

making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *Id.*

Jinyu 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, Jinyu'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 this company. Consequently, we preliminarily determine that Jinyu has met the criteria for the application of separate rates.

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 these PRC exporters, including correspondence received in this proceeding, and the fact that U.S. import statistics show that the responding company, Jinyu, did not account for all imports into the United States from the PRC during the POI, we have preliminarily determined that PRC exporters of RBAO 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; 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*, 65 FR 34660 (May 31, 2000) and accompanying decision memorandum at *Comment 1*. In this case, the preliminary AFA margin is 218.93 percent, which is the margin calculated for the respondent in this investigation (Jinyu).

Section 776(c) of the Act provides that where the Department selects from

among the facts otherwise available and relies on "secondary information," such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103-316 (1994) (SAA), states that "corroborate" means to determine that the information used has probative value. *See* SAA at 870; 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, in an investigation, if the Department chooses as facts available a calculated dumping margin of another respondent, it is not necessary to question the reliability of that calculated margin. With respect to relevance, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin may not be appropriate, the Department will attempt to find a more appropriate basis for facts available. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). In this investigation, there is no indication that the highest calculated margin is unreliable or irrelevant and, hence, inappropriate to use as adverse facts available. Thus, the Department has preliminarily determined the PRC-wide rate to be 218.93 percent.

Fair Value Comparisons

To determine whether sales of RBAO from the PRC were made at LTFV, we compared the EP to the NV, as described in the "Export Price," and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act and 19 CFR 351.414(c), we compared POI weighted-average EPs by product to the appropriate product-specific NV.

Export Price

In accordance with section 772(a) of the Act, we based our calculations on EP for Jinyu because the subject merchandise was sold by the producer/exporter outside of the United States directly to the first unaffiliated