

that it is capable of doing so.<sup>16</sup> Moreover, TPC did not attempt to provide an alternative means of reporting its sales volume in a consistent and uniform manner that would allow for a proper comparison of the volume of sales across countries. We have therefore concluded that TPC has failed to cooperate with the Department by not acting to the best of its ability, and has hampered the Department's ability to evaluate the appropriateness of the Japanese market and to make the necessary third-country comparison market determination.

Finally, TPC failed to provide the Department with a section B sales database for Japan. In doing so, TPC did not request an extension of the April 24, 2003 deadline so that it could attempt to comply with the Department's request. To the contrary, TPC stated that even if the Department were to substantially extend the deadline it would not be able to comply with the Department's request. The reasons cited by TPC for its inability to provide the requested data are inadequate. TPC has known since the beginning of this review that Japan was a potential third-country market. Therefore, TPC should have taken the appropriate steps to ensure that its affiliates would gather and retain any necessary documentation in an accessible format. TPC also requested that the Department make a finding as to Japan's appropriateness as a possible third-country comparison market prior to requiring TPC to provide a complete section B sales database. However, as previously mentioned, the Department is not able to conduct a proper third-country analysis without having its volume of sales reported in a consistent and uniform manner, which TPC has failed to provide.

For the reasons described above, we believe that TPC did not act to the best of its ability in responding to the Department's request for information and that, consequently, an adverse inference is warranted under section 776(b) of the Act. *See, e.g.*, Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany, 64 FR 30710, (June 8, 1999) and accompanying Issues and Decision Memorandum at Comment 3; *see also* Stainless Steel Sheet and Strip From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 6682 (February 13, 2002) and accompanying

Issues and Decision Memorandum at Comment 24.

#### 5. Selection and Corroboration of Information Used as AFA

Where we must base the entire dumping margin for a respondent in an administrative review on FA because that respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the use of inferences adverse to the interests of that respondent in choosing facts available. Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Due to TPC's failure to cooperate, we have preliminarily assigned to TPC as AFA a rate of 51.16 percent, the highest rate calculated for any respondent during any segment of this proceeding. This rate was calculated for a respondent in the less than fair value (LTFV) investigation.<sup>17</sup>

Because information from prior segments of the proceeding constitutes secondary information, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that 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* SAA at 870 (1994).

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 total AFA 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

AFA, 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 (February 22, 1996) (where the Department disregarded the highest margin as AFA because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). In this review, we are not aware of any circumstances that would render the use of the margin selected for TPC as inappropriate.

#### Product Comparisons

We compared the EP or the CEP, as applicable, to the NV, as described in the *Export Price and Constructed Export Price and Normal Value* sections of this notice. We first attempted to compare contemporaneous sales in the U.S. and comparison markets of products that were identical with respect to the following characteristics: weight, form, variety, and grade. Where we were unable to compare sales of identical merchandise, we compared products sold in the United States with the most similar merchandise sold in the comparison markets based on the characteristics listed above, in that order of priority. Where there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value (CV), in accordance with section 773(a)(4) of the Act. For all respondents, we based the date of sale on the date of the invoice.

#### Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP as defined in sections 772(a) and 772(b) of the Act, respectively. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold (or agreed be sold) before the date of importation by the producer or exporter of the subject merchandise outside the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold inside the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under subsections 772(c) and (d) of the Act.

For all respondents, we calculated EP and CEP, as appropriate, based on the

<sup>16</sup> See Memorandum from Charles Riggle, Program Manager, Office 5, to File, concerning Seventh Administrative Review of Canned Pineapple Fruit from Thailand, dated April 16, 2003.

<sup>17</sup> See Notice of Antidumping Duty Order and Amended Final Determination: Canned Pineapple Fruit From Thailand, 60 FR 36775 (July 18, 1995).