

letter in which the Department took the additional step of soliciting, from all parties, initial and rebuttal comments on the information and findings contained within the *Affiliation Memo*. Subsequently, the Department took the extraordinary step of accepting new information from Qingdao Rirong, rebutting or clarifying the information and findings contained within the *Affiliation Memo*, as well as new information from the Domestic Interested Parties, rebutting information contained within Qingdao Rirong's comments on *Affiliation Memo*.

After further analysis and consideration of all evidence on the record, the Department has concluded that there is substantial evidence demonstrating Qingdao Rirong and its importer are affiliated in accordance with section 771(33) of the Act. Furthermore, the Department has concluded that the evidence of affiliation on the record outweighs the evidence and arguments provided by Qingdao Rirong in support of its argument that it is not affiliated with its importer. See *Qingdao Rirong Memo*. The Department therefore continues to find that Qingdao Rirong and its importer were both owned and controlled by a common party, and as such, are "affiliated persons" within the meaning of section 771(33) of the Act, through the POR of this administrative review, and at least until December 16, 2002.

Section 776(a)(2)(A) of the Act provides for the use of facts available when an interested party withholds information that has been requested by the Department. As discussed in detail in the *Qingdao Rirong Memo*, Qingdao Rirong withheld essential information concerning the relationship between itself and its importer. Because of this, Qingdao Rirong made it impossible for the Department to perform a timely analysis of the nature of the relationship between Qingdao Rirong and its importer.

Section 782(d) of the Act provides that if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency, and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the administrative review. Accordingly, and despite the time constraints prescribed by section 351.213(h)(1) of the Department's regulations, when the Department discovered, through its own

independent research, that Qingdao Rirong's responses were deficient with respect to information concerning the relationship between Qingdao Rirong and its importer, the Department issued another supplemental questionnaire on October 24, 2002, affording Qingdao Rirong an opportunity to explain the deficiency. The Department also gave Qingdao Rirong an opportunity to respond to its December 31, 2002 *Affiliation Memo*.

In accordance with section 776(b) of the Act, we find that an adverse inference is warranted because Qingdao Rirong failed to cooperate to the best of its ability in complying with the Department's requests for information. Again, Qingdao Rirong withheld essential information concerning the relationship between itself and its importer, making it impossible for the Department to perform a timely analysis of the nature of the relationship between Qingdao Rirong and its importer, and similarly impossible for the Department to timely determine whether its dumping analysis should have been based on a comparison of NV to EP or CEP.

Information concerning the relationship between an exporter and its importer is fundamental to the Department's antidumping analysis. In order to determine whether dumping has occurred, an EP or CEP (as defined in section 772 of the Act and section 351.401 of the Department's regulations) is compared to an NV (as defined in section 773 of the Act and section 351.401 of the Department's regulations). EP means "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States," while CEP means "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter . . ." See sections 772(a) and (b) of the Act. Thus, to determine whether its dumping analysis should be based on a comparison of NV to EP, or NV to CEP, the Department must first determine whether Qingdao Rirong and Y&Z are affiliated under section 771(33) of the Act.

Since the Department has not been provided with complete U.S. sales information concerning Qingdao Rirong's sales to the first unaffiliated

purchaser, the Department is precluded from calculating an accurate dumping margin. Since Qingdao Rirong only reported data concerning its transactions with its importer, the Department does not possess data necessary for calculating an accurate dumping margin. This data includes the sales prices to Qingdao Rirong's first unaffiliated purchaser(s), and may include numerous other U.S. expenses (e.g., U.S. inland shipping, insurance, and re-packing costs). The Department has no way of knowing what the prices to the first unaffiliated customers were, what expenses were incurred, nor even who Qingdao Rirong's first unaffiliated customers were.

Given that this is the third time Qingdao Rirong has been reviewed, the company should have been able to comply with the Department's requests for information in an accurate and timely manner. Furthermore, given that the owner of Qingdao Rirong was also the incorporator, president, chief executive officer, and an owner of the importer, information concerning the sales of each company, the history and ownership of these two companies, as well as the history of the owner's involvement with each company, would have been readily available to both the owner and his company, Qingdao Rirong. Finally, Qingdao Rirong never indicated that it was having any difficulty obtaining any requested information, or in understanding the Department's requests.

Qingdao Rirong gave insufficient attention to its statutory duties, beyond mere inadvertence, by virtue of its failure to provide requested information that is essential to the Department's dumping analysis. As noted above, this is the third review of Qingdao Rirong; as such, the company should have been fully aware of its statutory duties in this regard. Furthermore, the Department requested information relevant to the relationship between Qingdao Rirong and Y&Z in several different questionnaires, issued both prior and subsequent to the *Preliminary Results*. Thus, Qingdao Rirong had multiple opportunities to fulfill its statutory duty to provide such information. Finally, we note that, if a respondent has any question as to the scope of what may be relevant to the Department's analysis of the relationship between a seller and purchaser, that respondent need only contact the Department for clarification, or review the definition of "affiliated persons," contained in Appendix I to the Department's initial questionnaire issued at the beginning of each review. In light of the aforementioned facts, Qingdao Rirong's failures to provide