

(D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On October 22, 2002, the Department issued its questionnaire to Clariant and Kuraray Europe. On December 9 and December 5, 2002, respectively, these parties informed the Department that they did not intend to participate in this investigation. Because both Clariant and Kuraray Europe failed to supply necessary information, we have applied FA to calculate their dumping margins, pursuant to section 776(a)(2)(B) of the Act.

2. Selection of Adverse FA (AFA)

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request 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 (Aug. 30, 2002). Both respondents were notified in the Department's questionnaires that failure to submit the requested information by the date specified might result in use of FA. As a general matter, it is reasonable for the Department to assume that Clariant and Kuraray Europe possessed the records necessary for this investigation and that by not supplying the information the Department requested, Clariant and Kuraray Europe failed to cooperate to the best of their ability. As the respondents failed to cooperate to the best of their ability, we are applying an adverse inference pursuant to section 776(b) of the Act.

3. Corroboration of Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV

investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

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 SAA also states 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. *Id.*

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculations in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*see* the September 25, 2002, Initiation Checklist, on file in the Central Records Unit, Room B-099, of the Main Commerce Department building, for a discussion of the margin calculations in the petition). In addition, in order to determine the probative value of the margins in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculations in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margins in the petition were based.

Export Price

With respect to the margins in the petition, EP was based on POI price quotes from a U.S. distributor for the sale of fully-hydrolyzed PVA produced by Kuraray Europe. The petitioners calculated net U.S. prices by deducting a distributor mark-up, certain movement expenses, and U.S. imputed credit expenses. We adjusted the petitioners'

EP calculation by not deducting an amount for U.S. credit expenses; instead, we made an adjustment to NV, in accordance with the Department's EP circumstance-of-sale calculation methodology.

We compared the U.S. market price quotes with official U.S. import statistics and U.S. customs data, and found the prices used by the petitioners to be reliable. For further discussion, *see* the February 12, 2003, memorandum to the file from the team entitled "Corroboration of Data Contained in the Petition for Assigning Facts Available Rates" (Corroboration Memo).

Normal Value

The petitioners based NV on a home market price quote from a German PVA producer for PVA of a comparable grade to the products exported to the United States. This price quote was contemporaneous with the U.S. price quotes used as the basis for EP. In addition, the petitioners alleged that sales of PVA products in the home market were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Based upon a comparison of the price of the foreign like product in the home market to the calculated COP of the product, we found reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department initiated a country-wide cost investigation. Pursuant to section 773(b)(3) of the Act, COP consisted of the cost of manufacture (COM), selling, general and administrative (SG&A) expenses, and packing. The petitioners calculated COP based on the experience of a U.S. PVA producer during the 2001 fiscal year, adjusted for known differences between costs incurred to manufacture PVA in the United States and Germany.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Germany on constructed value (CV). The petitioners calculated CV using the same COM, SG&A and financial expense figures used to compute the COP. Consistent with Section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in Clariant International's 2001 financial statements. The petitioners' calculation of profit was based on operating profit and not on the net income of the German PVA producer. Therefore, for