

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