

Background

On February 1, 2002, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on natural paintbrushes from the People's Republic of China (PRC) (67 FR 4945). On February 28, 2002, the Department received a timely request from the Paint Applicator Division of the American Brush Manufacturers Association, the petitioner, for administrative reviews of Hunan and Hebei Founder Import and Export Company (Hebei). On March 27, 2002, the Department initiated an administrative review of the antidumping duty order on natural paintbrushes, for the period from February 1, 2001, through January 31, 2002, in order to determine whether merchandise imported into the United States is being sold at less than fair value with respect to these two companies. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part*, 67 FR 14696 (March 27, 2002).

On May 1, 2002, the Department issued antidumping questionnaires to Hunan and Hebei. In its reply to section A of the questionnaire, Hebei stated that it had made no sales or shipments of subject merchandise to the United States during the POR. The Department also performed a U.S. Customs Service (Customs) data query for entries of paintbrushes from the PRC classified under the Harmonized Tariff Schedule of the United States (HTSUS) item number 9603.40.40.40 during the POR. We found no entries or shipments from Hebei during the POR. Thus, the Department rescinded the review with respect to Hebei. See *Natural Bristle Paintbrushes From the People's Republic of China; Notice of Rescission, In Part, of Antidumping Administrative Review*, 67 FR 58018 (September 13, 2002). On November 1, the Department extended the deadline for the preliminary results of review of Hunan until January 23, 2003 (67 FR 66614). This deadline was then fully extended, in accordance with 751(a)(3)(A) of the Tariff Act of 1930 ("The Act") by another 36 days (68 FR 4761).

Scope of the Antidumping Duty Order

The products covered by the order are natural paintbrushes from the PRC. Excluded from the order are paintbrushes and brush heads with a blend of 40 percent natural bristles and 60 percent synthetic filaments. The merchandise under review is currently classifiable under item 9603.40.40.40 of the Harmonized Tariff Schedule of the

United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Separate Rates

The Department's standard policy is to assign to all exporters of the merchandise subject to review in non-market economy ("NME") countries a single rate, unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. Hunan stated in its questionnaire response that it is an autonomous legal entity that is completely independent of any government control. In order to establish whether a company operating in a non-market economy ("NME") country is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in a NME country 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*").

Evidence supporting, though not requiring, a finding of *de jure* absence of government control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control with respect to exports is based on four criteria: (1) Whether the export prices are set by or subject to 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 and financing of losses; (3) whether each exporter has autonomy in making decisions regarding the selection of management; and (4) whether each exporter has the authority to sign contracts and other agreements.

1. Absence of De Jure Control

With respect to the absence of *de jure* government control over the export activities of the company reviewed, evidence on the record supports the claim made by Hunan that its export activities are not controlled by the government. Hunan submitted evidence

of its legal right to set prices independently of all government oversight. In its questionnaire response, Hunan submitted several legislative enactments that have decentralized control of business enterprises and their business activities. Hunan's business license also indicates that the company is permitted to engage in the exportation of natural bristle paintbrushes. We have not found any evidence of *de jure* government control that either restricts Hunan's exportation of natural bristle paintbrushes, or limits its ability to enter contracts and account for its own profits and losses. Therefore, we preliminarily determine that there is an absence of *de jure* control over export activity with respect to Hunan.

2. Absence of De Facto Control

With respect to the absence of *de facto* control over export activities, the information submitted on the record indicates that the general manager of Hunan is elected by company personnel and has the authority to appoint Hunan's senior management. Our analysis indicates that there is no government involvement in Hunan's daily operations or the selection of its management. In addition, Hunan's questionnaire response states that the company sets its own export prices, determines its own use of export revenues, and independently negotiates sales contracts free from government interference. Finally, decisions made by Hunan concerning its choice of suppliers and customers are not subject to government approval.

Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over its export activities, we preliminarily determine that a separate rate should be applied to Hunan. For further discussion of the Department's preliminary determination regarding the issuance of separate rates, see *Separate Rates Decision Memorandum* to Dana Mermelstein, Program Manager, Office of AD/CVD Enforcement VII, dated February 28, 2003. A public version of this memorandum is on file in the Department's Central Record Unit (CRU).

Normal Value Comparisons

To determine whether the respondent's sale of the subject merchandise to the United States was made at prices below NV, we compared its U.S. prices to NV, as described below in the "United States Price" and "Normal Value" sections of this notice.