

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid, based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.

Upon consideration of the resources available to the Department, we determined that it was not practicable to examine all known producers/exporters of the subject merchandise. Instead, because there were numerous producers/exporters of subject merchandise during the period of investigation (POI), we examined company-specific export data and U.S. Bureau of Customs and Border Protection (BCBP) import data for the POI and selected as mandatory respondents the two companies that accounted for the majority of subject imports from Korea, Kiswire and Dong-Il. See Memorandum from Daniel O'Brien, International Trade Compliance Analyst, to Gary Taverman, Director, Office 5, Re: Selection of Respondents, dated April 4, 2003.

Period of Investigation

The 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 Kiswire and Dong-Il.

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, Kiswire and Dong-Il 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, because the information that Kiswire and Dong-Il failed to report is critical for calculating preliminary dumping margins the Department must resort to facts otherwise available to ensure that Kiswire and Dong-Il do not obtain a more favorable result than they would by responding to the Department's request for information. The failure of Kiswire and Dong-Il to respond significantly impedes this process because the Department cannot accurately determine a margin for these parties. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, we have based Kiswire and Dong-Il'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 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, Kiswire and Dong-Il have failed to cooperate to the best of their ability by failing to respond to the Department's antidumping questionnaires. In addition, neither company made an effort to provide an explanation for its failure to respond, nor proposed an alternate form of submitting the required data. These omissions constitute a failure on the part of both of these companies to cooperate “to the best of {their} 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