

2003. On August 19, 2003, Yisheng filed a submission requesting that the Department accept its August 18, 2003, submission and claimed for the first time that its supplier was not cooperating. Specifically, Yisheng claimed that, "Only after the Department's deadline for this supplemental response, did the grower, Yuyu, agree to allow Yisheng's outside accountants to visit it and collect data to answer the questions relevant to it." Yisheng did not provide an explanation, however, as to why its supplier would not cooperate and did not provide an explanation as to why it had not identified this reason earlier.

In a review involving a non-market economy ("NME"), the factors of production are crucial to determining normal value. As the Department has stated clearly in its recent Policy Bulletin covering new shipper reviews in general (found on the Department's website at <http://ia.ita.doc.gov>), it is the responsibility of the party requesting a new shipper review to provide all of the information necessary to the Department for initiating the new shipper review. It is also the responsibility of the party requesting a new shipper review to provide the Department with the necessary information for it to calculate an accurate dumping margin. In other words, if a party desires to receive the benefits of a new shipper review, it has an affirmative obligation to provide the Department with the information necessary to calculate the new shipper dumping margin. Thus, in NME new shipper review cases, the respondent must provide complete factors-of-production information.

Section 776(a)(2) of the Act provides that, if, in the course of an antidumping review, 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, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, then the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination.

We find that, pursuant to section 776(a)(2)(A) of the Act, Yisheng withheld information we requested by not submitting an adequate factors-of-production response. We also find that, pursuant to section 776(a)(2)(B) of the Act, Yisheng did not provide an adequate factors-of-production response in a timely manner. Finally, we find that, pursuant to section 776(a)(2)(C) of

the Act, Yisheng significantly impeded this proceeding by not providing an adequate factors-of-production response for the following reasons: (1) the factors-of-production information is necessary to calculate a margin, (2) as a self-requesting new shipper, Yisheng has an affirmative obligation to respond, (3) Yisheng's first factors-of-production response was grossly inadequate, and (4) Yisheng did not submit a subsequent response to the request for factors-of-production information until 59 days after the deadline. Therefore, pursuant to section 776(a)(2) of the Act, we preliminarily determine that the use of facts otherwise available is warranted to calculate a margin for Yisheng's sales of subject merchandise during the period of review.

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.

The Department rejected Yisheng's August 18, 2003, factors-of-production response for the following reasons: (1) the information was not submitted by the deadline established for its submission, (2) Yisheng did not demonstrate that it acted to the best of its ability to provide the information, and (3) given the limited amount of time left under the statutory deadlines of the review to analyze its factors-of-production submission, issue supplemental questions, plan and conduct a verification, and prepare the preliminary results, the information could not be used without undue burden on the Department. Thus, for the various reasons under sections 782(e)(1), (4), and (5) of the Act, the Department has not used the factors-of-production information Yisheng reported.

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.

For the Department to calculate an accurate margin in an NME proceeding, it needs valid factors-of-production information. Yisheng had ample time to submit the requested production-process information and factors-of-production data for this new shipper review. In fact, Yisheng had more days to respond to the original and supplemental questionnaires than any other company in this new shipper review. Because Yisheng had an affirmative responsibility to provide the necessary factors-of-production information so that we may calculate a margin and because it did not provide this necessary information, we find that Yisheng did not act to the best of its ability.

Applying total adverse facts available to Yisheng is consistent with the Department's application of adverse facts available in past cases. See *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 68 FR 36767 (June 19, 2003) ("*Fresh Garlic: Final*"). In *Fresh Garlic: Final*, we applied adverse facts available to the respondent, Hongda, when it failed to provide total production and factors of production for the period in a timely manner. 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*").

In *Fresh Garlic From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review* ("*Fresh Garlic: Preliminary*"), we found that the "responsibility for submission of accurate factors of production lies with the respondent seeking a rate based on such information, and that failures, even if made by a supplier, may provide grounds for the application of adverse facts available." *Fresh Garlic: Preliminary*, 68 FR 22676 (April 29, 2003) (citing *Crawfish* at Comment 7). Also, in the *Fresh Garlic: Preliminary*, the Department explained that the language of the statute and regulation