

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. Furthermore, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Rep. No. 103-316 at 870 (1994). The statute provides, in addition, that in selecting from among the FA the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases), or any other information on the record.

### 3. Application of FA

As described above, TPC has withheld information, failed to respond to the Department's requests for information by the deadlines established or in the form required, and has significantly impeded this review. TPC failed to properly respond to the Department's request, pursuant to section 782(d) of the Act, that it report its volume and value of sales on a uniform (20-ounce equivalent) basis as it had done in the prior review. In asking for a revised chart of TPC's volume and value of sales, the Department informed TPC in its April 16, 2003, letter that reporting the "actual cases sold is meaningless in terms of providing a basis for comparing the volume sold between different markets" and that "to conduct the necessary analysis needed to determine the appropriate third-country market, it is imperative that [the Department] be provided with data that is consistent and uniform across countries." By not providing the Department with a revised chart of its volume and value of sales based on a consistent and uniform unit of measure, *e.g.*, on a 20-ounce equivalent basis, TPC prevented the Department from conducting the necessary analysis for determining the appropriate third-country comparison market to be used as a basis for calculating NV.

TPC's refusal to provide the Department with its volume and value of sales on a 20-ounce equivalent basis has also precluded the Department's consideration of TPC's request for a finding regarding Japan's appropriateness as a third-country

comparison market.<sup>14</sup> Pursuant to §351.404(e) of the Department's regulations, the Secretary will generally select the third-country market on the basis of certain criteria when, as in this review, several third-country markets are viable. The "market situation" and product similarity issues raised by TPC in its November 23, 2003, Combined Section A Response and again in its April 24, 2003, letter to the Department, would be considered among the factors in a third-country selection analysis. However, no one factor is considered in isolation when conducting such an analysis. All the criteria under §351.404(e) of the Department's regulations, product similarity, volume of sales, and other factors, are considered together when determining the appropriateness of a third-country comparison market. Therefore, without having TPC's volume of sales reported on a 20-ounce equivalent basis, which would allow for a meaningful comparison of sales volume across countries, the Department is unable to make a finding as to the appropriateness of Japan as a third-country market.

According to the volume of sales (one of the relevant factors the Department considers under §351.404(e) of its regulations), submitted in TPC's October 23, 2002, response at Exhibit A-1, the third-country market with the largest volume of sales was either Japan or the Netherlands. However, the Department was unable to make this determination from the outset of the review because TPC failed to report its sales to unaffiliated customers first in the Netherlands, and then in Japan. Furthermore, as detailed above, due to the delays in the progress of this review, in particular caused by TPC's reluctance to provide the Department with its volume and value of sales in Japan to unaffiliated customers, and the impending deadline for the preliminary results, the Department was forced to request a complete section B response, including a sales database for Japan. TPC failed to provide the requested response, thereby preventing the Department from calculating NV if it were eventually to find Japan to be the most appropriate third-country market.

Finally, we find that the application of section 782(e) does not overcome the respondents' failure to respond, given that the deadline for submitting the

necessary information has passed. *See* sections 782(e)(1), (3) and (4). Because the information that TPC failed to report is critical for purposes of the preliminary dumping calculations, the Department must resort to facts otherwise available in reaching its preliminary results, pursuant to sections 776(a)(2)(A)-(C) of the Act.

### 4. Use of Adverse Inferences

We also find that the application of an adverse inference in this review is appropriate, pursuant to section 776(b) of the Act. As discussed above, TPC has significantly impeded and delayed the progress of this review by repeatedly failing to properly report its volume and value of sales to the United States, and because its home market is not viable, to each of its three largest third-country markets. After TPC's initial failure to properly report its volume and value of sales as part of its October 23, 2003, section A response, it required three additional requests by the Department, pursuant to section 782(d) of the Act, and multiple extensions, to obtain TPC's sales in Japan to unaffiliated customers. TPC eventually provided the Department with the requested data despite its claims that the information would be "impossible" to obtain. These delays resulted in the Department having to extend the preliminary results for this review from April 2, 2003, to June 6, 2003.<sup>15</sup>

TPC also failed to bring to the Department's attention in a timely manner that it was reporting its volume and value of sales on the basis of actual cartons sold, rather than on a 20-ounce equivalent basis. This represented a change in TPC's reporting methodology from the prior review and should have been identified as such by TPC in its section A response as required in the general instructions of the market economy questionnaire sent to TPC by the Department. When the Department learned of the change in TPC's reporting methodology it requested that TPC provide the Department with a chart of its volume and value of sales on a 20-ounce equivalent basis. The Department gave TPC clear instructions and warned that without the data it would not be able to conduct the necessary analysis to determine the appropriate third-country market in this review. TPC failed to provide the Department with the requested information despite its having demonstrated in the previous review

<sup>14</sup> While we requested that TPC report its volume and value of sales on a 20-ounce equivalent basis, consistent with its methodology in prior reviews, some respondents used other common units of measure, *e.g.* kilograms and metric tons. TPC not only failed to report sales on a 20-ounce equivalent basis, it also offered no alternative common unit of measure.

<sup>15</sup> *See* Memorandum from Charles Riggle, Program Manager, Office 5, to Gary Taverman, Acting Deputy Assistant Secretary, concerning an Extension of Time Limit for Preliminary Results of Review, dated March 20, 2003.