

to question the reliability of the margin for that time period. *See Grain-Oriented Electrical Steel from Italy: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 36551, 36552 (July 11, 1996). With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin.

For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated); *see also Borden Inc. v. United States*, 4 F Supp 2d 1221, 1246–48 (CIT 1998) (the Department may not use an uncorroborated petition margin that is high when compared to calculated margins for the period of review). None of these unusual circumstances are present here. Accordingly, for PAM we have resorted to adverse facts available and have used the highest margin upheld in this proceeding as the margin for these preliminary results because there is no evidence on the record indicating that such a margin is not appropriate as adverse facts available.

#### Use of Partial Facts Available

Sections 776(a)(2)(A), (B) and (D) of the Act, provide for the use of facts available when an interested party withholds information that has been requested by the Department, when an interested party fails to provide the information requested in a timely manner and in the form required, or provides such information but the information cannot be verified.

From June 12, through June 26, 2003, the Department conducted a verification of Indalco's questionnaire response at the company's headquarters in Rivalimosani, Italy. At verification, the Department's verifiers asked Indalco to present minor changes, if any, to its questionnaire response resulting from

verification preparation. The Department notified Indalco of these requirements in its verification agenda dated, May 21, 2003. *See* the May 21, 2003 letter from the Department to Indalco, transmitting the verification outline. At the onset of verification, Indalco submitted a list of minor errors to the Department as Exhibit 1. Although, there were several errors with its selling expenses, Indalco did not bring these errors to the Department's attention until after Indalco's submission of minor corrections. Specifically, Indalco used fiscal year 2001, instead of POR, expenses to compute its direct and indirect selling and advertising ratios. For a more detailed discussion *see* Memorandum to Eric Greynolds, from Mark Young and Tipten Troidl, Re: Verification of the Sales Response of Industria Alimentare Colavita, S.p.A. ("INDALCO") and Fusco S.r.l. ("Fusco") in the 01/02 Administrative Review of the Antidumping Duty Order of Certain Pasta from Italy, ("Indalco/Fusco Verification Report"), which is available in the CRU.

While the Department granted Indalco's requests for additional time to respond to the questionnaires, and Indalco did appear to cooperate to the best of its ability, Indalco did not submit the information in the form and manner requested by the Department.

As long recognized by the CIT, the burden is on the respondent, not the Department, to create a complete and accurate record. *See Pistachio Group of Association Food Industries v. United States*, 641 F. Supp. 31, 39–40 (CIT 1987). Therefore, in accordance with section 776(a)(2) of the Act, we are applying partial facts otherwise available in calculating Indalco's dumping margin. However, because Indalco did cooperate to the best of its ability, we are not making any adverse inferences, for the reasons noted above. As a result of these miscalculations, as facts available, the Department will use the information verified and collected at verification to calculate Indalco's selling expenses.

#### Product Comparisons

In accordance with section 771(16) of the Act, we first attempted to match contemporaneous sales of products sold in the United States and comparison markets that were identical with respect to the following characteristics: (1) Pasta shape; (2) type of wheat; (3) additives; and (4) enrichment. When there were no sales of identical merchandise in the home market to compare with U.S. sales, we compared U.S. sales with the most similar product based on the

characteristics listed above, in descending order of priority. When there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to CV, in accordance with section 773(a)(4) of the Act.

For purposes of the preliminary results, where appropriate, we have calculated the adjustment for differences in merchandise based on the difference in the variable cost of manufacturing ("VCOM") between each U.S. model and the most similar home market model selected for comparison.

#### Comparisons to Normal Value

To determine whether sales of certain pasta from Italy were made in the United States at less than NV, we compared the EP or CEP to the NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions. *See* the company-specific verification reports and calculation memoranda, available in the CRU.

#### Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. We calculated EP when the merchandise was sold by the producer or exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. We based EP and CEP on the packed cost-insurance-freight ("CIF"), ex-factory, free-on-board ("FOB"), or delivered prices to the first unaffiliated customer in, or for exportation to, the United States. When appropriate, we reduced these prices to reflect discounts and rebates.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant or warehouse to port of exportation, foreign brokerage, handling and loading charges, export duties, international freight, marine insurance, U.S. duties, and U.S. inland freight expenses (freight