

Selection of Respondents, dated April 4, 2003.

Period of Investigation

The period of investigation (POI) is January 1, 2002, through December 31, 2002. This period corresponds to the four most recent fiscal quarters prior to the month of filing of the petition (*i.e.*, January, 2003) involving imports from a market economy, and is in accordance with our regulations. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

For purposes of this investigation, PC strand is steel strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pretensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand.

The merchandise under investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Facts Available

For the reasons discussed below, we determine that the use of AFA is appropriate for the preliminary determination with respect to BBA.

A. Use of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the Department, fails to provide such information by the deadline or in the form or manner requested, significantly impedes a proceeding, or provides information which 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. Section 782(d) of the Act provides that if the Department determines that a response to a request for information does not comply with the Department's request, the Department shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Act further states that 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.

As discussed above, BBA failed to respond to the Department's request for information, thus the curative provisions of sections 782(d) and (e) of the Act are not applicable. Specifically, the information that BBA failed to report is critical for calculating preliminary dumping margins, therefore, the Department must resort to facts otherwise available to ensure that BBA does not obtain a more favorable result than it would by responding to the Department's request for information. The failure of BBA to respond significantly impedes this process because the Department cannot accurately determine a margin for this party. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, we have based BBA's margin rate on facts available.

B. Application of Adverse Inferences for Facts Available

In applying facts otherwise available, 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, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (August 30, 2002). 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 accompanying the Uruguay Round Agreements Act*, H.R. Rep. No. 103–316, at 870 (1994) (SAA). Furthermore, “[a]ffirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.” *See Antidumping Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997). In this case, BBA has failed to cooperate to the best of its ability by failing to respond to the Department's antidumping questionnaire. In addition, the company did not make an effort to provide an explanation for its failure to respond, or proposed an alternate form of submitting the required data. These omissions constitute a failure on the part of this company to cooperate “to

the best of its ability to comply with a request for information” by the Department within the meaning of section 776 of the Act. Therefore, the Department has preliminarily determined that in selecting from among the facts otherwise available, an adverse inference is warranted. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985, 42986 (July 12, 2000) (the Department applied total AFA where respondent failed to respond to the antidumping questionnaires).

C. Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a 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 Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. *See also* 19 CFR 351.308(c); SAA at 829–831. In this case, because we are unable to calculate margins for the respondent in this investigation, we assign to BBA the highest margin from the proceeding, which is the highest margin alleged for Brazil in the petition. *See Initiation Notice*, 68 FR at 9052.

When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See* 19 CFR 351.308(d); *see also* SAA at 870.

To assess the reliability of the petition margin for the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition for both this preliminary determination and during our pre-initiation analysis. *See Office of AD/CVD Enforcement Initiation Checklist*, at 15 (February 20, 2003)