

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 1997-1998 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 suppliers 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,