

from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996) (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 used is the rate currently applicable to Top Pearl, Wo Hing, 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 Top Pearl and Wo Hing, 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).

With respect to Jinan Yipin, the use of adverse facts available is warranted because it has not provided information critical to the calculation of an antidumping duty margin and impeded the conduct of the administrative review by not providing correct and thorough responses to our questions, before, during, and following verification. These inadequacies relate to two issues: (1) whether Jinan Yipin reported some sales to an affiliated party as unaffiliated-party sales and (2) whether Jinan Yipin captured all of its indirect selling expenses on U.S. sales in its response.

We find that, pursuant to section 776(a)(2)(A) of the Act, Jinan Yipin withheld information concerning the relationship between American Yipin's (Jinan Yipin's U.S. affiliate) sales manager, Edward Lee, and one of its

customers. As described in detail in the memorandum from Laurie Parkhill, Office Director, AD/CVD Enforcement 3, to Jeffrey May, Deputy Assistant Secretary, Import Administration, dated December 1, 2003 (*Jinan Yipin Facts-Available Memorandum*), the verification team requested information from Edward Lee and American Yipin several times but was given inadequate, incomplete, or incorrect responses. Although American Yipin finally provided answers to many of the questions which the Department requested, it did so only after the Department did a great deal of its own research and presented facts to American Yipin which contradicted earlier statements the company had made. Nonetheless, after all of these questions and responses, new and further issues pertaining to affiliations between affiliates of both American Yipin and the U.S. customer now exist on the record. Thus, with respect to section 776(a)(2)(C) of the Act, the inadequate responses we received throughout the administrative review from Jinan Yipin impeded our process significantly. Thus, pursuant to these provisions, the use of facts otherwise available is warranted in this case.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the review. In this administrative review, the Department issued its standard questionnaire and, in response to inadequate responses and information provided by Jinan Yipin, eventually it supplemented the record with three additional questionnaires. The Department also asked numerous questions during verification as new information came to light throughout the verification. Accordingly and pursuant to section 782(d) of the Act, the Department provided Jinan Yipin with numerous opportunities to remedy or explain deficiencies on the record.

Pursuant to section 776(b) of the Act, the Department has determined that the use of an adverse inference is warranted in this case. Jinan Yipin and its U.S. affiliate, American Yipin, did not act to the best of their abilities in providing the information necessary to conduct this administrative review. Indeed, we learned much of the information now on the record only during or after verification and we were thus unable to

evaluate the information completely by the time of issuance of these preliminary results of review. Thus, absent the necessary information on the record and the respondents' repeated failure to act to the best of its ability to provide the information we need for our calculations and analysis, the application of partial adverse facts available is warranted for all of the transactions to Jinan Yipin's U.S. customer in question. We have selected a rate of 376.67 percent to apply to those transactions.

As discussed above, a number used as adverse facts available must be corroborated, pursuant to section 776(c) of the Act. The number is corroborated if it is found to be both reliable and relevant. To determine whether the rate of 376.67 percent is both a relevant and reliable rate to apply to Jinan Yipin's sales to the customer in question (in other words, whether the rate is indicative of the disparity in the respondent's pricing or has probative value), we examined individual U.S. sales made by Jinan Yipin to customers other than the customer in question in the current review and the dumping margins on those transactions. As a result of our analysis, we found sales in commercial quantities with dumping margins near or exceeding 376.67 percent. See the output of the margin program attached to the December 1, 2003, analysis memorandum for the preliminary results of review of Jinan Yipin. There is no information on the record that demonstrates that 376.67 percent rate is an inappropriate adverse facts-available rate for Jinan Yipin's sales involving the customer in question. Therefore, we consider the selected rate to be reliable for Jinan Yipin's sales to this customer and to reflect an appropriate adverse inference.

We also find that Jinan Yipin withheld certain information pertinent to the calculation of indirect selling expenses and, thus, the calculation of an antidumping margin. At verification, we found that Edward Lee and two other employees of American Yipin also worked for another company as well and that, for the first three months of American Yipin's operations in Westwego, Louisiana, these employees did not receive any compensation from American Yipin but were, however, paid by the other company consistently.

As discussed in detail in the *Jinan Yipin Facts-Available Memorandum*, where a respondent has failed to provide information we requested, pursuant to section 776(a)(2)(A) of the Act, we must rely on adverse facts available in determining the antidumping duty margin. Section