

These changes are discussed in the Final Results Analysis Memorandum dated October 20, 2004.

### Final Results of Review

We determine that the following weighted-average margin exists for the collapsed parties, CEMEX and GCCC, for the period August 1, 2002, through July 31, 2003:

Exporter/manufacturer	Weighted-average percentage margin
CEMEX/GCCC .....	54.97

### Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. We will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review. In accordance with 19 CFR 351.212(b), we have calculated an exporter/importer-specific assessment rate. For the sales in the United States through the respondent's affiliated U.S. parties, we divided the total dumping margin for the reviewed sales by the total entered value of those reviewed sales. We will direct CBP to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of the entries during the review period (see 19 CFR 351.212(a)).

The Department clarified its "automatic assessment" regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the period of review produced by the company included in the final results of review for which the reviewed company did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see Notice of Policy Concerning Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003).

### Cash-Deposit Requirements

As discussed in the Decision Memo at comment 6, we continue to determine that it is appropriate to require a per-unit cash-deposit amount for entries of subject merchandise produced or exported by CEMEX/GCCC. The following deposit requirements shall be effective upon publication of this notice of final results of administrative review

for all shipments of gray portland cement and clinker from Mexico, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash-deposit amount for CEMEX/GCCC will be \$32.85 per metric ton; (2) for previously investigated or reviewed companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or any previous reviews or the original less-than-fair-value (LTFV) investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will continue to be 61.85 percent, which was the "all others" rate in the LTFV investigation. See *Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker From Mexico*, 55 FR 29244 (July 18, 1990). The deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a 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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO are sanctionable violations.

These final results of administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 20, 2004.

**James J. Jochum**,  
Assistant Secretary for Import Administration.

### Appendix Issues in the Decision Memorandum

1. Revocation

2. Regional Assessment
3. Sales-Below-Cost Test
4. Bag vs. Bulk
5. Swap Sales
6. Cash-Deposit Methodology
7. Ordinary Course of Trade
8. Ministerial Errors

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-504]

### Petroleum Wax Candles From the People's Republic of China: Notice of Final Results of Antidumping Duty New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.  
**SUMMARY:** On August 3, 2004, the Department of Commerce (the Department) published the preliminary results of its new shipper review of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC) for Shandong Huihe Trade Co., Ltd. (Shandong Huihe). See *Petroleum Wax Candles From the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty New Shipper Review of Shandong Huihe, Ltd.*, 69 FR 46512 (*Preliminary Results*). The new shipper review covers the period August 1, 2002, through July 31, 2003.

Based on the Department's verification of Shandong Huihe's questionnaire responses and our consideration of the comments received, we have made changes to our analysis. Therefore, the final results differ from the *Preliminary Results*.

**EFFECTIVE DATE:** December 29, 2004.

**FOR FURTHER INFORMATION CONTACT:** Scott Lindsay, or Tom Gilgunn, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482-0780, or (202) 482-4236, respectively.

### SUPPLEMENTARY INFORMATION:

#### Background

On August 3, 2004, the Department published the preliminary results of its new shipper review of the antidumping duty order on petroleum wax candles from the PRC for Shandong Huihe. See *Preliminary Results*. This new shipper review covers the period August 1, 2002, through July 31, 2003.

Since the publication of the *Preliminary Results*, the following

events have occurred. On August 27, 2004, Shandong Huihe submitted its response to a supplemental questionnaire. The Department conducted verification of Shandong Huihe's responses in Jinan, China on October 11–13, 2004. On October 22, 2004, the Department extended the final results of this review to 147 days from July 26, 2004, the date that the preliminary results were issued, or December 20, 2004. See *Petroleum Wax Candles From the People's Republic of China: Extension of Time Limit for Final Results of New Shipper Review of Shandong Huihe Trade Co. Inc.*, 69 FR 60142. We received timely filed case and rebuttal briefs from Shandong Huihe and the National Candle Association (petitioners) on November 29, 2004, and December 2, 2004, respectively. The Department conducted a hearing for this new shipper review on December 9, 2004.

### Scope of the Antidumping Duty Order

The products covered by this order are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers. The products were classified under the Tariff Schedules of the United States (TSUS) item 755.25, Candles and Tapers. The products are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item 3406.00.00. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

### Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the *Memorandum from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to James J. Jochum, Assistant Secretary for Import Administration: Issues and Decision Memorandum for the Final Results of the New Shipper Review of Petroleum Wax Candles From the People's Republic of China*, dated December 20, 2004 (*Decision Memo*), which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memo*, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public

memorandum, which is on file in the Central Records Unit, room B–099 of the main Department Building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov>. The paper copy and electronic version of the *Decision Memo* are identical in content.

### Changes Since the Preliminary Results Use of Adverse Facts Available

Based on our analysis of information obtained during verification which occurred after the *Preliminary Results*, and of briefs and rebuttal briefs submitted by interested parties, we have changed our analysis for Shandong Huihe. For these final results, we are basing the margin for Shandong Huihe on adverse facts available (AFA). For a discussion of this change, refer to the *Application of Facts Available* section, below.

### Application of Adverse Facts Available

As further discussed below, pursuant to sections 776(a)(2)(B) and (C), 776(b), and 782(d) and (e) of the Tariff Act of 1930, as amended (the Act), the Department determines that the application of total adverse facts available is warranted for Shandong Huihe. Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form and manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782 (d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) provides that the Department must inform the interested party of the nature of any deficiency in its response and, to the extent practicable, allow the interested party to remedy or explain such deficiency. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (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; and (5) the information can be used without undue difficulties.

We find that pursuant to sections 776(a)(2)(B) and (C) of the Act, we should apply facts available to exports by Shandong Huihe because Shandong Huihe failed to report in a timely

manner information that was requested by the Department, and because Shandong Huihe took further action that impeded the Department's ability to conduct this proceeding.

Shandong Huihe reported in response to the Department's inquiries about the location of its sales activities that, "Huihe's administrative and sales office is located in Niuwang Village, Gaoxin District, Jinan City, Shandong Province, China." See Shandong Huihe's December 16, 2003, Section A questionnaire response at page 10. However, during verification, the Department learned that Shandong Huihe's sales manager, largest shareholder, and legal representative, the person able to enter Shandong Huihe into binding contracts, works at an office in Qingdao, 400 kilometers from Jinan. See *Verification Report* at page 6. Further, the Department also learned that the sales negotiations for Shandong Huihe's were conducted from the sales manager's office via telephone and telephonic facsimile; all of the relevant sales documents were created on the computer system located at this office; and, the sales manager's files for Shandong Huihe's sales are stored at this office. *Id.* at page 6. At no point in this new shipper review, prior to verification, did Shandong Huihe notify the Department of the existence of any additional sales offices, or seek guidance on the applicable reporting requirements as contemplated by section 782(c)(1) of the Act. Nor did Shandong Huihe report at the start of verification that it had an additional sales office in Qingdao, China. See *Verification Report* at page 1. Shandong Huihe thus failed to provide in a timely manner information requested by the Department within the meaning of section 776(a)(2)(B) of the Act.

The Department finds that the application of facts available is warranted for another reason. Specifically, the Department finds that Shandong Huihe significantly impeded the proceeding by refusing to consent to an extension of the schedule so as to permit verification at the Qingdao office, where keys sales and export functions take place. Access to the facility where these functions take place was critical to the Department's ability to conduct a thorough verification of Shandong Huihe's responses, specifically, the *bona fides* of Shandong Huihe's sales, affiliations, and reported sales process. Shandong Huihe thus took specific action to prevent the Department from determining the reliability of central elements of its responses, thereby impeding this proceeding. That action itself warrants

the application of facts available pursuant to section 776(a)(2)(C) of the Act.

While it is true that the Department does occasionally allow for off-site verifications, it does so only with full knowledge beforehand, and usually with a great deal of additional scrutiny. Shandong Huihe did not report the existence of its Qingdao sales office in its responses, and thus the Department was unaware of it until well into verification. Without being able to actually travel to this office and examine the company records and computer systems located there, the Department was left to rely solely on Shandong Huihe's assurances that it provided accurate and complete information.

Furthermore, Shandong Huihe has not met the requirements of sections 782(d) and (e) of the Act. Section 782(d) is not applicable because information concerning the additional sales office was not submitted by the established deadline. The Department only discovered this information at verification. Similarly, section 782(e) of the Act has also not been satisfied since, on two separate occasions, Shandong Huihe failed to provide consent that would have enabled the verification team to conduct an on-site verification of the company-specific information in Qingdao. Thus, Shandong Huihe has failed to satisfy the requirements of section 782(e), and subsections (1), (2), and (4) of the Act.

Once the Department determines that the use of facts available is warranted, the Department must then determine whether an adverse inference is warranted pursuant to section 776(b) of the Act, which permits the Department to apply an adverse inference if it makes the additional finding that an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information.

In determining whether a respondent has failed to cooperate to the best of its ability, the Department need not make a determination regarding the willfulness of the respondent's conduct. See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003). Instead, the courts have made clear that the Department must articulate its reasons for concluding that a party failed to cooperate to the best of its ability, and explain why the missing information is significant to the review. In determining whether a party failed to cooperate to the best of its ability, the Department considers whether a party could comply with the request for information, and whether a party paid

insufficient attention to its statutory duties. See *Pacific Giant*, 223 F. Supp. 2d 1336, 1342 (2002), see also *Tung Mung Dev. Co. v. US*, 2001 Ct. Intl. Trade LEXIS 94 at 89 (July 3, 2001). The Department also considers whether there is at issue a "pattern of behavior." *Borden, Inc. v. United States*, 22 C.I.T. 1153, 1154 (1998).

As discussed below, we determine that, within the meaning of section 776(b) of the Act, Shandong Huihe failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information, and that the application of adverse facts otherwise available (AFA) is therefore warranted.

On more than one occasion, Shandong Huihe failed to provide information when requested to do so by the Department. Specifically, Shandong Huihe never indicated prior to verification that it had an additional sales office in Qingdao and that its sales operations took place from that office. Moreover, at the start of verification, in response to the Department's request for corrections, Shandong Huihe did not report its additional sales office. See *Verification Report* at page 1.

Shandong Huihe could possibly have remedied these deficiencies even after they were discovered by the Department, but it chose not to avail itself of that opportunity. During verification, the Department learned that Shandong Huihe conducted its sales operations out of its Qingdao, China office. See *Verification Report* at page 6. The Department made it clear to Shandong Huihe at that time that Shandong Huihe's failure to provide information about its Qingdao office in its responses greatly impaired the Department's ability to conduct a complete and accurate verification under section 782(l) of the Act. See *Verification Report* at page 6. Immediately, and again the following day, the Department requested that Shandong Huihe extend the verification schedule to allow verification of its sales and export information at its Qingdao office. The Department thus offered Shandong Huihe an opportunity to remedy its failure to provide requested information in a timely manner, but Shandong Huihe refused the Department's offer. And Shandong Huihe did not attempt to explain its reasons for refusing to work with the Department on this matter.

In all new shipper reviews, the Department has a heightened obligation to make an exhaustive investigation into a respondent company's past and current affiliations, the *bona fides* of the sales by the respondent, and every

aspect of the new shipper company and sales relevant to the review. The Department conducts verification to examine not only the documents supporting information on the record, but also to examine other records and the environment in which those documents and information were generated and maintained. Companies that seek to benefit from new shipper reviews have a responsibility to work with the Department to facilitate such in-depth inquiry. Plainly stated, Shandong Huihe neither did so nor did it attempt to explain why it would not do so. Thus, we find that Shandong Huihe's failed to cooperate to the best of its ability and, therefore, an adverse inference is warranted.

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, secondary information which it applies as facts available. The SAA states that corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. To corroborate information, the Department will explain the reliability and relevance of the information used. We are applying as AFA the highest rate from any segment of this administrative proceeding, which is the highest rate from the 2001-2002 administrative review. See *Amended Notice of Final Results of the Antidumping Duty Administrative Review: Petroleum Wax Candles From the Peoples Republic of China*, 69 FR 20858 (April 19, 2004) (*Amended Final*). Unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only sources for calculated margins are administrative determinations. No information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, 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 *Fresh Cut Flowers From Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense

resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D&L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). The information used in calculating this margin was based on sales and production data of a respondent in a prior review, together with the most appropriate surrogate value information available to the Department, chosen from submissions by the parties in that review, as well as gathered by the Department itself. Furthermore, the calculation of this margin was subject to comment from interested parties. *See Amended Final*. Moreover, as there is no information on the record of this review that demonstrates that this rate is not appropriately used as adverse facts available, we determine that this rate has relevance. As the rate is both reliable and relevant, we determine that it has probative value. Accordingly, we determine that the highest rate from any segment of this administrative proceeding (*i.e.*, the calculated rate of 108.3 percent, which is the current PRC-wide rate and the rate currently applicable to other exporters) is in accord with section

776(c)'s requirement that secondary information be corroborated to the extent practicable (*i.e.*, that it have probative value).

#### Final Results of Review

For these final results we determine that the following dumping margin exists:

Manufacturer and Exporter	Margin (percent)
Shandong Huihe Trade Co. Ltd ...	108.30

#### Cash Deposit Requirements

The Department will notify Customs and Border Protection (CBP) that bonding is no longer permitted to fulfill security requirements for shipments from Shandong Huihe of petroleum wax candles from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this notice of final results of antidumping duty new shipper review in the **Federal Register**. Further, effective upon publication of this notice for all shipments of the subject merchandise exported by Shandong Huihe, and entered, or withdrawn from warehouse, for consumption, the cash deposit rate will be the PRC-wide rate of 108.30 percent *ad valorem*.

#### Assessment of Antidumping Duties

The Department will instruct CBP to assess antidumping duties on all appropriate entries. Since we have reached the final results of this antidumping duty new shipper review with respect to Shandong Huihe, based on total AFA, the PRC-wide rate of 108.30 percent in effect at the time of entry applies to all exports of petroleum wax candles from the PRC by Shandong Huihe entered, or withdrawn from warehouse, for consumption during the period of review (August 1, 2002, through July 31, 2003). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice of final results of antidumping duty new shipper review.

#### Notification to Importers

This notice also serves as a reminder to importers of their responsibility under section 351.402(f) of the Department's regulations 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.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation, which is subject to sanctions.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(2)(B) and 777(I)(1) of the Act.

Dated: December 20, 2004.

**James J. Jochum**,  
Assistant Secretary for Import Administration.

#### Appendix

##### List of Issues

1. Whether the Department should apply adverse facts available (AFA) to Shandong Huihe;
2. The *bona fides* of Shandong Huihe's sale;

3. Shandong Huihe's eligibility as a new shipper.

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-822-801, A-447-801, A-451-801, A-485-601, A-842-801, A-843-801, A-844-801]

#### Solid Urea from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan: Final Results and Revocation of Orders

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

**SUMMARY:** On October 1, 2004, the Department of Commerce ("Department") initiated the sunset reviews of the antidumping duty orders on solid urea from Belarus, Estonia, Lithuania, Romania, Tajikistan, Turkmenistan, and Uzbekistan (69 FR 58890). Because the domestic interested parties did not participate in these sunset reviews, the Department is revoking these antidumping duty orders.

**EFFECTIVE DATE:** November 17, 2004.

**FOR FURTHER INFORMATION CONTACT:** Hilary Sadler, Esq., Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482-4340.

#### SUPPLEMENTARY INFORMATION:

##### Scope

For purposes of these sunset reviews, the product covered is urea, a high-nitrogen content fertilizer which is produced by reacting ammonia with carbon dioxide. The product is currently classified under the Harmonized Tariff Schedules of the United States ("HTSUS") item 3102.10.0000. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

##### Background

On July 14, 1987, the Department issued an antidumping duty order on solid urea from the Union of Soviet Socialist Republics ("USSR") (52 FR 26367). In December 1991, the USSR divided into 15 republics. In response to the dissolution, the Department transferred the original order to all 15 republics and applied a uniform cash deposit rate. *See Solid Urea from the Union of Soviet Socialist Republics; Transfer of the Antidumping Duty Order*