

allow for the application of an adverse inference when an "interested party" does not act to the best of its ability in responding to questionnaires. The Department explained that a supplier that refused to respond to requests for necessary information is an "interested party" to the review and therefore application of adverse facts available was warranted. *Id.* (citing *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612 (July 25, 2002), and accompanying *Issues and Decision Memorandum*, at Comment 10).

Furthermore, because Yisheng did not provide an acceptable explanation as to why its supplier would not cooperate, applying adverse facts available to Yisheng is consistent with our conclusion in *Creatine Monohydrate From the PRC*, where the Department stated, "... [a]s there is no acceptable explanation on the record for the supplier's failure to provide factor of production information, an adverse inference in applying facts available is warranted due to the supplier's failure to act to the best of its ability." *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China*, 64 FR 71104, 71108 (December 20, 1999) (emphasis in original) ("*Creatine Monohydrate From the PRC*"). See also *Fresh Garlic: Preliminary* 68 FR at 22679; *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612 (July 25, 2002), and accompanying *Issues and Decision Memorandum*, Comment 10.

In Yisheng's August 19, 2003, submission, it claimed for the first time that its supplier was not cooperating and that this non-cooperation was the reason it was unable to submit a timely factors-of-production response. Given that Yisheng's claim was made after it was informed that its response would be rejected and 60 days after the deadline for its factors-of-production response, the Department questions the validity of this claim. Moreover, Yisheng's August 19, 2003, submission did not provide an explanation as to why its supplier would not cooperate and did not provide an explanation as to why it did not identify this reason earlier. Therefore, we find that Yisheng did not act to the best of its ability to comply with our request for information and, pursuant to section 776(b) of the Act, we have preliminarily determined to use adverse facts otherwise available in

reaching the preliminary results of review.

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. See section 776(b) of the Act. Section 776(c) of the Act provides, however, that, when the Department relies on secondary information rather than on information obtained in the course of a review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. See SAA at 870. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* As discussed in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (*TRBs*), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. If there are no independent sources from which the Department can derive calculated dumping margins, however, unlike other types of information such as input costs or selling expenses, the only source for margins is previous administrative determinations, as is the case in this review.

Throughout the history of this proceeding, the highest rate ever calculated is 376.67 percent; it is currently the PRC-wide rate and was calculated based on information contained in the petition. See *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Garlic from the People's Republic of China*, 59 FR 49058, 49059 (September 26, 1994). The information contained in the petition was corroborated for the preliminary results of the first administrative review. See *Fresh Garlic from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review*, 61 FR 68229, 68230 (December 27, 1996). Further, it

was corroborated in subsequent reviews to the extent that the Department referred to the history of corroboration and found that the Department received no information that warranted revisiting the issue. See *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002). Similarly, no information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department stated in *TRBs* that it will "consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. 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." See *TRBs*, 61 FR at 57392. See also *Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (disregarding the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin). The rate we have selected is the rate currently applicable to Yisheng and all exporters subject to the PRC-wide rate. Further, there is no information on the administrative record of the current review that indicates the application of this rate would be inappropriate or that the margin is not relevant. Therefore, for all sales of subject merchandise exported by Yisheng, we have applied, as adverse facts available, the 376.67 percent margin from a prior administrative review of this order and have satisfied the corroboration requirements under section 776(c) of the Act. See *Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 18439, 18441 (April 9, 2001) (employing a petition rate used as adverse facts available in a previous segment as adverse facts available in the current review).

Preliminary Results of the Review

As a result of the application of adverse facts available, we preliminarily determine a dumping margin of 376.67 percent for Yisheng's exports of fresh garlic during the period November 1, 2001, through October 31, 2002.

An interested party may request a hearing within 30 days of publication of