

customer approval, solicitation of orders, computer/legal/accounting/business systems, sales promotion, sales forecasting, strategic and economic planning, personnel training/exchange, and procurement and sourcing services whereas the home-market level of trade includes these activities.

As a result of our level-of-trade analysis, we could not match U.S. sales at either of the two U.S. levels of trade to sales at the same level of trade in the home market because there are no home-market sales at the same level of trade. In addition, because we found only one home-market level of trade, there is no basis for the calculation of a level-of-trade adjustment based on the collapsed entity's home-market sales of merchandise under review. Therefore, we have determined that the data available do not provide an appropriate basis on which to calculate a level-of-trade adjustment. We determined, however, that the level of trade of the home-market sales is more advanced than the levels of the U.S. sales. Thus, we made a CEP-offset adjustment to normal value in accordance with section 773(a)(7)(B) of the Act. In accordance with section 773(a)(7) of the Act, we calculated the CEP offset as the smaller of the following: (1) the indirect selling expenses on the home-market sale, or (2) the indirect selling expenses deducted from the starting price in calculating CEP. See the Level-of-Trade Analysis memorandum.

Adverse Facts Available

Section 776(a)(2) of the Act, provides that, if, in the course of an antidumping review, an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, then the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination.

Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if (1) the information is submitted by the deadline established for its submission, (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 in providing the information and meeting the requirements established by the Department with respect to the information, and (5) the information can be used without undue difficulties. Where these conditions are met, the statute requires the Department to use the information.

The Department determines that, in accordance with section 776(a)(2)(D) of the Act, the use of facts available is an appropriate basis for the calculation of a dumping margin on sales made by GCCC's U.S. affiliate, Rio Grande Materials (RGM).

On March 24, 2003, through March 26, 2003, the Department conducted a verification of the U.S. sales information submitted by GCCC. As discussed in detail in the verification report dated April 24, 2003, the Department was unable to obtain detailed source documentation supporting the quantity and value (Q&V) of RGM's reported sales and expenses. Furthermore, at the onset of the Department's verification, GCCC submitted numerous pre-verification corrections that, among other things, made substantial changes to the expenses GCCC had reported on sales by RGM.

As detailed in the verification report, without the necessary supporting documentation, the Department was unable to verify the information that was reported and/or corrected concerning RGM's sales of subject merchandise during the POR, as required under section 782(i) of the Act. This information is essential to the Department's dumping analysis. Thus, the sales information submitted on behalf of RGM does not comply with section 782(e) of the Act. Therefore, because we could not verify this information, we must resort to facts available.

Use of an Adverse Inference

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 in complying 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. 103-316 (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.*

The Department determines that, in accordance with section 776(b) of the Act, an adverse inference is appropriate in selecting from among the facts otherwise available for RGM sales. With respect to sales made by RGM, the main difficulty encountered by the Department at verification was the lack of availability of and access to the original source documentation supporting the information supplied to the Department. The other difficulty stemmed from RGM's unpreparedness to meet the specific requirements that were described in the Department's verification outline.

First, GCCC has been involved in numerous prior reviews of this order which indicates that it has experience with an antidumping proceeding. Second, pursuant to section 782(i)(3)(B) of the Act, the Department was required to verify the information provided by GCCC in this POR, as GCCC had not been verified during the two immediately preceding reviews. Thus, GCCC was aware that all documentation supporting the information it reported for this POR was subject to Departmental verification. Finally, although RGM was sold subsequent to the instant POR, GCCC was in control of the source documentation because it was stored in one of its facilities. Therefore, we have concluded that GCCC did not cooperate to the best of its ability.

In accordance with section 776(b) of the Act, we are making an adverse inference in our application of the facts available. As adverse facts available we have applied the highest published rate we have calculated for companies under review for any segment of this proceeding. Consequently, we preliminarily determine to apply the 73.74 percent rate that we calculated in the final results of the 2000/2001 administrative review to RGM's sales of subject merchandise in the United States during the POR. See *Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review*, 68 FR 1816-1817 (January 14, 2003). We discuss the corroboration of this rate below.

Corroboration of Secondary Information

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