

independent decisions regarding disposition of profits or financing of losses. *See Id.*

SVW has asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales and uses profits according to its business needs. Additionally, SVW's questionnaire responses indicate that it does not coordinate with other exporters in setting prices or in determining which companies will sell to which markets. This information supports a preliminary finding that there is an absence of *de facto* governmental control of the export functions of these companies. Consequently, we preliminarily determine that SVW has met the criteria for the application of separate rates.

In addition to the above analysis, the Department further analyzed information provided by the petitioners in a submission dated December 11, 2002. In this submission, the petitioners provided documentation which indicated that SVW was part of a debt-equity conversion agreement in April 2000, mandated by the PRC government between Sinopec Group Company (a ministry-level enterprise) and certain PRC banks. However, because there is no evidence on the record that shows that Sinopec Group Company exercises any influence or control in the day-to-day operations of SVW, we preliminarily determine that SVW has met the criteria for the application of separate rates. For further discussion, see the memorandum entitled "Concurrence Memorandum for the Preliminary Determination in the Investigation of Polyvinyl Alcohol from the People's Republic of China," dated March 14, 2003 (the Concurrence Memorandum), on file in room B-099 of the Department's Central Records Unit (CRU).

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

As in all NME cases, the Department implements a policy whereby there is a rebuttable presumption that all exporters or producers located in the NME comprise a single exporter under common government control, the "NME entity." The Department assigns a single NME rate to the NME entity unless an exporter can demonstrate eligibility for a separate rate.

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 deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides such 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.

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.

Information on the record of this investigation indicates that there are numerous producers/exporters of the subject merchandise in the PRC. As noted in the "Case History" section above, all exporters were given the opportunity to respond to the Department's questionnaire. Based upon our knowledge of PRC exporters (including correspondence received in this proceeding) and the fact that U.S. import statistics show that the responding company did not account for all imports into the United States from the PRC, we have preliminarily determined that PRC exporters of PVA failed to respond to our questionnaire. As a result, use of facts available (FA), pursuant to section 776(a)(2)(A) of the Act, is appropriate.

In selecting among the facts otherwise available, section 776(b) of the Act authorizes the Department to use adverse facts available (AFA) if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026, 19028 (April 30, 1996); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). MOFTEC was notified in the Department's questionnaire that failure to submit the requested information by the date specified might result in use of FA. The producers/exporters that decided not to respond to the Department's questionnaire failed to act to the best of their ability in this investigation. Absent a response, we must presume government control of

these companies. The Department has determined, therefore, that in selecting from among the facts otherwise available an adverse inference pursuant to section 776(b) of the Act is warranted.

In accordance with our standard practice, as AFA, we are assigning as the PRC-wide rate the higher of: (1) The highest margin stated in the notice of initiation (*i.e.*, the recalculated petition margin); or (2) the highest margin calculated for any respondent in this investigation. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China*, 64 FR 34660 (May 31, 2000) and accompanying decision memorandum at *Comment 1*. In this case, the preliminary AFA margin is 97.86 percent, which is the highest margin stated in the notice of initiation. *See Initiation Notice*, 67 FR 61594.

#### Corroboration of Information

Section 776(b) of the Act authorizes the Department to use AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as "[i]nformation 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 Statement of Administrative Action (SAA)* accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316 at 870 (1994) and 19 CFR 351.308(d). The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See the SAA at 870*. The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics, customs data, and information obtained from interested parties during the particular investigation. *See the SAA at 870*.

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculations in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available