

Company officials stated that a particular type of invoice used in this review was not used in the prior review in which PAM participated, specifically those invoices issued by PAM for merchandise sold from a non-PAM warehouse. As the program which instructs PAM's accounting system to extract this information when reporting PAM's quantity and value of home market sales was not modified from the previous review, the sales associated with this new invoice type were not reported. See PAM's Sales Verification Report at page 18.

The verifiers reviewed a company generated list showing all invoices issued by PAM for merchandise sold from non-PAM warehouses for the month of May 2002, and noted that these sales were not reported to the Department. In addition, we noted that there were several of these invoices that were not included in this list, but appeared to reference subject merchandise sold in the home market. These missing invoices were all to one customer. When asked why PAM did not report these sales, company officials stated they thought that because the sales were outside of the ordinary course of trade, PAM was not required to report the invoices. PAM's failure to report these sales is contrary to the explicit instructions set forth in the initial questionnaire sent to PAM. See the General Instructions to the Department's August 29, 2003 Antidumping Duty Questionnaire at page G-7, number 13 ("You must report all sales, including those sales which you believe are outside the ordinary course of trade. If you claim that some sales are outside the ordinary course of trade, you should then identify those sales. You must include a complete explanation in your narrative why you consider those sales to be outside the ordinary course of trade.") (emphasis added). Combining the sales to this customer and the FP invoices, PAM failed to report approximately two-thirds of its home market sales to the Department. See PAM's Sales Verification Report at page 18 and 19 (emphasis added).

The Department's antidumping analysis is based fundamentally on an evaluation of a respondent's home market and U.S. selling practices. Thus, complete and accurate reporting of home market sales is central to determining accurate dumping margins. The Department verified that only one-third of PAM's home market sales were reported. Therefore, the Department's ability to calculate PAM's dumping margin using the data reported by PAM has been severely compromised. Such a

small sample may not provide a reasonable approximation of PAM's actual sales practice in the home market. Not only may these sales not be representative, but any allocated expenses calculated by PAM for these sales are incorrect, because allocated expenses are calculated by dividing the total expenditure on a particular item by total sales. As PAM's total sales figure is incorrect, all of PAM's allocated expenses, including expenses such as direct and indirect selling expenses, in the home market are significantly overstated. Therefore, the data on the record cannot be used to calculate the actual percentage of sales at less than fair value.

PAM could not establish the completeness of its reported home market sales database. As noted above, the Department discovered at verification that PAM had failed to report approximately two-thirds of its home market sales, despite the Department's requests for such information. Given this significant omission from its home market database, we consider that PAM withheld information requested by the Department, and attempted to provide such information after the Department discovered the omission, but the information could not be verified. Consequently, the Department has determined to use facts otherwise available, consistent with section 776(a) of the Act. Put simply, PAM failed verification.

#### **Application of Adverse Facts Available**

As noted above, the record in this review demonstrates that PAM failed to report sales information representing approximately two-thirds of its home market sales during the POR. Therefore, pursuant to section 776(a)(2)(A) and (D) of the Act, we have relied upon facts available in reaching our preliminary results for PAM. The Department has determined that PAM has not acted to the best of its ability in failing to report approximately two-thirds of its home market sales in this review, because, (1) the Department issued clear instructions requiring this information in its initial questionnaire; (2) PAM had the opportunity to provide the information in responding to two supplemental questionnaires, all of the deadlines of which were extended at PAM's request by the Department; (3) the Department had instructed PAM to report all sales, including those claimed to be outside the ordinary course of trade; and (4) PAM has successfully participated in previous reviews. Moreover, the fact that the Department readily obtained general information regarding the

existence of such sales at verification adds support to our determination that PAM did not act to the best of its ability in reporting its home market sales.

PAM had the ability to report these sales; however, it failed to do so. Therefore, pursuant to section 776(b)(3) of the Act, we have used an adverse inference in selecting facts available margins for PAM. See *Reiner Brach GmbH & Co. v. United States*, 206 F. Supp. 2d 1323, 1333, 1336 (Court of International Trade 2002) (CIT). The CIT upheld the Department's determination to apply facts otherwise available and apply an adverse inference resulting from Reiner Brach's failure to provide all information regarding home market sales. The court noted, among other things, that "Reiner Brach failed to provide information regarding home market sales of similar merchandise despite the clear language of the questionnaire asking for information on 'all sales' of the foreign like product." See also *Acciai Speciali Terni v. United States*, 142 F. Supp. 2d 969, 994 (CIT 2001). The CIT affirmed the Department's application of adverse facts available occasioned by the respondent's failure to timely report 84 U.S. sales. The court noted that the respondent "has made no allegations that it could not provide the additional U.S. sales. It claims that the omission was inadvertent; inadvertence is not the same as inability." Accordingly, we have based PAM's preliminary margin on the highest margin upheld during the proceeding: 45.49 percent. See *World Finer Foods Inc. v. U.S.*, 120 F. Supp. 2d 1131, 1134 (CIT 2000).

#### **Corroboration of Secondary Information Used As Adverse Facts Available**

Section 776(c) of the Act provides that when the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The SAA states that 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. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not