

Hongda creates an undue difficulty for the Department. The large amount of missing information calls into question the potential manipulation of the Department's calculations through the selective reporting of factors of production. Absent confidence in the information provided, the Department cannot properly calculate a dumping margin using the limited, reported factors-of-production information. Thus, pursuant to sections 782(e)(3), (4), and (5) of the Act, the Department has not used the information Hongda has reported.

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. In addition, the *Statement of Administrative Action* accompanying the *Uruguay Round Agreements Act*, H. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA), establishes that the Department may employ an adverse inference “* * * to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” See SAA at 870. It also instructs the Department, in employing adverse inferences, to consider “* * * the extent to which a party may benefit from its own lack of cooperation.” *Id.*

As explained in detail below, the Department has applied total adverse facts available to Hongda. This is consistent with the Department's application of adverse facts available in past cases. See *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (April 21, 2003), and accompanying *Issues and Decision Memorandum*, Comment 7 (*Crawfish*). In *Crawfish*, we applied adverse facts available to the respondent, China Kingdom, when it failed to provide total production and factors of production for the POR in a timely manner and when we determined that it did not act to the best of its ability to comply with our request for information and it demonstrated a pattern of non-compliance in its reporting of factors-of-production information. We found that “responsibility for submission of accurate factors of production lies with the respondent seeking a rate based on such information, and that failures, even if made by a supplier, may provide grounds for the application of adverse facts available.” *Crawfish* at Comment 7.

In *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612 (July 25, 2002), and accompanying *Issues and Decision Memorandum*, Comment 10, citing also section 776(b) of the Act as well as 19 CFR 351.308(a), the Department explained that the language of the statute and regulation allow for the application of adverse inference when an “interested party” does not act to the best of its ability in responding to questionnaires. The Department explained that a supplier that refused to respond to requests for necessary information is an “interested party” to the review, and therefore application of adverse facts available was warranted. *Id.* Citing yet another case in support of the application of adverse facts available, the Department commented, “* * * [a]s there is no acceptable explanation on the record for the supplier's failure to provide factor of production information, an adverse inference in applying facts available is warranted due to the supplier's failure to act to the best of its ability.” *Id.* (citing *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China*, 64 FR 71104, 71108 (December 20, 1999)) (emphasis in original).

In this case, the application of adverse facts available is warranted for the following reasons. First, as this is a new shipper review, the requesting party has an obligation to provide the Department with all of the necessary information to calculate an accurate margin. Because this is an NME case, that means that Hongda has an affirmative responsibility to provide the Department with the necessary factors-of-production information so that the Department may calculate a margin. It did not provide this necessary information and, therefore, it did not act to the best of its ability. Second, neither Hongda nor Kima provided any explanation of the reasons that such information could not be obtained and provided to the Department except for a single sentence stating that Kima was “unable” to provide the necessary information. Such an explanation is inadequate. Therefore, pursuant to sections 776(a)(1), 776(a)(2)(A), and 776(b) of the Act, we have preliminarily determined to use adverse facts otherwise available in reaching the preliminary results of review.

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review,

or any other information placed on the record. See section 776(b) of the Act. Section 776(c) of the Act provides, however, that, when the Department relies on secondary information rather than on information obtained in the course of a review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. See SAA at 870. The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* As discussed in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (TRBs), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. If there are no independent sources from which the Department can derive calculated dumping margins, however, unlike other types of information such as input costs or selling expenses, the only source for margins is previous administrative determinations. This is the case in this review.

Throughout the history of this proceeding, the highest rate ever calculated is 376.67 percent; it is currently the PRC-wide rate and was calculated based on information contained in the petition. See *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Garlic from the People's Republic of China*, 59 FR 49058, 49059 (September 26, 1994). The information contained in the petition was corroborated for the preliminary results of the first administrative review. See *Fresh Garlic from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review*, 61 FR 68229, 68230 (December 27, 1996). Further, it was corroborated in subsequent reviews to the extent that the Department noted the history of corroboration and found that no information was received by the Department that warranted revisiting