

Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 67 FR 56267 (September 3, 2002). On September 3, 2003, in accordance with 19 CFR 351.213(b), Liepajas Metalurgs requested an administrative review. On October 24, 2002, the Department published the notice of initiation of this antidumping duty administrative review, covering the period January 30, 2001, through August 31, 2002 (the POR). See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 65336 (October 24, 2002).

On October 25, 2002, the Department issued its antidumping questionnaire to Liepajas Metalurgs, specifying that the responses to Section A and Sections B-D would be due on November 15, and December 2, 2003, respectively.² We received timely responses to Sections A-C of the initial antidumping questionnaire and associated supplemental questionnaires. Based on a timely allegation filed by the petitioners³ on January 6, 2003, we initiated a cost of production (COP) investigation of Liepajas Metalurgs. The company submitted timely responses to Section D of the antidumping questionnaire, as well as to supplemental questionnaires.

Scope of the Order

For purposes of this review, the product covered by this order is all steel concrete reinforcing bars sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 7214.20.00 or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth bars) and rebar that has been further processed through bending or coating. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

² Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under review. Section E requests information on further manufacturing.

³ The petitioners in this case are the Rebar Trade Action Coalition ("RTAC") and its individual members.

Verification

As provided in section 782(i)(3) of the Tariff Act of 1930, as amended (the Act), we verified information provided by Liepajas Metalurgs. We used standard verification procedures, including on-site inspection of Liepajas Metalurgs' facilities and examination of relevant sales and financial records. See Memorandum from Daniel O'Brien and Jim Kemp, International Trade Compliance Analysts, to Gary Taverman, Director, Office 5, Re: Verification of the Sales and Cost Responses of Joint Stock Company Liepaja Metalurgs in the First Administrative Review of Steel Concrete Reinforcing Bars from Latvia, dated July 30, 2003 (the Verification Report).

Facts Available

When responding to the questionnaire, Liepajas Metalurgs did not report all of the product characteristics for certain home market sales made by its affiliated reseller, Armaturas Servisa Centrs (ASC). Additionally, Liepajas Metalurgs did not report certain sales of merchandise that Liepajas Metalurgs produced but which was commingled at ASC's warehouse with incoming rebar produced by other companies and sold by ASC. Finally, we found that Liepajas Metalurgs' calculation of home market freight expense was unreliable for rebar shipments from the plant to the warehouse and shipments from Liepajas Metalurgs' Riga sales office (RSO) to the customer. We examined these issues closely at verification and found that Liepajas Metalurgs, in the normal course of business, did not maintain the necessary records to report the data as requested by the Department.

With regard to sales of merchandise commingled with different manufacturers' products, we found that ASC developed a system to identify the producer based on the customer, grade and size of the rebar, and location of the merchandise in inventory. However, ASC could not provide documentation to support its segregation of rebar and acknowledged that even by this method, the company was unable to identify the manufacturer for every sale. Concerning sales of merchandise with incomplete matching characteristics, we found that ASC only recorded all of the product characteristics (*i.e.* type of steel, yield strength, and size) of its merchandise when a customer ordered a specific grade of rebar. Therefore, ASC was unable to the report yield strength, and sometimes size, for sales where no such request was made by its customers. Finally, for the freight calculations in

question, Liepajas Metalurgs could not properly document the type of merchandise shipped (*i.e.* rebar or other products) and the quantity relating to the freight invoices. For a further discussion of these issues, see the Verification Report.

Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title.

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, (1994) (SAA) at 870. 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, we have found that an adverse inference is not appropriate for Liepajas Metalurgs because the company acted to the best of its ability to report the data requested by the Department. In its December 16, 2002, Section B response, Liepajas Metalurgs explained that ASC had some sales for which it did not track the necessary product information. Thereafter, the company answered all the Department's supplemental questions on this issue. At verification, we confirmed the information contained in Liepajas Metalurgs' responses regarding the sales with incomplete product information.