

examined in our final results of review. Thus, we have reconsidered our analysis of whether FHTK's sale was *bona fide*.

In determining whether a transaction is *bona fide* for purposes of an antidumping review, the Department will typically consider the totality of circumstances surrounding a sale rather than a single circumstance, such as price. See *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002), and accompanying Issues and Decision Memorandum (*Clipper Rescission*); *Notice of Final Results of Antidumping Duty New Shipper Review: Certain In-Shell Raw Pistachios from Iran*, 68 FR 353 (January 3, 2003), and accompanying Issues and Decision Memorandum; and *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty New Shipper Review, and Final Rescission of Antidumping Duty New Shipper Review*, 68 FR 1439 (January 10, 2003), and accompanying Issues and Decision Memorandum. We have reviewed the totality of circumstances surrounding FHTK's sale and have found that the transaction was a *bona fide* sale. Specifically, we found that, in light of average monthly U.S. import values for the subject merchandise during the period of review (POR), FHTK's price was not unreasonably high nor did the price provided a basis for determining that the sale was not commercially reasonable. In addition, we analyzed U.S. Customs Service data and found that the quantity involved in FHTK's transaction was not dissimilar to the quantity of other entries of subject merchandise during the POR and that the quantity was therefore commercially reasonable. We found that no information of record caused us to question the *bona fides* of FHTK or its customer as legitimate, historically commercial enterprises. Finally, we reviewed the record and confirmed that the terms of sale between FHTK and its customer were typical of the commercial selling practices of other exporters of the subject merchandise. For a detailed discussion of our review of the circumstances of FHTK's sale, see the "Memorandum to Faryar Shirzad from Susan Kuhbach" regarding the analysis of ministerial error comments (February 21, 2003), on file in the Central Records Unit, Main Commerce Building, Room B-099.

### Amended Final Results of Review

Because correction of the two ministerial errors in the Final Results Analysis Memorandum does not result in a change of the calculation of the final margin for FHTK, the weighted-average margin remains 0.00 percent for this company.

We are issuing and publishing this determination and notice in accordance with sections 751(h) and 777(i)(1) of the Act.

Dated: March 3, 2003.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-806]

#### Silicon Metal from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review

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

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review for Groupstars Chemical Co., Ltd. (Shandong) (Groupstars) under the antidumping duty order on silicon metal from the People's Republic of China (PRC). The period of review (POR) is from June 1, 2001 through May 31, 2002.

Groupstars did not respond to the Department's antidumping questionnaire. Accordingly, we have applied adverse facts available (AFA) in determining Groupstars' margin. If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess antidumping duties. Interested parties are invited to comment on these preliminary results. See the "Preliminary Results of Review" section of this notice.

**EFFECTIVE DATE:** March 10, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Christian Hughes or Matthew Renkey, AD/CVD Enforcement Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482-0190 and (202)482-2312, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

The Department published in the **Federal Register** an antidumping duty order on silicon metal from the PRC on June 10, 1991. See *Antidumping Duty Order: Silicon Metal from the People's Republic of China*, 56 FR 26649 (June 10, 1991). On June 21, 2002, Groupstars, a Chinese exporter of silicon metal, submitted a timely request for the Department to conduct an administrative review for the period June 1, 2001 through May 31, 2002. On July 18, 2002, the Department initiated an administrative review covering the period June 1, 2001 through May 31, 2002. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 48435 (July 24, 2002). On August 21, 2002, the Department sent Groupstars the standard non-market-economy antidumping questionnaire. The deadline for responding to the questionnaire was September 27, 2002. As of October 18, 2002, the Department still had not received a response from Groupstars, or a letter requesting an extension of the deadline. See *Memorandum to File through Maureen Flannery, Program Manager, from Matthew Renkey, Analyst: Status of Questionnaire Response: Silicon Metal from the People's Republic of China (PRC), Administrative Review 6/1/01-5/31/02*, dated October 18, 2002.

On October 30, 2002, the Department received a letter from counsel for Groupstars informing us that they were withdrawing from representation of Groupstars because they were also unsuccessful in eliciting a response from the company regarding the substantive nature of this case.

#### Scope of the Antidumping Duty Order

The product covered by the order consists of silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight, and silicon metal with a higher aluminum content containing between 89 and 96 percent silicon by weight.

The merchandise is currently classifiable under item numbers 2804.69.10 and 2804.69.50 of the *Harmonized Tariff Schedule of the United States* (HTSUS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTSUS) is not subject to this order. This order is not limited to silicon metal used only as an alloy agent or in the chemical industry. Although the HTSUS subheading is provided for

convenience and customs purposes, the written description of the merchandise is dispositive.

#### Application of Facts Available

We find that, in accordance with section 776 (a)(2) of the Tariff Act of 1930, as amended (the Act), the use of the facts otherwise available is warranted for Groupstars. Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. Groupstars failed to provide information explicitly requested by the Department; therefore, we must resort to the facts otherwise available. Because Groupstars did not respond to the Department's questionnaire, sections 782(d) and (e) of the Act, which reference deficient submissions and the use of certain information provided by respondent, are not applicable. In addition, section 782(c)(1), which also mentions notification by the interested party, does not apply because Groupstars did not indicate that it was unable to submit the information required by the Department.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of the respondent, if it determines that a party has failed to cooperate to the best of its ability. In applying the facts otherwise available, the Department has determined that an adverse inference is warranted pursuant to section 776(b) of the Act because Groupstars failed to cooperate to the best of its ability.

The Department finds that, by not providing any response to the questionnaire issued by the Department, Groupstars has failed to cooperate to the best of its ability. Groupstars did not submit to the Department any information or reason for its failure to respond. This information was in the sole possession of the respondent, and could not be obtained otherwise. Thus, the Department is precluded from calculating a margin for Groupstars or determining its eligibility for a separate rate. Therefore, in selecting from the facts available, the Department determines that an adverse inference is warranted. Because Groupstars is not eligible for a separate rate, it is considered part of the PRC-wide entity. In accordance with sections 776(a)(2)(A) and (B), as well as section 776(b) of the Act, we are applying total AFA to the PRC-wide entity. Section 776(b)(4) of the Act permits the Department to use

as AFA "any other information placed on the record." Thus, in selecting an AFA rate, the Department's practice has been to assign respondents who fail to cooperate with Department's investigation the highest margin determined for any party in the less-than fair-value investigation or in any administrative review. See *Sigma Corp. v. United States*, 117 F.3d 1401,1411 (Fed. Cir. 1997); See also *Sparklers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 65 FR 43293, (July 13, 2000). As AFA, the Department is assigning the rate of 139.49 percent, which is the only rate, as well as the highest rate, from any segment of this proceeding. This is the rate from the petition, as adjusted by the Department in the investigation of sales at less than fair value (see *Final Determination of Sales at Less Than Fair Value: Silicon Metal From the People's Republic of China*, 56 FR 18570 (April 23, 1991)), and the rate currently in effect for all exporters. As discussed below, this rate has been corroborated.

#### Corroboration of Secondary Information Used As Adverse Facts Available

Section 776(c) of the Act provides that when the Department relies on 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. The *Statement of Administrative Action*, H.R. Doc. 103-316 (SAA), clarifies that the petition is "secondary information," and states that "corroborate" means to determine that the information used has probative value. See SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. We have previously examined the reliability of the 139.49 rate and found it to be reliable. See *Memorandum to Ed Yang, Office Director, Office 9, AD/CVD Enforcement, through Maureen Flannery, Program Manager, from Gideon Katz, Analyst: Corroboration of Data Contained in the Petition in the Antidumping Investigation of Silicon Metal from the People's Republic of China*, dated March 2, 1998, and placed on the record of this review. We have no information in this administrative review which would indicate a change in the reliability of this rate.

With respect to the relevance aspect of corroboration, the Department has considered 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 AFA, 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 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). None of these unusual circumstances are present here. Moreover, the rate selected is the rate currently applicable to all exporters, and there is no information on the record of this review that demonstrates that this rate is not relevant for use as AFA during this administrative review.

Accordingly, we determine that the highest rate from any previous segment of this administrative proceeding (*i.e.*, the rate of 139.49 percent for the determination of sales at less than fair value) is in accord with section 776(c)'s requirement that secondary information be corroborated (*i.e.*, that it have probative value).

#### Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/ Exporter	Time Period	Margin (percent)
PRC-Wide Rate .....	6/1/01- 5/31/02	139.49

#### Duty Assessment and Cash Deposit Requirements

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service within 15 days of publication of the final results of review. For assessment purposes, for all PRC exporters, we will apply the rate listed above. Furthermore, the following deposit rates will be effective with respect to all shipments of silicon metal from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this review, as provided for by section

751(a)(2)(C) of the Act: (1) for all PRC exporters, the rate will be the PRC-wide rate, 139.49 percent. (2) for all non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### Public Comment

Pursuant to section 351.224(b) of the Department's regulations, the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Pursuant to section 351.309 of the Department's regulations, interested parties may submit written comments in response to these preliminary results. Case briefs should be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, should be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with section 351.303(f) of the Department's regulations.

Also, pursuant to section 351.310 of the Department's regulations, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal briefs, not later than 120 days after publication of these preliminary results, unless that deadline is extended.

#### Notification of Interested Parties

This notice also serves as a preliminary 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 administrative review and this notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and sections 351.213 and 351.221 of the Department's regulations.

Dated: March 3, 2003.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-856]

#### Synthetic Indigo from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

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

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to a timely request from a manufacturer/exporter, the Department of Commerce is conducting an administrative review of the antidumping duty order on synthetic indigo from the People's Republic of China with respect to Liyang Skyblue Chemical Co., Ltd. The period of review is June 1, 2001, through May 31, 2002. As a result of this review, the Department of Commerce has preliminarily determined that sales have been made below normal value by the above-referenced company for the covered period. Interested parties are invited to comment on these preliminary results. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

**EFFECTIVE DATE:** March 10, 2003.

#### FOR FURTHER INFORMATION CONTACT:

David J. Goldberger or Margarita Panayi, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4136 or (202) 482-0049, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On June 19, 2000, the Department of Commerce (the Department) published in the **Federal Register** (65 FR 37961) an antidumping duty order on synthetic indigo from the People's Republic of China (PRC), which was amended on June 23, 2000 (65 FR 39128). On June 26, 2002, Liyang Skyblue Chemical Co., Ltd. (Liyang), a PRC manufacturer/exporter of the subject merchandise, requested, in accordance with 19 CFR 351.213, that we conduct an administrative review of Liyang's exports. On July 24, 2002, the Department published a notice of initiation of an administrative review of the antidumping duty order on synthetic indigo from the PRC with respect to Liyang (67 FR 48435). In July 2002, we issued the antidumping questionnaire to Liyang, and we received its responses in August and September 2002. We issued a supplemental questionnaire to Liyang in October 2002 and received its response in November 2002.

On July 25, 2002, the Department informed the parties of an opportunity to submit publicly available information (PAI) for consideration as surrogate values in these preliminary results. The petitioner, Buffalo Color Corporation, provided such data in November 2002.

#### Scope of Order

The products subject to this order are the deep blue synthetic vat dye known as synthetic indigo and those of its derivatives designated commercially as "Vat Blue 1." Included are Vat Blue 1 (synthetic indigo), Color Index No. 73000, and its derivatives, pre-reduced indigo or indigo white (Color Index No. 73001) and solubilized indigo (Color Index No. 73002). The subject merchandise may be sold in any form (e.g., powder, granular, paste, liquid, or solution) and in any strength. Synthetic indigo and its derivatives subject to this order are currently classifiable under subheadings 3204.15.10.00, 3204.15.40.00 or 3204.15.80.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

#### Period of Review

The period of review (POR) is June 1, 2001 through May 31, 2002.

#### Separate Rates Determination

In previous antidumping duty proceedings, the Department has treated the PRC as a non-market economy (NME) country. We have no evidence