

steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products).

This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium. Drill pipe was excluded from this order beginning August 11, 2001. *See Continuation of Countervailing and Antidumping Duty Orders on Oil Country Tubular Goods From Argentina, Italy, Japan, Korea and Mexico, and Partial Revocation of Those Orders From Argentina and Mexico With Respect to Drill Pipe*, 66 FR 38630 (July 25, 2001).

The OCTG subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers:

7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this order is dispositive.

#### Use of Facts Available

Section 776(a)(2) of the Tariff 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 deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the

administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

On September 25, 2002 the Department issued its standard antidumping questionnaire to Acindar. Acindar made no written response to the questionnaire. Therefore, we determine that the use of facts available is warranted pursuant to section 776(a)(2)(A) and (C) of the Tariff Act because Acindar withheld information requested by the Department by not responding to the Department's questionnaire, thereby significantly impeding this proceeding. *See Memorandum from Fred Baker to the File dated April 1, 2003.* Thus, the curative provisions of section 782 of the Tariff Act are not applicable since Acindar did not provide any response.

Section 776(b) of the Tariff 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 information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994).* Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997), (Final Rule).

The Department finds that in not responding to the September 25, 2002, questionnaire, Acindar failed to cooperate by not acting to the best of its ability to comply with requests for information. The Department requires that respondents provide answers to the questionnaire because the Department uses the information to determine accurate dumping margins for the company. Since the information is within the sole control of Acindar, when the company fails to provide such information we cannot otherwise obtain the information necessary to calculate a dumping margin. Further, at no time did Acindar indicate during the POR that it was having difficulty in complying with the Department's request for information. Consequently, Acindar should not be allowed to benefit by its non-cooperation. Therefore, pursuant to

section 776(b) of the Tariff Act, we may, in making our determination, use an adverse inference in selecting from the facts otherwise available. This adverse inference may include reliance on data derived from the petition, a previous determination in an investigation or review, or any other information placed on the record. For this review we have determined to assign 60.73 percent as the facts available rate to Acindar. This rate represents the highest rate for any respondent in any prior segment of this proceeding. *See Oil Country Tubular Goods: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 13262 (March 19, 2003).

Information from prior segments of the proceeding constitutes secondary information, and section 776(c) of the Tariff Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316 at 870 (1994) and 19 CFR 351.308(d).*

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996)) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's