

Bureau of Customs and Border Protection (Customs).

#### Use of Facts Available

Section 776(a)(2) of the Tariff Act of 1930, as amended (the Tariff 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; (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), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

On March 25, 2003, the Department issued its standard antidumping questionnaire to Sam Sung. The Department received no response. On August 14, 2003 the Department issued a letter to Sam Sung extending the deadline for its response until August 25, 2003. Sam Sung again did not respond. The information in this questionnaire related to Sam Sung's pricing practices in its home and U.S. markets. Without this information the Department is unable to determine what level of dumping, if any, existed for Sam Sung during the period of review. Therefore, we determine that the use of facts available is warranted pursuant to section 776(a)(2)(A) of the Tariff Act because Sam Sung withheld information requested by the Department.

Section 776(b) of the Tariff Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as facts otherwise available. 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 (SAA) accompanying the URAA, H.R. Doc. 316-103d at 870 (1994). Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997) (*Final Rule*).

The Department finds that in not responding to the questionnaire, Sam

Sung failed to cooperate by not acting to the best of its ability to comply with requests for information. Therefore, pursuant to section 776(b) of the Tariff Act, we may, in making our determination, use an adverse inference in selecting from the facts otherwise available. This adverse inference may include reliance on data derived from the petition, a previous determination in an investigation or review, or any other information placed on the record. It is the Department's practice to assign the highest rate from any segment of a proceeding as total adverse facts available when a respondent fails to cooperate to the best of its ability. See e.g., *Stainless Steel Plate in Coils from Taiwan; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 67 FR 5789 (February 7, 2002). ("Consistent with Department practice in cases where a respondent fails to cooperate to the best of its ability, and in keeping with section 776(b)(3) of the Act, as adverse facts available we have applied a margin based on the highest margin from any prior segment of the proceeding.... In this case, the highest margin from any segment of the proceeding is... the petition rate in the less-than-fair-value (LTFV) investigation.") Therefore, in the instant case, the Department is applying the margin of 21.2 percent to Sam Sung for these final results. This margin represents the highest margin calculated in the AD petition submitted in the LTFV investigation. See *Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Butt-Weld Pipe Fittings from the Republic of Korea*, 57 FR 61881, 61882 (December 29, 1992).

Information from prior segments of the proceeding constitutes secondary information, and section 776(c) of the Tariff Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The SAA provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. See H.R. Doc. 316-103d at 870 (1994). To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

To corroborate the margins calculated in the petition, we examined the basis of the rates contained in the petition. The U.S. prices in the petition were based on prices of a Korean manufacturer selling in the United States. See *Petition* at 24 and appendix M (May 20, 1992). To corroborate this

information, we obtained U.S. import statistics from the U.S. International Trade Commission (the ITC). See *Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from South Africa*, 61 FR 24271, 24273 (May 14, 1996). However, the ITC reported this data on a weight basis, and the prices contained in the petition were reported on a per-piece basis. Therefore, we were unable to use the U.S. import statistics as corroboration. Nevertheless, the prices used in the petition were from a price list that was publicly available and obtained directly from the Korean seller and manufacturer. See *Petition*, at appendix M (public version) (May 20, 1992). Therefore, because it is an independent, public source, we find that it has probative value. See *Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand: Final Results of Antidumping Duty Administrative Review*, 68 FR 6409, 6411 (February 7, 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat from the People's Republic of China*, 62 FR 41347, 41349 (August 1, 1997). The Department is aware of no other independent sources of information that would enable us to further corroborate the petition's margin calculation.

The normal value was based on constructed value (CV). Petitioners based the cost of raw materials on petitioners' own consumption at prices reported in an antidumping petition for certain welded stainless steel pipes from Korea filed with the Department on November 18, 1991. Petitioners based direct and supervisory labor, natural gas, and electricity expenses on its own usage at wage rates and energy rates in Korea. The cost of utilities other than electricity and natural gas, tools and supplies, direct manufacturing overhead, and packing were based on petitioners' own actual experience in 1991. Petitioners added the statutory minimums of ten percent for general expenses and eight percent for profit to the cost of manufacturing. We examined the data submitted by the petitioners and the assumptions the petitioners made when calculating CV. The methodology was reasonable and was based on the data reasonably available to petitioners at the time. For purposes of the preliminary results of this review, we find no reason to believe the reliability of this information should be called into question.

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether there are circumstances that