

It Is Therefore Ordered:

First, that a civil penalty of \$4,500 is assessed against Pirasteh. Payment of the civil penalty shall be made in seven payments to the Department of Commerce. The first payment shall be of \$300 and shall be paid within 30 days from the date of entry of this Order. The next six payments shall each be of \$700 and shall be made on or before; April 1, 2004, July 1, 2004, October 1, 2004, January 4, 2005, April 1, 2005, and July 1, 2005. Payments shall be made in the manner specified in the attached instructions.

Second, that pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701–3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached notice, and, if a payment is not made by the due date specified herein, Pirasteh will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

Third, that for a period of seven years from the date of this Order, Pirasteh, 2308 Arroyo Court, Plano, Texas 75074, his successors or assigns, and when acting for or on behalf of Pirasteh, his representatives, agents, or employees (“denied person”) may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Fourth, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installations, maintenance, repair, modification or testing.

Fifth, that after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Pirasteh by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

Sixth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Seventh, that, the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action on this matter, is effective immediately.

Entered this 30th day of September 2003.

Lisa A. Prager,

Acting Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 03-25390 Filed 10-6-03; 8:45 am]

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DEPARTMENT OF COMMERCE**International Trade Administration**

[A-570-862]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Foundry Coke from the People's Republic of China

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

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

EFFECTIVE DATE: October 7, 2003.

SUMMARY: The Department of Commerce (“Department”) is conducting an administrative review of the antidumping duty order on foundry coke from the People’s Republic of China (“PRC”) in response to requests from ABC Coke, Citizens Gas & Coke Utility, Erie Coke Corporation, Sloss Industries Corporation, and Tonawanda Coke Corporation (collectively, “Domestic Producers” or “Petitioners”). The period of review (“POR”) is from March 8, 2001 through August 31, 2002.

We preliminarily determine, based on adverse facts available, that CITIC Trading Company, Ltd. (“CITIC”) sold subject merchandise at less than normal value (“NV”). The preliminary results are listed below in the section titled “Preliminary Results of Review.” If these preliminary results are adopted in our final results, we will instruct the U.S. Bureau of Customs and Border Protection (“Customs”) to assess antidumping duties based on the PRC-wide rate. We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

FOR FURTHER INFORMATION CONTACT: Michael Holton, Office of AD/CVD Enforcement 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482-1324.

SUPPLEMENTARY INFORMATION:**Background**

On July 31, 2001, the Department published the antidumping duty order on foundry coke from the People’s Republic of China (“Foundry Coke from the PRC”). See *Notice of Final Determination of Sales at Less Than Fair Value: Foundry Coke Products From The People’s Republic of China*,

66 FR 39487 (July, 31, 2001); *see also Notice of Amended Final Determination of Sales at Less Than Fair Value: Foundry Coke Products From The People's Republic of China*, 66 FR 45962 (August 31, 2001), and *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Foundry Coke Products From The People's Republic of China*, 66 FR 48025 (September 17, 2001). On September 3, 2002, the Department published a notice of opportunity to request an administrative review for this order covering the period March 8, 2001, through August 31, 2002. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 56267 (September 3, 2002). On September 30, 2002, the Department received a request from the Petitioners, requesting the review of CITIC, in accordance with 19 CFR 351.213(b). The Department initiated the review on October 24, 2002. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 65336 (October 24, 2002).

On November 8, 2002, the Department issued an antidumping questionnaire to CITIC with instructions that it and the appropriate producers/suppliers ("suppliers") of the subject merchandise are required to respond by the due dates. The original due dates were November 11, 2002, for section A and December 17, 2002, for sections C-E. After two separate extensions, the Department received a timely section A questionnaire response, in part, on December 12, 2002, from CITIC. There were multiple transactions of subject merchandise during the POR in which CITIC was the exporter and other parties were the suppliers. During the POR, CITIC obtained the foundry coke that was ultimately sold in the United States from three suppliers.

On December 16, 2002, the Department received a completed section A response from CITIC. On December 19, 2002, CITIC submitted its response to section C of the questionnaire. On January 3, 2003, CITIC requested a two-week extension for section D of the questionnaire, which was originally due on December 17, 2002. On January 7, 2003, the Department granted a one-week extension for section D of the questionnaire, setting a new deadline of January 13, 2003. CITIC did not supply the Department with a response to section D of the questionnaire by the January 13, 2003, deadline.

On April 15, 2003, the Department issued CITIC a supplemental questionnaire with a response date of April 29, 2003. After five additional extensions, CITIC responded to the supplemental questionnaire, in part, on June 5, 2003, and stated that the Department would receive the full information as soon as the information was available. CITIC did not provide a complete response to all questions of the supplemental questionnaire.

On May 1, 2003, we requested comments on surrogate-country selection and requested that parties provide surrogate factors of production values for the preliminary results no later than May 15, 2003. We received comments from the Petitioners, on May 8, 2003. On May 15, 2003, CITIC submitted publicly available Indian import statistics for valuing the subject merchandise's factors of production in this review.

On May 28, 2003, the Department determined that it was not practicable to complete the preliminary results of this review within the statutory time limit. Consequently, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(1) of the Department's regulations, the Department extended the deadline for completion of the preliminary results of the administrative review by 120 days, to September 30, 2003. *See Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Foundry Coke from the People's Republic of China*, 68 FR 31681 (May 28, 2003) ("Extension of Time Limits"). On July 24, 2003, the Department published a correction to the *Extension of Time Limits*, due to incorrect information regarding the deadline of the preliminary results. *Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Foundry Coke from the People's Republic of China; Correction*, 68 FR 43712 (July 24, 2003).

Scope of Review

For purposes of this investigation, the product covered is coke larger than 100 mm (4 inches) in maximum diameter and at least 50 percent of which is retained on a 100-mm (4 inch) sieve, of a kind used in foundries.

The foundry coke products subject to this investigation were classifiable under subheading 2704.00.00.10 (as of January 1, 2000) and are currently classifiable under subheading 2704.00.00.11 (as of July 1, 2000) of the Harmonized Tariff Schedule of the United States ('HTSUS'). Although the HTSUS subheadings are provided for

convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Nonmarket Economy Country

The Department has treated the PRC as a non-market economy ("NME") country in all past antidumping investigations (*see e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (April 13, 2000)). A designation as a NME remains in effect until it is revoked by the Department. *See section 771(18)(C) of the Tariff Act of 1930, as amended ("the Act")*. The respondents in this investigation have not requested a revocation of the PRC's NME status. We have, therefore, preliminarily determined to continue to treat the PRC as a NME country. When the Department is investigating imports from a NME, section 773(c)(1) of the Act directs us to base the NV on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise.

Furthermore, no interested party has requested that the foundry coke industry in the PRC be treated as a market-oriented industry and no information has been provided that would lead to such a determination. Therefore, we have not treated the foundry coke industry in the PRC as a market-oriented industry in this investigation.

Separate Rate

Although CITIC, a mandatory respondent, submitted a response to section A of the questionnaire, it did not respond to section D of the questionnaire and other vital information requested by the Department. As a mandatory respondent, CITIC was required to provide complete questionnaire responses. Therefore, as detailed in the "Application of Adverse Facts Available" section below, adverse facts available have been assigned to CITIC. As a result, CITIC will not receive a separate rate for these preliminary results.

Application of Facts Available

On November 8, 2002, the Department sent CITIC section D of the questionnaire, requesting CITIC and its three suppliers to provide factors of production ("FOP") information for the

subject merchandise during the POR. The original deadline to file a response to section D of the questionnaire was December 17, 2002. On December 6, 2002, CITIC requested an extension of the December 17, 2002, due date for filing its response to section D of the questionnaire. On December 12, 2002, the Department granted an extension, giving CITIC until January 6, 2003, to file its section D questionnaire response.

On January 3, 2003, CITIC requested a second two-week extension for filing its section D questionnaire response. Due to the necessity of meeting the statutory time limits, the Department only granted CITIC a one week extension, until January 13, 2003, for filing its response to section D of the questionnaire. On January 13, 2003, the Department did not receive a response from CITIC, either requesting a third extension or a response to section D of the questionnaire. One week later, the Department still had not received any response from CITIC or any other communication, and on January 21, 2003, the Department sent CITIC a letter requesting that CITIC file its late section D response by the close of business of the same day. Additionally, the letter requested that CITIC provide a detailed explanation on what measures it had taken to file section D of the questionnaire and what prevented it from submitting the response on January 13, 2003.

On January 23, 2003, CITIC responded to the Department's letter of January 21, 2003, stating that because "section D requires cooperation of unrelated producers of foundry coke . . . CITIC Trading has been unable to persuade those producers to undertake the time and expense of responding to the questionnaire, despite its best efforts." See CITIC's response to Department's letter of January 21, 2003, dated January 23, 2003. On January 28, 2003, the Department sent a second letter requesting that CITIC file its late section D response. In addition, the Department requested that CITIC provide a detailed explanation of the measures it had taken in securing a response from its suppliers. CITIC did not provide a response to the requested information identified in the letter of January 28, 2003.

Because it is imperative that the Department obtains the FOP information for the normal value calculation, the Department attempted to contact CITIC's suppliers directly. Due to the lack of information on the record regarding CITIC's suppliers, on February 10, 2003, the Department requested that CITIC supply additional detailed contact information for its POR suppliers. On February 10, 2003, CITIC

responded by stating that the contact information was already included in the section A response. Because CITIC had not provided names of persons to contact and because the information on the record was less than complete, on March 21, 2003, the Department again requested that CITIC supply complete and detailed contact information for its suppliers. On April 4, 2003, CITIC responded, providing the Department with names of the people whom the Department should contact for only two of the three suppliers.

On April 9, 2003, using the contact information provided by CITIC, the Department attempted to fax two of the three suppliers (hereinafter "Supplier A," "Supplier B" and "Supplier C"). The Department contacted Supplier A via fax with a response due date of April 23, 2003, for the section D questionnaire. To date, we have not received a response from Supplier A, although the Department received confirmation that the fax was transmitted successfully. See Memorandum to the File, from Michael Holton, Case Analyst, through James Doyle, Program Manager, regarding Fax Transmission Verification Report for Supplier A, dated April 10, 2003.

With regard to Supplier B, the Department was unable to contact the company via fax on April 9, 2003. On April 10, 2003, the Department attempted to contact Supplier B a second time via fax, again there was no connection. On April 16, 2003, the Department made a third attempt to send section D of the questionnaire via fax to Supplier B. Again, the Department received no fax connection. See Memorandum to the File, from Michael Holton, Case Analyst, through James Doyle, Program Manager, regarding Fax Transmission Verification Report for Supplier B, dated April 16, 2003. Upon closer examination of the fax number provided by CITIC, the Department discovered that the fax number appeared to be incomplete. Thus, on May 1, 2003, the Department requested that CITIC provide a complete fax number for Supplier B. On May 2, 2003, CITIC's counsel informed the Department that CITIC was unable to find any other additional information regarding the Supplier B's fax number. See Memorandum to the File, from Michael Holton, Case Analyst, through James Doyle, Program Manager, regarding Request for a Correction to the Fax Number, dated May 6, 2003.

Because the Department did not have the correct fax number for Supplier B and CITIC did not provide a fax number for Supplier C, the Department sent section D questionnaires via FedEx to

these two suppliers on April 22, 2003. The Department received confirmation via the FedEx internet tracking system that section D of the questionnaire was delivered to Supplier B on May 15, 2003. See Memorandum to the File, from Michael Holton, Case Analyst, through James Doyle, Program Manager, regarding Delivery Status of Section D Questionnaire Sent to Supplier B, dated July 21, 2003. To date, we have not received a response from Supplier B. The section D questionnaire, however, for Supplier C was returned to the Department, with an indication that Supplier C was not in FedEx's service area. See Memorandum to the File, from Michael Holton, Case Analyst, through James Doyle, Program Manager, regarding Delivery Status of Section D Questionnaire Sent to Supplier C, dated July 21, 2003. Additionally, the Department requested assistance from its Chinese Commercial Service Division ("Division") in contacting Supplier C. The Division made several attempts in locating and contacting the supplier, but it was unsuccessful in contacting them. See Memorandum to the File, from Chris Cloutier, Senior Import Administration Officer, United States Embassy Beijing, regarding Foundry Coke, dated September 23, 2003.

On August 12, 2003, the Department sent CITIC a letter requesting several items with respect to Supplier C. First, the Department requested that CITIC reconsider its decision not to release Supplier C's name from APO protection, so the Department could receive aid in contacting the supplier from Chinese governmental agencies. Second, the Department requested documentation relating to CITIC's purchase of subject merchandise from Supplier C during the POR and post POR, which would contain further contact information. Third, the Department requested that CITIC reconfirm the contact information provided to the Department. Finally, the Department again requested that CITIC supply information and documentation regarding its efforts to persuade the three suppliers to respond to section D of the questionnaire. The Department requested that CITIC file its response to this letter no later than August 18, 2003. On August 18, 2003, the Department did not receive a response from CITIC with respect to the information we requested. On August 19, 2003, the Department contacted CITIC's counsel who indicated that he had faxed the letter to CITIC, yet he had not received a response from them. CITIC's counsel then requested that the Department send him an electronic copy of the letter so

that he could e-mail it to CITIC. The Department sent CITIC's counsel an electronic copy of the letter on August 19, 2003, requesting that CITIC file its response no later than August 22, 2003. See Memorandum to the File, from Michael Holton, Case Analyst, through James Doyle, Program Manager, regarding Request for Release from APO of Supplier's C Name, dated August 28, 2003. On August 22, 2003, the Department did not receive a response from CITIC regarding the information the Department requested.

On August 27, 2003, the Department made a final request that CITIC respond to the letter sent on August 12, 2003. Despite the Department's best efforts to provide CITIC with every opportunity to respond to our requests, we did not receive a response to the letter originally sent out on August 12, 2003, nor has the Department received the FOP information necessary to calculate the a normal value.

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 Department; (B) fails to provide such information in a timely manner or in the form or manner requested under the antidumping statute; (C) significantly impedes an antidumping review; or (D) provides such information but the information cannot be verified, the Department shall use the facts otherwise available in reaching the applicable determination as provided in Section 782 (d) of the Act. See *Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part*, 64 FR 30481 (June 8, 1999); *Silicon Metal From The People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 63 FR 37850 (July 14, 1998); *Silicon Metal From The People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 11654 (March. 10, 1998). CITIC and its suppliers, as "interested parties," have failed to respond and CITIC has engaged in pattern of non-compliance in submitting its responses to the Department's request for information, which have impeded the Department's best efforts in conducting this review.

Specifically, CITIC failed to either report or supply the Department with FOP information. For these reasons, the Department finds that use of facts otherwise available is appropriate for these preliminary results.

Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if (1) the information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information, and (5) the information can be used without undue difficulties.

For the Department to calculate an accurate margin in an NME proceeding, it needs valid FOP information. CITIC and its suppliers failed to provide the FOP information for the transactions. There has been no alternative or substitutable information suggested for use in place of the missing FOP data. Therefore, in cognizance of CITIC's submission of section A and section C response, we find that the submitted data is nevertheless so incomplete that reliance on it would not result in an accurate measurement or reflection of CITIC's selling practices. Further, as detailed above, CITIC and its suppliers had ample time and extraordinary number of opportunities to submit the requested FOP data for this review and the requested explanation as to its efforts to secure responses from the suppliers, but they failed to do so.

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 an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA), establishes that the Department may employ an adverse inference "... to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See SAA at 870. It also instructs the Department, in employing adverse inferences, to consider "... the extent to which a party may benefit from its own lack of cooperation." Id.

When determining whether a company has acted to the best of their ability the Department "must make an

objective showing that a reasonable and responsible importer would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations;" and "a subjective showing that the respondent under investigation not only has failed to promptly produce the requested information, but further that the failure to fully respond is the result of the respondent's lack of cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records." See *Nippon Steel Co. v. U.S.*, 337 F.3d 1373 (Fed Cir 2003) ("Nippon").

In this particular case, CITIC and its suppliers failed to respond to several of the Department's requests for information for which they should have known the Department would need to conduct this administrative review. We note that CITIC participated in the investigation only two years ago and one of its suppliers during this review also participated in that investigation. See Memorandum to the File, from Michael Holton, Case Analyst, through James Doyle, Program Manager, regarding CITIC's Suppliers in the Investigation, dated September 23, 2003. Therefore, the Department finds that, by not providing the necessary responses to the questionnaires issued by the Department, CITIC and its suppliers have failed to cooperate to the best of its ability.

First, FOP information is fundamental for calculating the a dumping margin. Section 771(35)(A) of the Act, requires that dumping margins are calculated by comparing the NV to the export price or constructed export price. For NME countries, the Act states that the NV is determined "on the basis of the value of the factors of production utilized in producing the merchandise." See section 773(c)(1) of the Act. Because this is an NME proceeding, it is necessary that the Department have valid FOP information in order to calculate the NV. In cases such as this, we are precluded from reviewing the FOP of the suppliers, and absent any FOP information provided, the Department cannot simply create or postulate the costs of the uncooperative suppliers. In addition, the Department has no other FOP information on the record. Because CITIC and its suppliers have failed to provided FOP information for this administrative review the Department cannot properly calculate a dumping margin in accordance with section 773(c)(1) of the Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from*

the People's Republic of China, 64 FR 71104, 71108 (December 20, 1999) ("*Creatine from the PRC*"); see also *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1997-998 Antidumping Duty Administrative Review and Final Results of New Shipper Review*, 64 FR 61837, 61846 (November 15, 1999) ("*TRBs-11*"); see also *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (April 21, 2003), and accompanying Issues and Decision Memorandum, Comment 7 ("*Crawfish*"). Because CITIC and one of its suppliers had participated in the original investigation, it is reasonable to presume that CITIC should have known that the Department would request FOP information for this administrative review. Because CITIC and its suppliers failed to provide the information which they knew the Department would need to calculate a dumping margin, the Department finds that CITIC and its suppliers have not acted to the best of their ability.

Second, CITIC and the suppliers failed to provide any explanation why they were unable to provide the FOP information, nor did they offer any alternative forms by which they might be able to comply with the Department's requests. As the Court of Appeals for the Federal Circuit has held, respondents must "put forth its maximum efforts" in complying with the Department's requests. See *Nippon*, 337 F.3d at 1382. The issue of cooperation from unrelated suppliers was raised by CITIC in the investigation. CITIC should have known that its claims of being unable to persuade unrelated supplies to provide FOP information would require convincing evidence of the suppliers' inability or unwillingness to supply the requested information. See *CITIC Trading Co., Ltd et al v. U.S.*, No. 01-00901, slip op. 03-23 (CIT 2003) (finding that CITIC acted to the best of its ability when it provided Commerce with documentation that its unrelated non-responding suppliers had been shutdown). On numerous occasions, the Department requested that CITIC supply detailed information regarding its attempts to contact its suppliers for the FOP information. The only response the Department received from CITIC was a conclusory statement explaining that "section D requires cooperation of unrelated producers of foundry coke . . . CITIC Trading has been unable to persuade those producers to undertake the time and

expense of responding to the questionnaire, despite its best efforts." See CITIC's response to Department's letter of January 21, 2003, dated January 23, 2003.

CITIC's claim that it was unable to persuade its suppliers to cooperate despite its best efforts, provides the Department with no reliable basis to determine that CITIC in fact cooperated to the best of its ability. As noted earlier, the Department requested that CITIC explain and provide documentation of its efforts to persuade its suppliers to respond to section D of the questionnaire. CITIC failed to provide any explanation or documentation showing that it had contacted its suppliers to respond to section D of the questionnaires. Because the information on the record is so incomplete it is impossible for the Department to determine what efforts CITIC made in contacting its suppliers regarding their cooperation in responding to section D of the questionnaire. Therefore, the Department finds that CITIC has not acted to the best of its ability.

Additionally, it has been the Department practice to apply adverse facts available when a respondent has failed to provide convincing evidence "claiming that their suppliers cannot supply requested factors of production information." See *Creatine from the PRC*, 64 FR at 71108 (applying adverse facts available because the respondent did not provide an acceptable explanation on the record for its suppliers failure to provide the FOP information); see also *TRBs-11*, 64 FR at 61846 (finding that the respondent did not act to the best of its ability when it was unable to provide letters from unrelated suppliers stating their unwillingness to supply factors of production information); see also *Notice of Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 68 FR 36767, 36768 (June 19, 2003) ("*Garlic*") (applying adverse facts available when a supplier stated that it was unwilling to provide details on its production process or its FOP; and the respondent did not provide an explanation as to why it or its supplier could not provide the FOP information); see also *Notice of Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612 (July 25, 2002), and accompanying Issues and Decision Memorandum, Comment 10 (finding that there was no acceptable explanation on the record for the supplier's failure to provide factor of production information, an adverse

inference in applying facts available was warranted due to the supplier's failure to act to the best of its ability).

Although the Department made extensive efforts to obtain the information, it is ultimately CITIC's responsibility for submitting accurate FOP information as it is the party that is seeking the rate based on the FOP information and it is more readily available to them, and any "failures, even if made by a supplier, may provide grounds for the application of adverse facts available." See *Crawfish* 68 FR at 19504; see also *Garlic* 68 FR at 36768.

Finally, CITIC engaged in pattern of non-compliance to the Department's requests. On numerous occasions, CITIC requested extensions to the original filing dates which the Department granted. After granting CITIC's requested extensions to file its section D responses on two separate occasions, and nearly one full month from the original due date, CITIC nonetheless failed to respond to the Department's request for FOP information. Only after two further requests by the Department did CITIC respond that it was unable to get its suppliers to respond to section D of the questionnaire. The Department finds it is reasonable that CITIC could have submitted this information before the original deadline for information had passed. If CITIC was having problems in obtaining the information from its suppliers, it should have notified the Department at that time. Instead, CITIC informed the Department only after the deadline passed and after the Department had sent two requests for the information.

Similarly, on four separate occasions the Department granted CITIC's requests to extend the deadline to file its response to the Department's supplemental questionnaire. Again, only after the Department sent a letter requesting that the late information be supplied did CITIC respond. Additionally, CITIC's response to the supplemental questionnaire was incomplete, informing the Department that it would supply the missing information at a later date. To date, the Department has not received a complete supplemental questionnaire response. Further, as noted earlier, CITIC failed to respond on three separate occasions to the Department's requests for information regarding Supplier C and any documentation with respect to each of its suppliers purported inability to supply the FOP information. The information that the Department requested was for documentation relating to CITIC's purchase of subject merchandise from Supplier C (e.g., contracts, payment documentation,

shipment documentation, etc.). A reasonable respondent would have maintained all this documentation in anticipation the Department would request it. Finally, throughout the process the Department informed CITIC of the importance of the information and the need to respond to the requests for information.

Therefore, in accordance with the statute, the Department finds that CITIC and its suppliers, as interested parties, have not acted to the best of their ability. First, it is reasonable that CITIC should have known, as a responsible exporter, that the requested FOP information was required to be kept and maintained under the applicable statutes, rules, and regulations, as CITIC and one of its suppliers participated in the original investigation. Second, it is reasonable that an interested party could have provided an explanation for either its inability to respond to the Department's requested information or offer alternative forms for which to comply with the Department's requests. Further, it is the Department's procedure to apply adverse facts available when a respondent is unable to provide an explanation and documentation for its failure to supply complete FOP information, even if it is the failure of one of its suppliers. Finally, the Department finds that CITIC and its suppliers, by failing to produce the requested information, engaged in a pattern of non-compliance and also failed to put forth a maximum efforts to investigate and obtain the requested information from their records. *See Nippon*, 337 F.3d at 1382. Thus, because CITIC and its suppliers have failed to act to the best of their ability the Departments finds that an adverse facts available is applicable to this review.

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act. Section 776(c) of the Act provides, however, that, when the Department relies on secondary information rather than on information obtained in the course of a review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. *See* SAA at 870. The SAA clarifies that "corroborate"

means that the Department will satisfy itself that the secondary information to be used has probative value. *See id.* As discussed in *Notice of Preliminary 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 (November 6, 1996) ("TRBs"), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

The highest rate determined in any segment of this proceeding is the PRC-wide rate from the investigation, which is 214.89 percent; it is currently the PRC-wide rate and was calculated based on information contained in the petition. *See Final Determination of Sales at Less Than Fair Value: Foundry Coke Products From The People's Republic of China*, 66 FR 39487 (July, 31, 2001). The information contained in the petition was corroborated for the final determination of the investigation. In the investigation, the Department reviewed the adequacy and accuracy of the petition. To the extent practicable, the Department examined the key elements of the U.S. price and NV calculations on which the petition margin was based and compared the sources used in the petition to publicly available information, where available, and respondent data as appropriate. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Foundry Coke From the People's Republic of China*, 66 FR 13885 (March 8, 2001). Additionally, no information has been presented in the current review that calls into question the reliability of this information. We note that this is the highest rate from the investigation and is less than two years old. Thus, the Department finds that the information continues to be reliable.

With respect to the relevance aspect of corroboration, the Department stated in TRBs that it will "consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin." *See* TRBs at 61 FR 57392; *see also Stainless Steel Sheet and Strip in Coils from Taiwan; Final Result and Rescission of Antidumping Duty Administrative Review*, 67 FR 40914, 40916 (June 14, 2002) (where the

Department disregarded the highest margin for the use as adverse facts available because the margin was based on a finding of middleman dumping by another producer). The rate used is the rate currently applicable to all exporters subject to the PRC-wide rate. Further, there is no information on the administrative record of the current review that indicates the application of this rate would be inappropriate or that the margin is not relevant. Therefore, for all sales of subject merchandise by the PRC entity, we have applied, as adverse facts available, the 214.89 percent margin from the investigation and have satisfied the corroboration requirements under section 776(c) of the Act. *See Persulfates from The People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 18439, 18441 (April 9, 2001) (employing a petition rate used as adverse facts available in a previous segment as adverse facts available in the current review).

Preliminary Results Of The Review

As a result of the application of adverse facts available, we preliminarily determine that a dumping margin of 214.89 percent exists for the period March 8, 2001, through August 31, 2002, on all exports of foundry coke by the PRC entity.

An interested party may request a hearing within 30 days of publication of these preliminary results. Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, within 120 days of publication of this notice. *See* 19 CFR 351.213(h)(1).

Assessment Rates

Upon issuance of the final results, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate

assessment instructions directly to Customs upon completion of this review. If these preliminary results are adopted in our final results of review, we will direct Customs to assess the resulting rate against the entered customs value for the subject merchandise on each importer's/customer's entries during the POR.

Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for all previously investigated companies which have a separate rate, the cash-deposit rates will continue to be the company specific rates published for the most recent period; (2) for all other PRC exporters, including CITIC, the cash-deposit rate will be the PRC countrywide rate, which is 214.89 percent; and (3) for all non-PRC exporters of subject merchandise, the cash-deposit rate 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 also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) 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.

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: September 30, 2003.

James J. Jochum,
Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration [A-570-501]

Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews

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

SUMMARY: The Department of Commerce (the Department) has received timely requests to conduct new shipper reviews of the antidumping duty order on natural bristle paintbrushes and brush heads from the People's Republic of China (PRC). In accordance with 19 CFR 351.214(d), we are initiating a review for Shanghai R&R Imp./Exp. Co., Ltd. (Shanghai) and its producer Zhejiang Lin'an Maxiao Brushes Factory (ZLMBF), and for Changshan Import/Export Co., Ltd. (Changshan) and its producer ZLMBF.

EFFECTIVE DATE: October 7, 2003.

FOR FURTHER INFORMATION CONTACT: Douglas Kirby or Dana Mermelstein, Office of AD/CVD Enforcement 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-0961 or (202) 482-1391, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 2003, the Department received timely requests from Shanghai and Changshan, pursuant to section 751(a)(2)(B) of the Tariff Act of 1930 (the Act) and in accordance with 19 CFR 351.214(c), for new shipper reviews under the antidumping duty order on natural bristle paintbrushes and brush heads from the PRC. This order has a February anniversary month and therefore an August semiannual anniversary month. On August 27, 2003, the Department issued a letter to Shanghai and Changshan noting that there were similarities in the new shipper review requests for both companies, and we asked whether Shanghai and Changshan were related in any way. Shanghai and Changshan, in their response of August 29, 2003, replied that the similarities occurred because the actions by both Shanghai and Changshan occurred shortly after their counsel conducted a program in China discussing the antidumping law and various ways of participating. Because of the schedule for filing new

shipper review requests, both Shanghai and Changshan arranged their sales and made the shipments on relatively short notice. While there are similarities in the shipments, the two companies stated that they are not affiliated, and therefore they requested separate new shipper reviews. The Department will continue throughout the review to examine carefully any similarities between Shanghai and Changshan.

Initiation of Reviews

Pursuant to 19 CFR 351.214(b)(2)(ii) and 19 CFR 351.214(b)(2)(iii)(A), in their August 14, 2003 requests for review, Shanghai and Changshan certified that they did not export the subject merchandise to the United States during the period of investigation (POI) and that they are not affiliated with any company which exported subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214(b)(ii)(B), Shanghai's and Changshan's producer, ZLMBF, certified that it did not export subject merchandise during the period of investigation. Pursuant to 19 CFR 351.214(b)(2)(iii)(B), Shanghai and Changshan further certified that their export activities are not controlled by the central government of the PRC. Also, in accordance with 19 CFR 351.214(b)(2)(iv), Shanghai and Changshan submitted documentation establishing the date on which each company first shipped the subject merchandise to the United States, the volume of its first shipment, and the date of the first sale to an unaffiliated customer in the United States. Shanghai and Changshan also stated that they had no shipments to the United States other than their first shipment.

Therefore, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d), we are initiating new shipper reviews of the antidumping duty order on natural bristle paintbrushes and brush heads from the PRC. In accordance with 19 CFR 351.214(i), we intend to issue the preliminary results not later than 180 days from the date of initiation of these reviews. All provisions of 19 CFR 351.214 will apply to Shanghai and Changshan throughout the duration of these new shipper reviews.

In accordance with 19 CFR 351.214(g)(1)(i)(B), the POR for a new shipper review initiated in the month immediately following the semiannual anniversary month is the six-month period immediately preceding the semiannual anniversary month. Therefore, the POR for these new shipper reviews is February 1, 2003 through July 31, 2003. Pursuant to