

respondents who has not responded to the Department's questionnaire, requested that the Department revise the scope to exclude certain PVA products with specific physical characteristics and/or specific end-uses. These products include: D-copolymers (*i.e.*, certain copolymers of PVA and diacetoneacrylamide) for use in a paper application.

Additionally, on January 27, 2003, Nippon Gohsei requested that the remaining scope exclusions agreed to by the petitioners but not addressed in Kuraray's January 9, 2003, submission specify a minimum percentage of the non-PVA monomers (*i.e.*, sulfonic acid, acetoacetylate, polyethylene oxide, or quaternary amine) instead of specifying exact levels of hydrolysis, viscosity, volatiles, and ash content as noted in the petitioners' December 23, 2002, submission.

On February 4, 2003, the petitioners agreed to all of the revisions requested by Nippon Gohsei. In addition, the petitioners also agreed to revise the scope to exclude certain copolymers covalently bonded with silan uniformly present on all polymer chains in a concentration equal to or greater than one mole percent, certified for use in paper coating applications, pursuant to a request made by Kuraray.

As noted above, on February 5, 2003, the petitioners submitted a letter noting that they were in the process of reviewing Japan VAM & POVAL's exclusion request, and had not yet agreed to the exclusion request. Because there was insufficient time to properly consider Japan VAM & POVAL's exclusion request, we will address it in the final determination.

Facts Available (FA)

1. Application of FA

Section 776(a)(2) of the Act provides that if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (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 Denki Kagaku, Japan VAM & POVAL, and Kuraray. Neither Denki Kagaku nor Japan VAM & POVAL responded to the Department's questionnaires. Moreover, on December 5, 2002, Kuraray informed the Department that it did not intend to participate in this investigation. Because these companies 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 of 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). Each of the respondents was 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 Denki Kagaku, Japan VAM & POVAL, and Kuraray possessed the records necessary for this investigation and that by not supplying the information the Department requested, these companies 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* the 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 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.

In selecting from among the facts otherwise available and using an adverse inference, we reviewed the information provided in the petition and in the response submitted by Nippon Gohsei. The petition contained a margin calculation for each of two products sold by Kuraray. *See* below for a review of the methodology used by the petitioners for their calculations of EP and NV. Because these margins were higher than the margin that we calculated for Nippon Gohsei, we selected these margins for purposes of corroboration.

Export Price

With respect to the margins in the petition, EP was based on POI price quotes for the sale of PVA produced by Kuraray to customers in the United States. The petitioners calculated net U.S. prices for PVA by deducting a distributor mark-up, where applicable, and certain movement charges.

We corroborated the U.S. prices from the petition by comparing them to prices of comparable products sold by Nippon Gohsei. We found that Nippon