

the respondent an opportunity to remedy or explain the deficiency. Isibars was cautioned in an October 21, 2003, letter, attached to the Department's October 21, 2003, fifth Section A, fourth Section D supplemental questionnaire, that the Department required working computer data files from Isibars in order to proceed to verification. *See* October 29, 2003, letter from the Department. Isibars was again cautioned by the Department, in an October 29, 2003, letter from the Department, that failure by Isibars to submit complete and accurate data would result in the cancellation of verification. *See* October 29, 2003, letter.

Because Isibars failed to supply the Department with the necessary sales data that the Department needed to conduct a meaningful verification, and gave no explanation why it has failed to do so, despite numerous opportunities afforded by the Department, the Department cannot consider Isibars to have acted to the best of its ability in this review. Therefore, the application of adverse facts available in determining the preliminary margin, in accordance with section 776(b) of the Act, is warranted. *See Preliminary Results of Antidumping Duty Administrative Review: Porcelain on Steel Cookware from Mexico*, 65 FR 63562, 63564 (October 24, 2000) (stating that the use of adverse facts available was appropriate because respondent did not provide home market sales data in a timely manner).

E. Failure To Serve Petitioner in This Review

Isibars' non-service of petitioners, in conjunction with numerous late filings, improper filings, and incomplete responses by Isibars, has possibly impaired petitioners' ability to participate in this review. *See* Petitioner's letter Stainless Steel Wire Rod from India—Isibars' Supplemental Sales Deficiencies and Cost Deficiencies, dated October 20, 2003.

Section 776(a)(2)(B) of the Act authorizes the Department, subject to section 782(d) of the Act, to use facts otherwise available when a respondent fails to provide information by the deadline for submission, or in the form or manner requested. Isibars has failed to serve the petitioner in this review numerous times, as requested by section 351.303(f)(1) of the Department's regulations, which directs all persons filing a document with the Department to simultaneously serve a copy of that document to all persons on the service list. To date, petitioner has not received: Isibars' September 29, 2003, Sections B

& C supplemental questionnaire response; Isibars' October 14, 2003, Section A supplemental questionnaire response; Isibars' October 14, 2003, first Section D supplemental questionnaire response; Isibars' October 14, 2003, Section D second supplemental questionnaire response; nor Isibars' October 20, 2003, Sections A, B and D supplemental questionnaire response.

Section 782(d) requires that, in the case of a deficient response by the respondent, the Department inform the respondent of the deficiency, and give the respondent an opportunity to remedy or explain the deficiency. Despite numerous admonitions by the Department (*i.e.*, an October 15, 2003, telephone call; an October 15, 2003, e-mail; and an October 29, 2003, letter), Isibars, to date, has never served to petitioner the above mentioned responses.

Because Isibars failed to serve petitioner, and gave no explanation why it has failed to do so, despite admonitions by the Department, the Department cannot consider Isibars to have acted to the best of its ability in this review. Therefore, the application of adverse facts available in determining the preliminary margin, in accordance with section 776(b) of the Act, is warranted.

Isibars' failure to provide the information requested by the Department has resulted in an inadequate response that has prevented the Department from conducting verification and using its data in the preliminary results. *See* Cancellation of Verification Memorandum to the File from Eugene Degnan to Edward Yang, dated November 26, 2003 (*"Cancellation of Verification Memorandum"*). Furthermore, Isibars' failure to provide the requested data and to serve petitioners has significantly impeded this review, as defined by section 776(a)(2)(C) of the Act. Thus, pursuant to sections 776(a)(2)(A), (B), (C) and (D) of the Act, and having satisfied sections 782(c)(2), (d), and (e) of the Act, the Department has determined to apply facts otherwise available in this proceeding with respect to Isibars.

In selecting from among the facts otherwise available, section 776(b) of the Act provides that adverse inferences may be used in selecting from the facts available if a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. 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 Uruguay Round Agreements Act ("URAA"), H.R. Doc. No. 103-316, Citation No. (1994), at 870. 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 27340 (May 17, 1997).

In this case, Isibars has failed to cooperate by not acting to the best of its ability to comply with the requests for information. As discussed above, despite the numerous requests by the Department, Isibars failed to provide or withheld requested information from the Department (*i.e.*, a sales reconciliation, information concerning the valuation of major inputs, weighted-average CONNUM specific cost data, service of the petitioner, and a working Sections B and C database). Additionally, Isibars was provided numerous offers of assistance by the Department and opportunities and supplemental questionnaires to fully respond to the Department's requests, in accordance with section 782(d) of the Act. *See Cancellation of Verification Memorandum*. However, despite the assistance offered and provided by the Department's staff, Isibars failed to rectify its many record deficiencies. *See Cancellation of Verification Memorandum*.

Due to Isibars' failure to provide the requested information that the Department identified as necessary for the verification, the Department was precluded from conducting verification by the inadequacy of information on the record. Moreover, Isibars failed to provide a reasonable explanation for its failure to comply with these standard requests for information. Accordingly, the Department finds that Isibars did not act to the best of its ability to provide the information requested, despite the assistance offered by the Department. As facts become available, we have preliminarily assigned Isibars the all others rate of 48.80 percent. As discussed below, we have corroborated this rate pursuant to 19 CFR 351.308(d) of the Department's regulations.

Corroboration of Secondary Information Used as Adverse Facts Available

Section 776(c) of the Act provides that when the Department relies on the facts otherwise available and relies on "secondary information," the Department shall to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The SAA,