

The PRC-Wide Rate and Use of Facts Otherwise Available

Both respondents were given the opportunity to respond to the Department's questionnaire. As explained above, we received a questionnaire response from Red Point and we have calculated a separate rate for Red Point. The PRC-wide rate applies to all entries of subject merchandise except for entries from Red Point and Max Fortune, a producer which was excluded from the antidumping duty order.

As discussed above, Yun Choy is appropriately considered part of the PRC-wide entity. Yun Choy did not respond to the Department's questionnaire. 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 Department shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Because the PRC entity did not respond to the Department's questionnaire, we find that, in accordance with sections 776(a)(2)(A) and (B) 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 (Aug. 17, 2000). For a more detailed discussion, see the following determinations: *Preliminary Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms from the People's Republic of China*, 65 FR 40609, 40611 (June 30, 2000); *Final Determinations of Sales at Less Than Fair Value: Persulfates from the People's Republic of China*, 62 FR 27222, 27224 (May 19, 1997); *Preliminary Results of Antidumping Duty Administrative Review: Certain Grain-Oriented Electrical Steel from Italy*, 61 FR 36551, 36552 (July 11, 1996); *Final Results of Antidumping Duty Administrative Review: Certain Grain-Oriented Electrical Steel from Italy*, 62 FR 2655 (Jan. 17, 1997). Because Yun Choy provided no

information, sections 782(d) and (e) of the Act 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 full." See Statement of Administrative Action (SAA) accompanying the URAA, H. 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 less-than-fair-value (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." On February 27, 2003, the Department transmitted its questionnaire to Yun Choy via Federal Express. We confirmed that Yun Choy signed for and received the questionnaire on March 3, 2003 (Hong Kong date). Yun Choy did not submit a response to our questionnaire by the due date, April 7, 2003. On April 11, 2003, the Department mailed a letter via Federal Express to Yun Choy asking it to inform the Department as to whether it has submitted or intended to submit a response to the questionnaire or whether it and its affiliates did not have any U.S. sales or shipments during the review period. Yun Choy received the letter on April 14, 2003 (Hong Kong date), but it did not respond to the letter by the due date, April 21, 2003. Because Yun Choy did not provide a response to the Department's questionnaire, the Department is unable to determine Yun Choy's eligibility for a separate rate. Thus, Yun Choy has not rebutted its presumption of government control and is presumed to be part of the PRC entity. Therefore, we determine that Yun Choy and, thereby, the PRC-entity failed to cooperate to the best of its ability, making the use of an adverse inference appropriate.

In accordance with the Department's practice, we have preliminarily assigned to the PRC entity (including Yun Choy) the rate of 164.75 percent as adverse facts available. 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 (Nov. 12, 1999). This rate is the highest dumping margin determined in any segment of this proceeding and was established in the LTFV investigation. See *Final Determination of Sales at Less Than Fair Value: Certain Folding Gift Boxes from the People's Republic of China*, 66 FR 58115, 58118 (Nov. 20, 2001) (*Final Determination*). In selecting a rate for adverse facts available, the Department selects a rate that 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 (Feb. 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 "information 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 word "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. We corroborated the rate of 164.75 percent in the LTFV investigation. See *Preliminary Determination of Sales at Less Than Fair Value: Certain Folding Gift Boxes From the People's Republic of China*, 66 FR 40973, 40976 (Aug. 6, 2001). We have no reason to question the reliability of this data for this review and no party has argued that it is not reliable. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. 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. For example, in *Final Results of Antidumping Duty Administrative Reviews: Fresh Cut Flowers from Mexico*, 61 FR 6812 (Feb. 22, 1996), the