

A. Use of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the Department, fails to provide such information by the deadline or in the form or manner requested, significantly impedes a proceeding, or provides information which cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination. As stated above, UC informed the Department at the outset that it would not participate in this investigation. DNP has informed the Department that it will no longer participate in this investigation and has requested that all of its responses be returned or destroyed. Since UC and DNP withheld information requested by the Department, the Department has no choice but to rely on the facts otherwise available in order to determine a margin for these parties, pursuant to section 776(a)(2) of the Act.

B. Application of Adverse Inferences for Facts Available

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, at 870 (1994) (SAA). 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, UC has failed to cooperate to the best of its ability by not responding to the Department's antidumping questionnaires. DNP has failed to cooperate to the best of its ability by withdrawing its responses to the Department's antidumping questionnaires and declining any further participation in this investigation. Therefore, the Department has preliminarily determined that in selecting from among the facts otherwise available, an adverse

inference is warranted. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985, 42986 (July 12, 2000) (the Department applied total AFA where respondent failed to respond to the antidumping questionnaires).

C. Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. *See also* 19 CFR 351.308(c); SAA at 829–831. In this case, because there is insufficient information on the record for the Department to calculate margins for the Respondents in this investigation, we are relying on information derived from the petition in applying AFA. We preliminarily assign to UC and DNP the highest margin from the proceeding, which is the highest margin alleged for Japan in the petition, 147.30 percent. *See Initiation Notice*, 68 FR at 38308.

When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See* 19 CFR § 351.308(d); *see also* SAA at 870.

To assess the reliability of the petition margin for the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis. *See Antidumping Investigations Initiation Checklist; Wax and Wax/Resin Thermal Transfer Ribbon From France, Japan, and South Korea*, pages 7 through 9 (June 25, 2003) (*Initiation Checklist*). In

accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the constructed export price (CEP) and normal value (NV) calculations on which the highest margin in the petition was based.

1. Corroboration of Constructed Export Price

To calculate constructed export price (CEP) the Petitioner obtained pricing information for certain wax and wax/resin products sold to unaffiliated parties in the United States, and comparable to the products sold in Japan. The Petitioner made certain adjustments to this selling price for specific expenses that would be incurred by foreign producers of the subject merchandise for sales made in the United States. Because the Petitioner was unable to obtain actual data for selling expenses incurred by respondents in the United States, the Petitioner obtained price quotes as a basis for its estimation of certain expenses, and, where appropriate, also based its estimates for such expenses on actual figures incurred in the course of its own selling activities. The Petitioner indicates this approach is a reasonable and appropriate way to calculate CEP because the selling process for TTR is uniform within the United States, and the selling activities performed by respondents' U.S. affiliates for their U.S. customers are largely the same as those performed by the Petitioner for its customers in the United States. Where known differences between the Petitioner's and respondents' operations exist, the Petitioner adjusted selling expenses accordingly to account for such differences.

With respect to selling expenses incurred in Japan, the Petitioner indicated there is no basis to believe that such expenses would differ for TTR destined for the United States versus merchandise sold in the home market. Therefore, according to the Petitioner, it is reasonable to consider such expenses to be equal for sales to the United States and in the home market.

As detailed in the *Initiation Checklist*, the petition contained documentation supporting the figures used in this CEP calculation, which was analyzed by the Department and revised by the Petitioner through answers to supplemental questions issued by the Department.

2. Corroboration of Normal Value

With respect to normal value (NV), the Petitioner relied on foreign market research to obtain price estimates for TTR sold in the home market. The