* November 3, 2011.

FOR FURTHER INFORMATION CONTACT: Sandra Stewart or Hermes Pinilla, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–0768 and (202) 482–3477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 2011, Clariant Corporation (the petitioner) filed an antidumping petition against imports of stilbenic OBAs from Taiwan. *See* ''Certain Stilbenic Optical Brightening Agents from the People's Republic of China and Taiwan; Petitions Requesting the Imposition of Antidumping Duties,'' dated March 31, 2011 (the petition).

On April 27, 2011, the Department initiated the antidumping duty investigation on stilbenic OBAs from Taiwan. *See Certain Stilbenic Optical Brightening Agents From the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations,* 76 FR 23554 (April 27, 2011) (*Initiation Notice*).

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of the date of publication of the *Initiation Notice. See Initiation Notice,* 76 FR at 23555. The Department