

Accordingly, the Department shall determine, and the BCBP shall assess, antidumping duties on all appropriate entries. We will instruct the BCBP to assess entry-specific antidumping duty amounts by applying an *ad valorem* rate of 39.53 percent to the value of each entry during the period September 5, 1996 through August 31, 1997. The Department will issue appraisal instructions to the BCBP after publication of the amended final determination.

This notice is published in accordance with sections 735(d) and 777(i) of the Act.

Dated: September 16, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-882]

#### **Notice of Final Determination of Sales at Less Than Fair Value: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China**

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

**EFFECTIVE DATE:** September 26, 2003.

**FOR FURTHER INFORMATION CONTACT:** David J. Goldberger, Jim Mathews or Tinna E. Beldin, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-4136, (202) 482-2778 or (202) 482-1655, respectively.

#### **FINAL DETERMINATION:**

We determine that refined brown aluminum oxide (RBAO) from the People's Republic of China (PRC) is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). In addition, we determine that critical circumstances exist with respect to all PRC producers/exporters of the subject merchandise. The estimated margins of sales at LTFV are shown in the "Continuation of Suspension of Liquidation" section of this notice.

#### **SUPPLEMENTARY INFORMATION:**

#### **Background**

The preliminary determination in this investigation was published on May 6, 2003. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China*, 68 FR 23966 (Preliminary Determination). Since the preliminary determination, the following events have occurred.

In July 2003, we conducted verification of the questionnaire responses of the sole participating respondent in this case, Zibo Jinyu Abrasive Co., Ltd. (Jinyu).

We gave interested parties an opportunity to comment on the preliminary determination. In August 2003, we received case and rebuttal briefs from the following parties: the petitioners, C-E Minerals, Treibacher Schleifmittel Corporation, and Washington Mills Company, Inc.; the respondent Jinyu; and interested third parties Allied Mineral Products, Inc., Cometals, a Division of Commercial Metals Co., Saint Gobain Corporation, Dauber Company, Inc., Golden Dynamic Inc., China Abrasives Import and Export Corporation, and White Dove Group Import and Export Inc. (hereinafter interested third parties). The Department held a public hearing on August 20, 2003, at the request of the petitioners and the interested third parties.

Due to the closure of the federal government on September 18-19, the deadline for this final determination is September 22, 2003.

#### **Scope of the Investigation**

The merchandise covered by this investigation is ground, pulverized or refined brown artificial corundum, also known as refined brown aluminum oxide or brown fused alumina, in grit size of 3/8 inch or less. Excluded from the scope of the investigation is crude artificial corundum in which particles with a diameter greater than 3/8 inch constitute at least 50 percent of the total weight of the entire batch. The scope includes brown artificial corundum in which particles with a diameter greater than 3/8 inch constitute less than 50 percent of the total weight of the batch. The merchandise under investigation is currently classifiable under subheading 2818.10.20.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the

merchandise under investigation is dispositive.

#### **Period of Investigation**

Pursuant to 19 CFR 351.204(b)(1), the period of investigation is April 1, 2002, through September 30, 2002, which corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, October 2002).

#### **Nonmarket Economy Status for the PRC**

The Department has treated the PRC as a nonmarket economy (NME) country in all past antidumping investigations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China*, 66 FR 49345, 49346 (September 27, 2001). A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. No party in this investigation has requested a revocation of the PRC's NME status. Therefore, we have continued to treat the PRC as an NME in this investigation. For further details, see *Preliminary Determination* at 23968.

#### **Separate Rate**

In our preliminary determination, we found that Jinyu had met the criteria for receiving a separate antidumping rate. We have not received any information since the preliminary determination which would warrant reconsideration of our separate-rate determination with respect to this company. Therefore, we continue to find that Jinyu should be assigned an individual dumping margin.

#### **Surrogate Country**

For purposes of the final determination, we continue to find that India is the appropriate primary surrogate country for the PRC. For further discussion and analysis regarding the surrogate country selection for the PRC, see *Preliminary Determination* at 23970.

#### **PRC-Wide Rate and Use of Facts Otherwise Available**

As discussed in the Department's *Preliminary Determination*, Jinyu was the only exporter to respond to the Department's questionnaire and to cooperate in this investigation. Therefore, we have continued to calculate a company-specific rate for Jinyu only. However, in the preliminary determination, we stated that our review of U.S. import statistics from the PRC revealed that Jinyu did not account for all imports into the United States from the PRC. For this reason, we determined that some PRC exporters of subject merchandise failed to cooperate in this

investigation and assigned to them a rate based on adverse facts available pursuant to section 776(b) of the Act. *See Preliminary Determination* at 23969. These facts have not changed since the preliminary determination. Therefore, in accordance with our standard practice, as adverse facts available, we are continuing to assign as the PRC-wide rate the higher of: (1) the highest margin listed in the notice of initiation; or (2) the margin calculated for Jinyu. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From The People's Republic of China*, 65 FR 34660 (May 31, 2000), and accompanying Issues and Decision Memorandum at Comment 1. For purposes of the final determination of this investigation, we are using the margin calculated for Jinyu as adverse facts available because it is higher than the margin of 131.38 percent stated in the notice of initiation.

#### Analysis of Comments Received

All issues raised in the case briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Decision Memorandum, which is adopted by this notice. A complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum is on file in the Central Records Unit, room B-099, of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov>. The paper copy and electronic version of the Decision Memorandum are identical in content.

#### Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made certain changes to the margin calculations. These changes include:

- We used the value reported in the Defense Logistics Agency FY2000 Annual Report as the surrogate value for crude brown aluminum oxide.

- Based on our verification findings, we have included an additional sale of the subject merchandise in our final determination analysis, which Jinyu had inadvertently omitted in its original reporting.

- We revised Jinyu's reported consumption of electricity by allocating electricity consumption only to the brown and white aluminum oxide production, based on our verification findings.

- We recalculated Jinyu's labor factor by allocating labor based on actual production, rather than theoretical production, based on our verification findings.

- We did not add a separate packing labor factor to our calculation of normal value to avoid double-counting because we found at verification that the reported packing labor is part of the production line labor, which is already included in the direct labor factor.

For a discussion of these changes, see the "Margin Calculations" section of the Decision Memorandum and the Decision Memorandum comments.

#### Critical Circumstances

In our preliminary determination, we found, pursuant to section 733(e)(1) of the Act, that there was a reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise from the respondent and all other producers/exporters. As discussed in detail in the preliminary determination, we first found that there is a history of dumping and material injury by reason of dumped imports. We then analyzed the import volume and value data placed on the record, in accordance with 19 CFR 351.206, and preliminarily determined that imports of the subject merchandise have been massive over the short period of time subsequent to the filing of the petition. *See Preliminary Determination* at 23971. In accordance with section 735(a)(3) of the Act, and based upon our verification of Jinyu's shipment data placed on the record, we determine that critical circumstances exist with respect to RBAO from Jinyu. We applied adverse facts available for all other producers / exporters as an adverse

inference that critical circumstances apply for companies that refused to cooperate with the Department's requests for information. *See* September 18, 2003, Memorandum to File entitled *Jinyu Shipment Data Analysis for the Final Determination* and Decision Memorandum at Comments 1 and 2. Therefore, we are directing the U.S. Bureau of Customs and Border Protection (BCBP) to continue to suspend liquidation of any unliquidated entries of subject merchandise on or after the date 90 days prior to the date of publication of the preliminary determination in the **Federal Register**, as discussed below in the "Continuation of Suspension of Liquidation" section.

#### Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by Jinyu.

#### Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the BCBP to continue to suspend liquidation of all entries of RBAO from the PRC that are entered, or withdrawn from warehouse, for consumption on or after February 5, 2003, the date 90 days prior to the date of publication of the preliminary determination in the **Federal Register**, in accordance with our critical circumstances finding.

Effective on or after the date of publication of the Department's final determination, BCBP shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the export price or constructed export price, as appropriate, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-Average Margin Percentage	Critical Circumstances
Zibo Jinyu Abrasive Co., Ltd. ....	135.18	Yes
PRC-wide Rate .....	135.18	Yes

The PRC-wide rate applies to all entries of the subject merchandise except for entries from Jinyu.

#### Disclosure

We will disclose the calculations performed within five days of the date of the announcement of the final

determination to parties in this proceeding in accordance with 19 CFR 351.224(b).

**ITC Notification**

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the BCBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

**Notification Regarding APO**

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 return/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 is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: September 22, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

**Appendix Issues in the Decision Memorandum****Comments**

1. Use of Adverse Facts Available for Critical Circumstances
2. Seasonal Trend for Jinyu's Shipments
3. Surrogate Value for Crude Brown Aluminum Oxide
4. Application of Verification Findings [FR Doc. 03-24396 Filed 9-25-03; 8:45 am]

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**DEPARTMENT OF COMMERCE****International Trade Administration****Notice of Solicitation of Requests for Modification of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics**

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

**ACTION:** The Department of Commerce (Department) is soliciting requests for the modification of the limitations on the quantity of imports of certain worsted wool fabric under the 2004 tariff rate quotas established by the Trade and Development Act of 2000 (TDA 2000).

**SUMMARY:** The Department hereby solicits requests for the modification of the limitations on the quantity of imports of certain worsted wool fabric under the 2004 tariff rate quotas established by the TDA 2000, and amended by the Trade Act of 2002. To be considered, a request must be received or postmarked by 5:00 p.m. on October 14, 2003 and must comply with the requirement of 15 C.F.R. 340. If a request is received, the Department will solicit comments on the request in the Federal Register and provide a twenty-day comment period. Thirty days after the end of the comment period, the Department will determine whether the limitations should be modified.

**ADDRESS:** Requests must be submitted to: Industry Assessment Division, Office of Textiles and Apparel, Room 3100, United States Department of Commerce, Washington, D.C. 20230. Six copies of any such requests must be provided.

**FOR FURTHER INFORMATION CONTACT:** Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

**SUPPLEMENTARY INFORMATION:****BACKGROUND:**

Title V of the TDA 2000 created two tariff rate quotas (TRQs), providing for temporary reductions for three years in the import duties on limited quantities of two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers: (1) for worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11); and (2) for worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS heading 9902.51.12).

On August 6, 2002, President Bush signed into law the Trade Act of 2002, which includes several amendments to Title V of the TDA 2000. These include the extension of the program through 2005; the reduction of the in-quota duty rate on HTS 9902.51.12 (average fiber diameter 18.5 microns or less) from 6 percent to zero, effective for goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2002; and an increase in the 2003 through 2005 TRQ levels to 3,500,000

square meters for HTS 9902.51.12 and to 4,500,000 square meters for HTS 9902.51.11. Both of these limitations may be modified by the President, not to exceed 1,000,000 square meters per year for each tariff rate quota.

The TDA 2000 requires the annual consideration of requests by U.S. manufacturers of men's or boys' worsted wool suits, suit-type jackets and trousers for modification of the limitation on the quantity of fabric that may be imported under the tariff rate quotas, and grants the President the authority to proclaim modifications to the limitations. In determining whether to modify the limitations, specified U.S. market conditions with respect to worsted wool fabric and worsted wool apparel must be considered. On January 22, 2001, the Department published regulations establishing procedures for considering requests for modification of the limitations. 15 CFR 340.

To be considered, requests must be submitted by a manufacturer of men's or boys' worsted wool suits, suit-type jackets, and trousers in the United States and must comply with the requirements of 15 CFR 340.

A request must include: (1) The name, address, telephone number, fax number, and Internal Revenue Service number of the requester; (2) The relevant worsted wool apparel product(s) manufactured by the person(s), that is, worsted wool suits, worsted wool suit-type jackets, or worsted wool trousers; (3) The modification requested, including the amount of the modification and the limitation that is the subject of the request (HTS heading 9902.51.11 and/or 9902.51.12); and (4) A statement of the basis for the request, including all relevant facts and circumstances.

A request should include the following information for each limitation that is the subject of the request, to the extent available: (1) A list of suppliers from which the requester purchased domestically produced worsted wool fabric during the period July 1, 2002 to June 30, 2003, the dates of such purchases, the quantity purchased, the quantity of imported worsted wool fabric purchased, the countries of origin of the imported worsted wool fabric purchased, the average price paid per square meter of the domestically produced worsted wool fabric purchased, and the average price paid per square meter of the imported worsted wool fabric purchased; (2) A list of domestic worsted wool fabric producers that declined, on request, to sell worsted wool fabric to the requester during the period July 1, 2002 to June 30, 2003, indicating the product requested, the