

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-570-856]

Synthetic Indigo from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a timely request from a U.S. importer, on July 23, 2001, the Department of Commerce published a notice of initiation of an administrative review of the antidumping duty order on synthetic indigo from the People's Republic of China with respect to China Jiangsu International Economic Technical Cooperation Corp., and Wonderful Chemical Industrial Ltd./Jiangsu Taifeng Chemical Industry. The period of review is September 15, 1999, through May 31, 2001. As a result of this review, the Department of Commerce has preliminarily determined that dumping margins exist for exports of the subject merchandise by the above-referenced companies for the covered period. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 7, 2002.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4136.

THE APPLICABLE STATUTE:

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the "Department's") regulations are to 19 CFR Part 351 (2001).

SUPPLEMENTARY INFORMATION:**Background**

On June 19, 2000, the Department of Commerce ("the Department") published in the Federal Register (65 FR 37961) an antidumping duty order on synthetic indigo from the People's

Republic of China ("PRC"), which was amended on June 23, 2000 (65 FR 39128). On June 29, 2001, Clariant Corporation ("Clariant"), a U.S. importer, requested, in accordance with 19 CFR 351.213, that we conduct an administrative review of exports to Clariant by China Jiangsu International Economic Technical Cooperation Corp. ("CJIETCC") and Wonderful Chemical Industrial Ltd./Jiangsu Taifeng Chemical Industry ("Wonderful/Jiangsu Taifeng"). On July 2, 2001, Clariant's request was revised to include the review of all sales of subject merchandise exported by CJIETCC and Wonderful/Jiangsu Taifeng to the United States. On July 23, 2001, the Department published a notice of initiation of an administrative review of the antidumping duty order on synthetic indigo from the PRC with respect to CJIETCC and Wonderful/Jiangsu Taifeng (66 FR 38252). On August 16, 2001, we issued the antidumping questionnaire to these companies. On October 9, 2001, these companies submitted a letter notifying the Department that they were no longer willing to cooperate in this review.

Scope of Order

The products subject to this order are the deep blue synthetic vat dye known as synthetic indigo and those of its derivatives designated commercially as "Vat Blue 1." Included are Vat Blue 1 (synthetic indigo), Color Index No. 73000, and its derivatives, pre-reduced indigo or indigo white (Color Index No. 73001) and solubilized indigo (Color Index No. 73002). The subject merchandise may be sold in any form (e.g., powder, granular, paste, liquid, or solution) and in any strength. Synthetic indigo and its derivatives subject to this order are currently classifiable under subheadings 3204.15.10.00, 3204.15.40.00 or 3204.15.80.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Period of Review

The period of review covers the period September 15, 1999 through May 31, 2001.

Separate Rates Determination

In previous antidumping duty proceedings, the Department has treated the PRC as a non-market economy ("NME") country. We have no evidence suggesting that this determination should be changed. Accordingly, the Department has determined that NME treatment is appropriate in this review.

See section 771(18)(c)(i) of the Act. To establish whether a company operating in a NME is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) ("Sparklers"), as amplified by the Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"). Under this test, companies operating in a NME are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities (Sparklers, 56 FR 20589). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies (*id.*). *De facto* absence of government control over exports is based on four factors: (1) whether each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management (see Silicon Carbide, 59 FR 22587). In the instant review, neither CJIETCC nor Wonderful/Jiangsu Taifeng submitted responses to the Department's antidumping duty questionnaire, including the separate rates section. We therefore preliminarily determine that these companies did not establish their entitlement to a separate rate in this review and, therefore, are presumed to be part of the PRC NME entity and, as such, are subject to the PRC country-wide rate. Accordingly, exports by these companies are preliminarily assigned the PRC-wide rate, which is the highest margin in the less-than-fair-value ("LTFV") petition.

PRC-Wide Rate and Use of Facts Otherwise Available

As noted above, CJIETCC and Wonderful/Jiangsu Taifeng submitted a

letter on the record stating that they would not participate in this review. Because of their refusal to cooperate in this review and their failure to establish their entitlement to a separate rate, we have assigned them the PRC-wide rate, which is based on facts available, pursuant to section 776(a)(2) of the Act.

Section 776(a)(2) of the Act provides that "if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

Because CJJETCC and Wonderful/Jiangsu Taifeng have refused to participate in this administrative review, we find that, in accordance with sections 776(a)(2)(A) and (C) of the Act, the use of total facts available is appropriate (see, e.g., Final Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms from the People's Republic of China, 65 FR 50183, 50184 (August 17, 2000) (for a more detailed discussion, see Preliminary Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms from the People's Republic of China, 65 FR 40609, 40610-40611 (June 30, 2000)); Notice of Final Determination of Sales at Less Than Fair Value: Persulfates from the People's Republic of China, 62 FR 27222, 27224 (May 19, 1997); and Certain Grain-Oriented Electrical Steel from Italy: Final Results of Antidumping Duty Administrative Review, 62 FR 2655 (January 17, 1997) (for a more detailed discussion, see Preliminary Results of Antidumping Duty Administrative Review: Certain Grain-Oriented Electrical Steel from Italy, 61 FR 36551, 36552 (July 4, 1996)). Because these respondents have provided no information, sections 782(d) and (e) are not relevant to our analysis.

Section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the

party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Doc. No. 103-316, at 870 (1994).

Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. Under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide requested information, but also to provide a "full explanation and suggested alternative forms." CJJETCC's and Wonderful/Jiangsu Taifeng's October 9, 2001, letter documented for the record their refusal to provide this information and they have otherwise failed to respond to our request for information, thereby failing to comply with this provision of the statute. Therefore, we determine that the respondents failed to cooperate to the best of their ability, making the use of an adverse inference appropriate.

In this proceeding, in accordance with Department practice (see, e.g., Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review: Brake Rotors From the People's Republic of China, 64 FR 61581, 61584 (November 12, 1999); and Preliminary Results of Antidumping Duty Administrative Review: Fresh Garlic From the People's Republic of China, 64 FR 39115 (July 21, 1999); and Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 65 FR 33295 (May 23, 2000) (for a more detailed discussion, see Preliminary Results of Antidumping Duty Administrative Review: Fresh Garlic From the People's Republic of China, 64 FR 39115 (July 21, 1999)), as adverse facts available, we have preliminarily assigned to exports of subject merchandise by CJJETCC and Wonderful/Jiangsu Taifeng the PRC-wide rate of 129.60 percent, which is the PRC-wide rate established in the LTFV investigation and the highest dumping margin determined in any segment of this proceeding. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to

provide the Department with complete and accurate information in a timely manner." See Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan, 63 FR 8909, 8932 (February 23, 1998).

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." See SAA at 870. The SAA states that "corroborate" means to determine that the information used has probative value (id.). To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. To examine the reliability of margins in the petition, we examine whether, based on available evidence, those margins reasonably reflect a level of dumping that may have occurred during the period of investigation by any firm, including those that did not provide us with usable information. This procedure generally consists of examining, to the extent practicable, whether the significant elements used to derive the petition margins, or the resulting margins, are supported by independent sources. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin may not be relevant, the Department will attempt to find a more appropriate basis for facts available. See, e.g., Final Results of Antidumping Duty Administrative Review: Fresh Cut Flowers from Mexico, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

In the underlying LTFV investigation, we established the reliability and relevance of the petition margin (see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination:

Synthetic Indigo from the People's Republic of China, 64 FR 69723, 60726–69727 (December 14, 1999); and Synthetic Indigo from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value, 65 FR 25706, 25707 (May 3, 2000). As there is no information on the record of this review that demonstrates that the petition rate is not an appropriate adverse facts available rate for the PRC-wide rate, we determine that this rate has probative value and, therefore, is an appropriate basis for the PRC-wide rate to be applied in this review to exports of subject merchandise by CJJETCC and Wonderful/Jiangsu Taifeng as facts otherwise available.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following margin applies for the period September 15, 1999, through May 31, 2001, for those imports where the exporter is CJJETCC or Wonderful/Jiangsu Taifeng:

Manufacturer/producer/exporter	Margin Percent
PRC-wide Rate	129.60

Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) a statement of the issue, and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations and cases cited. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

In addition, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments raised in the case and rebuttal briefs. Any hearing, if requested, will be held two days after the date for submission of 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, Room B-099, within 30 days of the date of publication

of this notice, containing: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issued raised in the hearing will be limited to those raised in case and rebuttal briefs.

The Department will publish the final results of this administrative review with respect to subject merchandise exports by CJJETCC and Wonderful/Jiangsu Taifeng, including the results of its analysis of issues raised in any case or rebuttal briefs or at a hearing, not later than 120 days after the date of publication of these preliminary results.

Assessment Rates and Cash Deposit Requirements

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisal instructions directly to the Customs Service. Upon publication of the final results of this administrative review, the cash deposit rate for all shipments by CJJETCC or Wonderful/Jiangsu Taifeng of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, will be the PRC-wide rate stated in the final results of this administrative review, as provided for by section 751(a)(1) of the Act. The cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding for which there was no request for administrative review will continue to be the rate assigned in that segment of the proceeding. The cash deposit rate for the PRC NME entity will continue to be 129.60 percent, and the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections

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

February 28, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 02-005. *Applicant:* The Pennsylvania State University, EM Facility, The Life Sciences Consortium, 519 Wartik Lab, University Park, PA 16802. *Instrument:* Slow Scan CCD Camera, Model TemCam F-224.

Manufacturer: Tietz Video and Image Processing Systems GmbH, Germany. *Intended Use:* The instrument is intended to be used to study the following: (1) Organized chromatin domains in yeast minichromosomes, (2) viruses, cell organelles and whole cells, (3) ultrathin sections of tissues, (4) colloids, (5) nanostructures, and (6) biopolymers. Experiments in plant pathology involve the imaging of aphid vector viruses; those in analytical chemistry—barcode patterns built into metal rods during their synthesis via template-directed electrochemical disposition; those in neurochemistry — neurotransmitters in dense core vesicles and others in solid state synthesis—three-dimensional perovskites from two-dimensional precursors. *Application accepted by Commissioner of Customs:* February 21, 2002.

Docket Number: 02-006. *Applicant:* Saint Joseph's University, Department of Biology, 5600 City Avenue, Science Center, Philadelphia, PA 19131.