

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty
Administrative Review of Stainless Steel Bar from Spain for the
Period of Review March 1, 2005, through February 28, 2006

Summary

We have analyzed the case and rebuttal briefs of interested parties in the administrative review of the antidumping duty order on stainless steel bar from Spain for the period March 1, 2005, through February 28, 2006. As a result of our analysis, we did not make changes in our determination. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments and rebuttal comments by parties:

- (1) Cost-Reporting Period
- (2) Adverse Facts Available
- (3) Selection of an Adverse-Facts-Available Rate

Background

On March 28, 2007, the Department of Commerce (the Department) published its preliminary results of the administrative review of the antidumping duty order on stainless steel bar from Spain. Stainless Steel Bar from Spain: Preliminary Results of Antidumping Duty Administrative Review, 72 FR 14522 (March 28, 2007) (Preliminary Results). The review covers one manufacturer/exporter, Sidenor Industrial SL (Sidenor). We invited interested parties to comment on the preliminary results. At the request of Sidenor we held a hearing on May 16, 2007.

Discussion of the Issues

1. Cost-Reporting Period

Comment 1: At the outset of this review, Sidenor requested that it be allowed to shift its cost-reporting period backwards by two months to capture costs from its fiscal year rather than the period of review. The Department denied Sidenor's request to shift its cost-reporting period.

Sidenor claims that the two main reasons for requesting a shift in the cost-reporting period was the ease of calculating and reconciling data submitted on a fiscal-year basis and the distortion caused by using the period-of-review data in light of the date of sale of the reported home-market and U.S. sales. Sidenor asserts that, due to the dates of its U.S. sales, the possible matches to Sidenor's home-market sales would overlap fewer months in the period of review than the fiscal year because of the 90/60-day contemporaneity period. Consequently, Sidenor asserts, the Department's denial of Sidenor's request resulted in an unnecessarily complex cost-calculation methodology.

The domestic interested parties did not comment on this issue.

Department's Position: Generally, the Department will allow a respondent to shift its cost-reporting period to its fiscal year if the respondent can establish that shifting the period will not distort the costs for the period of review. In the instant case, on two separate occasions we requested information from Sidenor with regard to its request to shift the cost-reporting period. Sidenor did not respond properly to our request for information. Because Sidenor did not provide the specific information as requested, we instructed Sidenor to report its costs for the period of review.

Specifically, in a letter dated May 30, 2006, we informed Sidenor that we may agree to Sidenor's request to shift the cost-reporting period from the period of review to its fiscal year if we can establish that shifting the period will not distort the costs for the period of review. In order to make such a determination, we required further information concerning the impact the requested shift would have on the cost data. Therefore, we requested that Sidenor respond to the May 30, 2006, four-question supplemental questionnaire by June 5, 2006. See letter to Sidenor from Laurie Parkhill, dated May 30, 2006. Sidenor did not respond to the four questions we had asked.

On August 8, 2006, Sidenor requested again to report its cost information on a fiscal-year basis rather than for the period of review. On August 10, 2006, we sent a second letter to Sidenor re-iterating the request for additional information we had issued on May 30, 2006, regarding the impact the requested shift in the reporting period would have on the cost data. On August 15, 2006, Sidenor provided a narrative response, but, again, it did not provide the requested schedules or address the specific issues we requested in the four questions. Because Sidenor did not provide the specific information we had requested, on August 18, 2006, we instructed Sidenor to report its costs for the period of review.

Without Sidenor's response to our request, we could not determine whether a shift in the reporting period was reasonable and, thus, we disallowed its request. Further, even if Sidenor provided the requested information and we denied the request due to possible distortions,

Sidenor's claims of complexity with respect to its cost-calculation methodology are very limited. Sidenor's reported cost of direct materials (*i.e.*, purchased billets) accounts for the vast majority of its cost of manufacture for the merchandise under consideration. In its cost- questionnaire responses Sidenor claimed that it reported the cost of direct materials on an actual-cost basis. Sidenor's complexity arguments are associated with its standard conversion costs. Thus, only a very small portion of Sidenor's reported costs (*i.e.*, conversion costs) are affected by the split of the reporting period over two of its fiscal years.

2. *Adverse Facts Available*

Comment 2: Sidenor asserts that the Department based its finding that it failed to answer the Department's questions to the best of its ability on three broad allegations: (a) that Sidenor did not provide complete and proper reconciliations; (b) that Sidenor did not provide product-specific costs based on its normal books and records; and (c) that Sidenor's explanations as to how it derived the submitted costs were unclear. Sidenor disagrees with the Department's determination that it failed to reconcile production costs to sales. Sidenor asserts that it reconciled the cost of its entire production to its audited financial statements through its trial balance. Sidenor also contends that it reconciled its sales to its audited financial statements. Accordingly, as both production and sales were reconciled to the audited financial statements, Sidenor asserts, they necessarily reconcile to each other through the audited financial statements.

Sidenor contends that it provided detailed costs for individual items. In regard to a selected item, Sidenor claims that it stated in its response that the Department's question could not be answered directly as several of the Department's basic assumptions were incorrect and all of the relevant information from its books and records had been provided previously in exhibit D-9 of the cost response. Sidenor claims that its response in exhibit D-9 contains each and every amount carried in its books and records as a cost in the ordinary course of business and, thus, it argues, it has been fully responsive. Moreover, Sidenor asserts, it has stated consistently how it calculated its reported material costs in each and every response. Sidenor also claims that it set forth its calculation methodology for conversion costs clearly but the Department did not understand the methodology, notwithstanding the fact that it was enumerated clearly. Finally, Sidenor states, it provided the variances at the level of detail contained in its accounting records and on a factor-specific basis. Sidenor claims that its variance calculation was appropriate as it was limited to the production operations to which stainless steel was subject and covered all of the items which were subject to the variance in Sidenor's books and records. Sidenor also claims that the variance is small and it is not unusual that Sidenor does not maintain detail at the level sought by the Department.

Sidenor argues that its correction of errors it discovered during the supplemental-questionnaire process should increase, not decrease, trust in its response. It also argues that it is inappropriate for the Department to draw any adverse inferences because Sidenor failed to answer a question the Department did not ask.

The domestic interested parties reiterate that application of facts available in this review is warranted under section 776(a) of the Tariff Act of 1930, as amended (the Act). Specifically, they claim, Sidenor failed repeatedly to provide information in its cost-of-production

questionnaire responses in the form and manner the Department requested. For example, the domestic interested parties claim, the Department requested on numerous occasions that Sidenor provide an explanation and supporting documentation linking its reported costs to its normal books and records. Moreover, the domestic interested parties assert, Sidenor did not provide support from its normal accounting records for the overall reconciliation. They contend that these decisions by Sidenor to withhold information significantly impeded the conduct of this review.

Department's Position: In general, in its comments following our preliminary results of review, Sidenor has addressed its reporting methodologies, conversion costs, cost variances, and the overall cost reconciliation. These issues are all important and are of a complex nature. The primary reason for the Department's finding that Sidenor did not cooperate to the best of its ability, however, is Sidenor's failure to provide adequate explanations and requested documentation linking its reported direct-materials cost to cost-accounting records it maintains in the normal course of business. Sidenor did not address this primary deficiency in either its submitted questionnaire responses or post-preliminary results comments. Instead, Sidenor chose to address complex auxiliary issues in its comments in what appears to be an attempt to diminish the importance of the deficiencies in supporting its reported direct-materials cost.

Regardless of the complex nature in allocating the conversion costs and applying cost variances, our request for support from Sidenor's normal books and records for the actual cost of a billet should not be an untenable task. Sidenor has not provided a single document from its normal books and records that can be traced to its reported direct-materials cost for the merchandise under consideration. Throughout this review Sidenor has declined to provide us with requested documentation in support of its reported direct-materials cost at both the control-number and specific-product levels. See the Memorandum from Mark Todd through Neal Halper to the file entitled "Summary of the Department's Supplemental Questions and Sidenor's Responses Regarding Direct Material Costs," dated July 26, 2007. Sidenor has written numerous pages of narrative discussing its reporting methodology and provided detailed spreadsheets created for purposes of this review only (*i.e.*, prepared outside its normal course of business). To date, however, Sidenor has not provided any of the requested documents *from its normal books and records* that support the reported direct-materials cost.

Sidenor purchased the billets it used to produce the stainless steel bar under consideration. The billet cost represents the vast majority of the total production cost Sidenor incurred. In contrast, the conversion costs related to transforming the purchased billets into stainless steel bar is a minor amount in comparison to the total cost of manufacture for stainless steel bar. In the preliminary results, we applied adverse facts available primarily because Sidenor failed to provide adequate explanations and documents we requested that link its reported direct-material costs to cost-accounting records it maintains in the normal course of business. Thus, given that its direct-materials cost represents such a large portion of the reported costs, the costs associated with the merchandise under consideration included in Sidenor's overall cost reconciliation is substantially unreliable. Moreover, with regard to conversion costs, Sidenor provided inaccurate explanations throughout the majority of the review and, in the end, used an unreasonable variance-allocation methodology in its calculation. Further, Sidenor did not

provide other cost and quantity reconciliations we requested.

With regard to Sidenor's assertion that, because it separately reconciled its sales and overall cost to the audited financial statements, they necessarily reconcile to each other, Sidenor's discussion is off-point and appears to cloud the specific issue discussed in the Department's memorandum to the file entitled "Use of Adverse Facts Available for the Preliminary Determination - Sidenor Industrial, SL" from Mark Todd through Neal Halper, dated March 22, 2007 (AFA Memorandum). In the AFA Memorandum, we discussed how Sidenor failed to provide proper data for two types of reconciliations: (1) an overall cost reconciliation that encompasses a top-down approach of reconciling the cost from the audited financial statements downwards to the cost of merchandise under consideration for the period of review; and (2) a quantity reconciliation between reported sales and production quantities.

Sidenor's comments address only a small portion of the overall cost reconciliation. As stated earlier, the deficiency with the overall cost reconciliation is the unsupported direct-materials cost of the merchandise under consideration. The portion of the overall reconciliation that Sidenor's arguments address, *i.e.*, the section associated with reconciling the total period-of-review cost to the audited financial statements, is not even an issue here.

With respect to the quantity reconciliation, Sidenor decided unilaterally not to provide the requested data. In the instant case, as mentioned earlier, it was imperative that Sidenor provide the quantity reconciliation because Sidenor calculated the costs it reported using sales quantity as a surrogate for production quantity. Thus, as the denominator, sales quantity is a vital component to any per-unit cost calculation. As stated in the AFA Memorandum, typically the purpose of a reconciliation is to identify and quantify major differences between certain items. In this case, Sidenor did not provide the requested quantity reconciliation and only provided a general statement that the two quantities do not reconcile due to different time periods and a difference in the range of products.

Sidenor claims that it provided detailed costs for individual items and that all of the data for the requested product could be found in exhibit D-9 of its response. Sidenor asserts further that it could not answer the Department's question directly because several basic assumptions the Department made were incorrect. Sidenor's explanation is not on point. We requested *support* for the data of a single product within a single control number that Sidenor included in exhibit D-9. Further, Exhibit D-9 and later exhibit SSD-5 are spreadsheets Sidenor prepared outside the normal course of business specifically for this review. The purpose of our request for information was to obtain support from Sidenor's normal books and records for the information included in these exhibits, which Sidenor never provided. Sidenor's statement that it had reported all the data we required in the relevant exhibit still misses the point: it did not comply with our request for information to support the data it reported in exhibit D-9 with documentation from its normal books and records. Specifically, we requested supporting documentation for the total starting costs, total quantity, the standard conversion costs being deducted, and the actual conversion costs being added for a single product within a single control number.

Sidenor claims in its comments that exhibit D-9 contains costs carried in its books and records in the ordinary course of business but it did not provide the requested documentation from its normal books and records to support this assertion. Instead, Sidenor ignored our question outright by not addressing it in its narrative response and by not providing the requested

information. In fact, the record of this administrative review does not support Sidenor's claim that it provided the data we requested. Moreover, the attachment that Sidenor provided as support in its brief does not demonstrate how the *reported* direct-materials cost reconciles to the direct-materials cost in its *normal books and records* because the record of this administrative review has no direct-materials data from Sidenor's normal books and records due to Sidenor's failure to provide the requested information.

Sidenor's claim that it reported its material costs in a consistent fashion and clearly set forth its calculation methodology only partially addresses our statement in the AFA Memorandum with regard to the lack of or unclear explanations. Sidenor's comments do not address the remaining portion of our statement that, due to the "...lack of supporting documentation we are unable to discern how Sidenor calculated its reported direct materials cost for {stainless steel bar} and it is unclear how its reported methodology ties to their normal books and records" (see AFA Memorandum at page 5). As discussed previously, eventually Sidenor provided narrative responses and pages of spreadsheets it prepared outside its normal course of business (*i.e.*, for reporting purposes only); it did not support these statements and spreadsheets with the requested documents that would have demonstrated how the reported direct-materials cost tied to its normal books and records.

Finally, we disagree with Sidenor's claims that it provided variances at the level of detail contained in its accounting records and thus responded fully to our questionnaires and remedied the alleged discrepancies. Throughout the review it was unclear how Sidenor's reported conversion-cost methodology, specifically the application of the cost variance, tied to its normal books and records. Thus, we requested support and explanations repeatedly on how it applied the cost variances to the standard conversion cost in its reported cost. Sidenor maintained in its first three responses to our questionnaires (the original cost questionnaire and two supplemental questionnaires) that it had included the conversion-cost variances in its reported costs. Sidenor also maintained that it had applied these variances on a steel-group basis because the company does not track variances on a product-specific basis.

In Sidenor's third and final supplemental response, for the first time, it acknowledged that it had not applied the conversion-cost variances to the reported cost and submitted revised conversion costs as previously asserted. The revised reported conversion costs included a new reporting methodology, however, in which Sidenor based the variances on the company's overall experience by company-wide cost categories. Sidenor produces a wide range of products and its overall operations consist of multiple factories, melt shops, and various finishing centers for all of the steel products it produces. Given that Sidenor purchased the billets it used to produce stainless steel bar and the fact that stainless steel bar is a small percentage of Sidenor's total production (including subject and non-subject merchandise), the application of an overall company-wide variance is not appropriate. Further, it is not apparent whether Sidenor included all of the variances related to the production of stainless steel bar. Moreover, Sidenor's response to this issue and its revised reported conversion-cost methodology contradict its previous statements in all prior responses where Sidenor asserted that variances were applied on a steel-group basis. Given the late nature of Sidenor's acknowledgment and change in reporting methodology, we were unable to obtain additional information or supporting documentation associated with the new information.

Finally, Sidenor asserts that correction of errors should increase trust in a response and that a submission in a response to a specific question does not require an answer not subject to the question. We do not believe that these arguments have any relevance to our decision to apply adverse facts available to Sidenor for this review because the underlying discussion here is based on issues associated with the conversion cost, an insignificant portion of the total overall costs. As mentioned earlier and discussed further below, the primary reason for the Department's application of adverse facts available to Sidenor is its failure to provide adequate explanations and documentation linking its reported direct-materials cost to the cost-accounting records it maintains in the normal course of business.

Comment 3: Sidenor argues that adverse facts available may not be arbitrarily imposed, but can only be used where statutory criteria are met pursuant to sections 776(a)-(b) of the Act. Sidenor claims that all of the information necessary for the Department to calculate a rate is present on the record. Contrary to the Department's claim, Sidenor asserts, it provided a reconciliation of sales to the financial statements and a reconciliation of costs to the financial statements. Sidenor argues that, where both sales and costs are reconciled to the financial statements, they necessarily reconcile to each other. Sidenor claims that it did not withhold requested information or fail to provide such information by the deadlines for submission or in the form and manner requested. It asserts that it did not significantly impede the proceeding and that it provided sufficient information which can be verified from its normal books and records. Sidenor asserts that the Department cannot know whether the information can be verified as it did not conduct a verification. Finally, Sidenor contends that it did not fail to cooperate and did act to the best of its ability to comply with all requests for information. According to Sidenor, the Department did not verify the company and may not understand the basis of the cost allocations, but that does not justify a conclusion that Sidenor did not cooperate.

The domestic interested parties contend that substantial record evidence establishes that the cost-of-production questionnaire responses Sidenor submitted in this administrative review are based on misrepresented and incomplete information. The domestic interested parties assert that Sidenor did not reconcile its reported costs for merchandise under review to the company's normal books and records despite being in possession of the information sought by the Department and given numerous opportunities by the Department to do so. The domestic interested parties argue that Sidenor's repeated failures to comply with the Department's clear reporting instructions render the cost data submitted in the company's cost-of-production questionnaire response unreliable and, therefore, unusable for purposes of calculating a dumping margin for the company. Accordingly, the domestic interested parties assert, the statutory and factual bases for rejecting Sidenor's data and application of total facts available with adverse inferences are amply satisfied in this review.

The domestic interested parties contend that application of facts available in this proceeding is warranted under section 776(a) of the Act. Specifically, the domestic interested parties claim that Sidenor failed repeatedly to provide information in its cost-of-production questionnaire responses in the form and manner requested by the Department. For example, the domestic interested parties claim, the Department asked Sidenor on numerous occasions to provide an explanation and supporting documentation linking its reported costs to its normal

books and records. Moreover, the domestic interested parties assert, Sidenor did not provide support from its normal accounting records for the overall reconciliation. They contend that these decisions by Sidenor to withhold information significantly impeded the conduct of this review. The domestic interested parties argue that, by limiting the Department's ability to assess the accuracy and reasonableness of the reported costs, Sidenor precluded the Department from determining an accurate normal value for the calculations and, as a result, Sidenor precluded the Department from using Sidenor's reported sales data to calculate an accurate dumping margin.

Department's Position: The record of this administrative review does not support the conclusions Sidenor asserts. The record evidence, including the briefs and accompanying attachments, does not contain the documentation we requested concerning the reported costs for direct materials for the merchandise under consideration from Sidenor's normal books and records, despite our repeated requests for the information. This lack of information impeded the conduct of the review and limited our ability to attempt a verification because the requested details and documentation for the direct-material costs, from Sidenor's books and records, was not on the record to verify. Therefore, consistent with the preliminary results, we have determined that the application of adverse facts available for this period is appropriate.

According to section 773(f)(1)(A) of the Act, costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. In accordance with the statutory directive, the Department will accept costs of the exporter or producer if they are based on records kept in accordance with GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise (i.e., the cost data are reasonably allocated to merchandise under consideration). In determining whether the costs are reasonably allocated to all products, the Department will examine, consistent with section 773(f)(1)(A) of the Act, whether the company uses the allocation methods in its normal accounting records and whether they have been historically used by the company. Sidenor has not been responsive to all of our requests for information, has provided inconsistent explanations, and, as a result, has not demonstrated a link between its reported direct-materials cost and its normal books and records. See the AFA Memorandum for a detailed discussion of the analysis of the adequacy of the cost response.

Before assessing the reasonableness of a respondent's cost-allocation methodology, we must ensure that the aggregate amount of the reported costs captures all costs incurred by the respondent in producing the merchandise under consideration during the period under examination. A reconciliation of the respondent's submitted cost data to the company's audited financial statements achieves this step of our analysis, when such statements are available. Because of the time constraints associated with antidumping proceedings, we usually rely on the independent auditor's opinion concerning whether a respondent's financial statements accurately represent the total actual costs incurred by the company and whether those financial statements are prepared in accordance with GAAP of the exporting country. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Mexico, 68 FR 68350 (December 8,

2003), and accompanying Issues and Decision Memorandum at Comment 6 and Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Venezuela, 67 FR 62119 (October 3, 2002), and accompanying Issues and Decision Memorandum at Comment 1.

In situations where the respondent's total reported costs differ from amounts reported in its financial statements, the reconciliation of the costs from the financial statements to the submitted per-unit costs assists us in identifying and quantifying those differences in order to determine whether it was reasonable for the respondent to exclude certain costs for purposes of reporting data concerning its cost of production and constructed value. Although the format of the reconciliation of submitted costs to actual financial-statement costs depends greatly on the nature of the accounting records maintained by the respondent, the reconciliation represents the starting point of a cost investigation because it assures us that the respondent has accounted for all costs before allocating those costs to individual products.

As discussed further below, Sidenor did not provide adequate explanations or documentation linking its reported direct-material costs to its financial-accounting records maintained in the normal course of business, despite the Department's requests that it do so. Because Sidenor's reported direct-material costs (*i.e.*, purchased billets) account for the vast majority of its cost of manufacture for the merchandise under consideration, an incomplete reconciliation of those costs for the merchandise under consideration leaves the Department with substantially unsupported information. See Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India, 71 FR 45012 (August 8, 2006), and accompanying Issues and Decision Memorandum at Comment 14. Moreover, with regard to conversion costs, Sidenor provided inaccurate explanations throughout the majority of the review and in the end used an unreasonable variance-allocation methodology in its calculation. Further, Sidenor did not provide other cost and quantity reconciliations we requested.

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information by the deadlines for such information or in the form and manner requested, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides information which cannot be verified, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. In addition, section 776(a)(1) of the Act provides that the Department can resort to facts available if the necessary information is not available on the record. In this case, Sidenor did not provide the requested details on how it allocated costs to specific products in its normal books and records and for reporting purposes. In addition, Sidenor withheld job cost sheets (so-called SDCs), cost-of-sales information, and other documents relating to the specific merchandise under examination which we had requested.

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 will inform the person submitting the response of the nature of the deficiency and, to the extent practicable, shall provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory or this information is not submitted within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard

all or part of the original and subsequent responses, as appropriate. In this case, we requested a cost reconciliation in our original cost-of-production questionnaire and documentation for the reported direct-material cost. We found Sidenor's response to be deficient.

We provided Sidenor with opportunities to remedy these deficiencies by issuing three supplemental cost questionnaires requesting that Sidenor provide and support a proper cost reconciliation and provide supporting information for the direct-materials cost for merchandise under consideration, which is a portion of the cost reconciliation. Sidenor provided a cost reconciliation in its second supplemental response and supported the cost for merchandise *not* under consideration. Sidenor never provided the information we requested for the direct-materials cost, which accounts for the vast majority of the cost of the merchandise under consideration. As such, the remaining deficiency concerning the overall cost reconciliation is the unsupported direct-materials cost of the merchandise under consideration, not the section of Sidenor's response reconciling the total period-of-review cost to the audited financial statements as Sidenor suggests in its comments. Further, Sidenor neglects to address in its arguments that it did not provide the requested sales and quantity reconciliation. Sidenor's failure to provide this reconciliation (*i.e.*, reconciling its production quantity to its sales quantity) has left the Department with no support or assurance that the quantity of stainless steel bar Sidenor reported as merchandise under consideration is complete and accurate. In the instant case, it was imperative that Sidenor provide this reconciliation because Sidenor calculated its reported costs using sales quantity as a surrogate for production quantity. Thus, as the denominator, sales quantity is a vital component to any per-unit cost calculation.

Section 782(e) of the Act provides that the administering authority shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements, if the following criteria are met: (1) the information is submitted by the deadline established; (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 in providing the information and meeting the requirements; and (5) the information can be used without undue difficulties. In this case, Sidenor never provided complete and proper reconciliations (*i.e.*, production quantity to sales quantity) and it never provided the documentation from its normal books and records for the product-specific costs (*i.e.*, specifically direct materials) which we requested. Lack of these reconciliations and supporting documentation renders the reported costs unverifiable and unusable. In addition, as all of the requested information exists and is not overly burdensome to provide, Sidenor has not acted to the best of its ability by continuing to choose what information it will provide and will not provide. Thus, because the information submitted by Sidenor does not meet the criteria of section 782(e) of the Act either, the Department declined properly to use Sidenor's reported per-unit cost data. Therefore, we conclude that, pursuant to sections 776(a)(1) and (a)(2) of the Act, use of facts otherwise available is appropriate.

Having determined to use facts otherwise available in lieu of Sidenor's reported costs, we must determine whether the use of facts available for Sidenor's cost data renders Sidenor's submitted sales data unusable and whether the use of an adverse inference to facts available is warranted. In order to determine whether a respondent sold the subject merchandise in the

United States at less than fair value, the Department compares the prices of its U.S. sales to the weighted-average normal value of Sidenor's sales of the foreign like product made in the ordinary course of trade.¹

Based on allegations by domestic interested parties and in accordance with section 773(b)(2)(A)(i) of the Act, we determined that we have reasonable grounds to believe or suspect that Sidenor's sales of the foreign like product under consideration for the determination of normal value in this review may have been made at prices below the cost of production. For more details, see the memorandum to Laurie Parkhill entitled "Stainless Steel Bar From Spain: Request to Initiate Cost Investigation for Sidenor Industrial SL," dated July 31, 2006. As such, pursuant to section 773(b)(1) of the Act, we conducted a sales-below-cost investigation of sales made by Sidenor in the home market. In a sales-below-cost investigation, the Department compares the respondent's home-market price to its cost of production to determine whether the foreign like product was sold at prices above or below the cost of production. See section 773(b) of the Act. After conducting the cost test, the Department compares the U.S. price to the home-market prices that have passed the cost test. Because Sidenor's reported per-unit cost data are incomplete and unreliable, we could not conduct a proper cost test. Therefore, we were unable to determine whether Sidenor's home-market sales were made within the ordinary course of trade based upon the cost test.

In situations where the U.S. price cannot be compared to home-market prices because the home-market sales are made outside the ordinary course of trade, the Department compares the U.S. price to constructed value which is another way to determine normal value. See section 773(a)(4) of the Act. The constructed-value information Sidenor reported suffers from the same problems as the unverifiable cost-of-production data it provided because most of the cost elements are the same for determining an accurate cost of production and an accurate constructed value. In this case, we cannot compare the U.S. price to normal value because we cannot conduct the cost test nor do we have reliable cost data with which to calculate the constructed value. Therefore, the necessity for use of facts available for cost-of-production data precludes the use of the submitted constructed-value information.

Our practice has been to reject a respondent's submitted information in total when flawed and unreliable cost data render any price-to-price comparison impossible. See Notice of Final Determination of Sales at Less Than Fair Value: Grain-Oriented Electrical Steel from Italy, 59 FR 33952 (July 1, 1994), and Certain Cut-to-Length Carbon Steel Plate from Mexico: Notice of Final Results of Antidumping Duty Administrative Review, 64 FR 76, 77-78 (January 4, 1999); see also Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Mexico, 68 FR 68350 (December 8, 2003). Even if the Department had accepted verifiable sales information when a respondent's cost information (a substantial portion of the response) could not be verified, respondents would be in a position to manipulate the calculations of a dumping

¹ In this case, because Sidenor's home market is viable, under section 773(a)(1)(B)(ii)(II) of the Act, we are using the price of the foreign like product sold in the home market as normal value.

margin by permitting the Department to verify only that information which the respondent wishes the Department to use in its margin calculation. Accordingly, we find that there is no reasonable basis for determining normal value for Sidenor. As a result, we can not use Sidenor's reported sales data to calculate a dumping margin. Therefore, we have based Sidenor's margin on total facts available.

Section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with 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); see also Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 103-316, vol.1 (1994) (SAA) at 870. Specifically, section 776(b) of the Act provides that, where the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority," the Department "may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." As discussed above, after providing Sidenor with numerous opportunities, it failed to provide requested reconciliations and documentation when the requested information was within its control. Thus, we have determined that Sidenor has not acted to the best of its ability to comply with our requests for information. Accordingly, consistent with section 776(b) of the Act, we have applied total adverse facts available. See Notice of Preliminary Determination of Sales at Less than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Prestressed Concrete Steel Wire Strand from Mexico, 68 FR 42378, 42380-81 (July 17, 2003) (unchanged in Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Mexico, 68 FR 68350 (December 8, 2003)).

Comment 4: Sidenor argues that it is not appropriate to resort to adverse facts available in the absence of a verification, given Sidenor's full and complete cooperation. Sidenor asserts that its response contains the information necessary for the Department to calculate cost-of-production values and possibly lacks only the "ancillary" supporting information, the kind it claims the Department examines typically at verification. Sidenor claims that the Department's reliance on certain earlier decisions it cited in the Preliminary Results is misplaced because in those cases the Department's determination with respect to a lack of accuracy or completeness of submitted information was established as a result of verification. Furthermore, Sidenor claims, it found no single case where the Department applied adverse facts available to a respondent that provided timely and complete responses and did not fail a verification. In the case at hand, Sidenor argues, its information should be used because Sidenor did not fail a verification.

Sidenor also argues that, should the Department reverse its decision to apply adverse facts available and, instead, calculate a dumping margin for Sidenor, it then must be given an opportunity to comment on the calculation of such margin. Citing Globe Metallurgical, Inc. v. United States, 2005 Ct. Intl. Trade LEXIS 98 (CIT 2005), Sidenor suggests that the Department issue "a pre-final determination" in order to provide it with a meaningful opportunity to comment on the Department's calculation methodology before the Department's publication of the final

results.

The domestic interested parties argue that the Department is not under any obligation to verify Sidenor's reported cost data or to provide Sidenor an opportunity to correct its cost data through verification before relying on adverse facts available. The domestic interested parties maintain that 19 CFR 351.307(b)(iv) does not require the Department to verify a respondent in an administrative review. Further, relying on sections 776(a)-(b) of the Act, the domestic interested parties assert that a verification is not required as a condition for the application of adverse facts available. Citing the Department's AFA Memorandum at pages 5-6, the domestic interested parties argue that the Department identified numerous deficiencies in Sidenor's reporting of its cost data requiring the submission of new factual information. The domestic interested parties argue that, had Sidenor submitted such new factual information at verification to remedy these deficiencies, the Department would have been required to reject such submissions on the basis of untimely filed new factual information. In support of its argument the domestic interested parties cite 19 CFR 351.302(d) and Final Results of Antidumping Duty Administrative Review of Petroleum Wax Candles From the People's Republic of China, 68 FR 13264 (March 19, 2003), and accompanying Issues and Decision Memorandum at Comment 3.

Department's Position: Section 776(a) of the Act states that if (1) necessary information is not available on the record or (2) an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title. The statute does not require verification for the Department to apply facts otherwise available. As we stated in the AFA Memorandum at 6, "{i}n this case complete and proper reconciliations were never provided, product-specific costs based on {respondent's} normal books and records have not been provided and explanations of how they derived the submitted costs remain unclear, which renders the reported costs *unverifiable* and unusable" (emphasis added). Accordingly, once the Department determines that certain information can not be verified, verification becomes moot. Further, verification is not mandated under sections 776(a) and (b) of the Act and, therefore, is not a requirement necessary for the application of adverse facts available. In fact, albeit in the context of discovery at verification of contradictory information, in Shanghai Taoen Int'l Trading Co. v. United States, 360 F. Supp. 2d 1339, 1345 (CIT 2005) (Shanghai Taoen), the court found that an act of purposefully withholding or providing misleading information, in itself, is grounds for the application of adverse facts available under section 776(b) of the Act. Therefore, we find that application of adverse facts available is warranted because, as explained above, Sidenor withheld certain information in some instances and provided misleading information in others.

Finally, concerning Sidenor's argument that we must provide it with an opportunity to comment on our methodology for calculating a dumping margin for Sidenor, this issue is moot because we did not calculate a dumping margin for Sidenor for the final results of this review.

Instead, we find that it is appropriate to apply adverse facts available to Sidenor for the final results.

Comment 5: Sidenor argues that, because the Department's issuance of its original and supplemental cost questionnaires coincided with the most significant holiday periods in Spain and in the United States, Sidenor was constrained by the time available to respond which, Sidenor contends, led to the alleged "small discrepancies" in its reporting of cost information.

The domestic interested parties argue that Sidenor's assertion that the Department's issuance of its original and supplemental questionnaires, coincidental with certain holidays, constrained the company's permitted time to respond is without merit. The domestic interested parties assert that the Department afforded Sidenor numerous opportunities, in the form of three supplemental questionnaires, to correct the various deficiencies the Department had identified. Furthermore, the domestic interested parties assert, the Department granted Sidenor's repeated requests for extensions of time to respond. Citing Shandong Huarong Gen. Group Corp. v. United States, 2003 Ct. Intl. Trade LEXIS 153 (CIT 2003), the domestic interested parties argue that the Department had no further obligation under section 782(d) of the Act to provide Sidenor with another opportunity to correct its cost data by issuing yet another supplemental questionnaire.

Department's Position: We disagree with Sidenor that the timing of the issuance of our original and supplemental cost questionnaires, coincidental with the onset of certain holidays, constrained the actual amount of time allowed Sidenor to respond accurately to our requests for information. We face strict statutory deadlines when conducting administrative reviews of antidumping duty orders. Given the time limits under U.S. law, we strive to issue our supplemental questionnaires to respondents soon after the receipt and review of the questionnaire responses. The instant review is no different. As such, the Department is not in the position, nor is obligated, to time the issuance of its supplemental questionnaires to accommodate the various holidays observed by respondents in the various parts of the world because doing so would impede unduly the Department's ability to conduct administrative reviews within the statutorily defined time limits.

The conduct of the administrative review at hand is no different. Section 751(a)(3)(A) of the Act mandates the completion of preliminary results of administrative review within 245 days after the last day of the anniversary month. Sidenor requested multiple extensions of time to respond to our original and supplemental cost questionnaires and we granted, in full or in part, Sidenor's every request for extension. Specifically, the record shows that Sidenor had approximately 131 days to respond to our original and supplemental cost questionnaires. Furthermore, Sidenor requested multiple extensions of time to respond to our original and supplemental sales questionnaires which we granted in full or in part. Consequently, Sidenor had the bulk of the 245-day time period within which to provide the Department with the requested information. As such, we do not find Sidenor's argument compelling that it had not been provided with sufficient time to respond.

3. *Selection of an Adverse-Facts-Available Rate*

Comment 6: Sidenor contends that the adverse facts-available rate the Department selected is excessive. Citing Shandong Huarong Gen. Group Corp. v. United States, No. 01-00858, 2007 Ct. Intl. Trade LEXIS 3 (CIT 2007) (Shandong), Sidenor asserts that the selected adverse facts-available rate should reasonably reflect the rate that would have applied if the company's data were used and include an additional amount to deter non-compliance. Sidenor argues that a determination of an additional increase in the rate for deterring non-compliance must rest on the Department's examination of the nature of non-compliance on the part of Sidenor. Sidenor asserts that the Department should use a base rate of 7.7 percent, which is the only rate ever calculated in the less-than-fair-value investigation on stainless steel bar from Spain for a respondent, and increase that rate by an amount that would deter non-compliance.

The domestic interested parties assert that, in the preliminary results of the review, the Department applied its standard methodology for determining the adverse facts-available rate. Specifically, the domestic interested parties assert that the Department relied on the rate of 62.85 percent, which is the highest rate determined in the original less-than-fair-value investigation. The domestic interested parties argue that the selection of this rate is consistent with court and agency precedent. Citing F.Lii de Cecco di Filippo Fara S. Martino S.p.A. v. United States, 216 F.3d 1027, 1032 (CAFC 2000) (F.Lii De Cecco), the domestic interested parties contend that the Department met its burden of determining "a reasonably accurate estimate" of the respondent's actual rate, "albeit with some built-in increase intended as a deterrent to noncompliance," in its selection of a 62.85 percent rate for Sidenor.

Department's Position: We disagree with Sidenor's assertion that the adverse facts-available rate we selected is not appropriate. Section 776(b) of the Act states that an adverse inference may include reliance on information derived from the following sources: (1) the petition; (2) a final determination in the investigation under this title; (3) any previous review under section 751 or determination under section 753; or (4) any other information on the record. In accordance with our normal practice, we reviewed all potential rates in the history of the proceeding which could be applied to Sidenor as an adverse facts-available rate in this segment of the proceeding. Specifically, because Sidenor is a first-time participant in the current administrative review and there are no other respondents in the review, there are no prior weighted-average dumping margins that were ever calculated for Sidenor in prior segments of the proceeding nor are there weighted-average dumping margins that were calculated for other respondents in the instant review. Also, this is the first administrative review of the antidumping duty order since the less-than-fair value investigation.² Consequently, the rates that exist are from the less-than-fair value investigation, which are as follows: 7.7 percent, the weighted-average margin we calculated for a cooperative respondent, Roldan; 25.77 percent, the all-others rate; and 62.85 percent, an adverse facts-available rate we determined for a non-cooperative

² The original investigation covered the period July 1, 1993, through December 31, 1993.

respondent, Acenor, S.A.³ See Amended Final Determination and Antidumping Duty Order: Stainless Steel Bar From Spain, 60 FR 11656 (March 2, 1995) (LTFV). In addition to the rate the Department used in the LTFV as the adverse facts-available rate, another rate of 38.82 percent was alleged in the petition. See Initiation of Antidumping Duty Investigations: Stainless Steel Bar from Brazil, India, Italy, Japan and Spain, 59 FR 3844, 3846 (January 27, 1994).

It is the Department's practice, where warranted, to select the highest margin determined in the proceeding for any respondent, corroborate it to the extent practicable if it is secondary information, and apply it to uncooperative respondents. See Elemental Sulphur from Canada: Final Results of Antidumping Duty Administrative Review, 65 FR 11980 (March 7, 2000), and accompanying Issues and Decision Memorandum at Comment 3, and Brass Sheet and Strip from Germany: Final Results of Antidumping Duty Administrative Review, 63 FR 42823, 42824 (August 11, 1998). As total adverse facts available, we have assigned to Sidenor the highest rate we determined in the LTFV, a rate of 62.85 percent. The Court of Appeals for the Federal Circuit has upheld our use of the highest margin. In Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330, 1339 (CAFC 2002) (Ta Chen) (citing Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1190 (CAFC 1990)), the court held that, “in cases in which the respondent fails to provide Commerce with the most recent pricing data, it is within Commerce's discretion to presume that the highest prior margin reflects the current margins.” Further, as stated in Shanghai Taoen, 360 F. Supp. 2d at 1348 (citing D&L Supply Co. v. United States, 113 F.3d 1220, 1223 (CAFC 1997)), “the purposes of using the highest prior antidumping duty rate are to offer assurance that the exporter will not benefit from refusing to provide information, and to produce an antidumping duty rate that bears some relationship to past practices in the industry in question.” In the instant review, although Sidenor provided the most recent pricing data, we determined that we are not able to calculate a current dumping margin for Sidenor because we cannot ascertain with confidence that the cost-of-production data it provided reflect, reasonably and accurately, the costs Sidenor incurred to produce the merchandise under consideration. Therefore, consistent with the courts' rationales in Ta Chen and Shanghai Taoen, the facts of the instant case support our determination that the highest prior margin, established in the LTFV, reflects Sidenor's current margin and, thus, the facts validate the selection of that rate as an adverse facts-available rate for Sidenor.

With respect to a second rate alleged in the petition, a 38.82 percent rate, notwithstanding our concern with respect to this rate not being sufficiently adverse to discourage non-compliance, the 38.82 percent rate reflects an alleged price-to-price dumping margin. As such, we do not find this rate appropriate to Sidenor because Sidenor's home-market sales are subject to the sales-below-cost test as a result of our initiating a cost investigation. See the July 31, 2006, memorandum to Laurie Parkhill, entitled “Stainless Steel Bar From Spain: Request to Initiate Cost Investigation for Sidenor Industrial SL.” Accordingly, we find that the selection of the 62.85 percent rate, which was alleged in the petition as a price-to-constructed-value rate, is more appropriate to Sidenor, as adverse facts available, than the 38.82 percent rate based on a price-to-price allegation.

³ In the LTFV we assigned to Acenor S.A. the highest margin among the margins alleged in the petition, as recalculated by the Department.

We did not assign to Sidenor the all-others rate as total adverse facts available because, by definition, this rate is not based upon any adverse assumption or an adverse rate. Moreover, given that Sidenor's entries under review are already subject to deposit at the all-others rate, an assignment of this rate, as total adverse facts available, to Sidenor would neutralize the intent of an adverse inference, the main purpose of which is to prevent a respondent from benefitting from being non-compliant.

Sidenor does not explain why a calculated rate in the LTFV of 7.7 percent is more appropriate, as a starting point, than the rate we chose. Further, Sidenor does not propose a methodology which would result in an additional increase to be added to the calculated rate in the LTFV in order to deter non-compliance. Nor are we able to implement such a methodology because we have determined that Sidenor's data are flawed and, thus, unusable. Consequently, the selection of an arbitrary amount to add to the existing rate would be subjective and not based on record evidence. In Shanghai Taoen the court opined that "Commerce's burden is greater where information on the record demonstrates that an alternative rate may be appropriate. Where the highest available rate is the most probative rate on the record, Commerce's burden is satisfied. While the highest prior margin is obviously not a precise indicator of current dumping practices, it provides at least some guidance as to the probable dumping margin in the period for which the exporter is not providing information, and it is preferable in that respect to an arbitrarily selected figure that has no pretension to accuracy." See Shanghai Taoen, 360 F. Supp. 2d at 1223. Because, as demonstrated below, the adverse facts-available rate we have selected is the most probative rate on the record of this review, absent any information indicating the appropriateness of an alternate rate, we find that we satisfied our burden in selecting the highest prior margin as the adverse facts-available rate.

Section 776(c) of the Act mandates that, "{w}hen the administering authority or the Commission relies on secondary information rather than on information obtained in the course of an investigation or review, the administering authority or the Commission, as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal." Information from a prior segment of this proceeding, such as the adverse facts-available rate we selected from the LTFV to be applied to Sidenor, constitutes secondary information. See the SAA at 870. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. Id. Further, the SAA states that, "{c}onsistent with Annex II, paragraph VII of the Agreement, section 776(c) requires Commerce and the Commission to corroborate secondary information where practicable using independent sources... {i}ndependent sources may include, for example, published price lists, official import statistics, and customs data, and information obtained from interested parties during the particular investigation or review." Id. To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information.

As we stated in the Preliminary Results, "with respect to the reliability aspect of corroboration, we found the rate of 62.85 percent to be reliable in the investigation...Because the information was supported by source documents, we preliminarily determine that the information is still reliable." See the Preliminary Results, 72 FR at 14524. Also, in Shandong the court agreed with the Department's rationale that it was not necessary to question the reliability of the

margin because the selected rate was calculated using verified information provided by a respondent in a prior segment of the proceeding. See Shandong at *12. Consequently, in Shandong the court upheld the Department's selection of a dumping margin from a prior segment of the proceeding as total adverse facts available. See id. at *16. Consistent with the logic in Shandong, in the LTFV the Department confirmed the validity of the selected rate through an examination of source documents supporting its derivation. Furthermore, this rate was not judicially invalidated and we have no new information that would lead us to reconsider the reliability of this rate. Therefore, for the final results of this review, we continue to find the rate of 62.85 percent to be reliable.

The thrust of Sidenor's argument appears to focus on the relevance aspect of our corroboration analysis. As we stated in the Preliminary Results, “{i}n making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. 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. For example, in Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996) (Flowers from Mexico), the Department disregarded the highest margin as ‘best information available’ (the predecessor to “facts available”) because the margin was based on another company's uncharacteristic business expense that resulted in an unusually high dumping margin. Similarly, the Department does not apply a margin that has been discredited. See D&L Supply Co. v. United States, 113 F.3d 1220, 1224 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated).” We continue to find that the unusual circumstances present in the aforementioned cases are absent in the instant review and, therefore, the selected rate retains its relevance. Further, Sidenor has not provided nor is there any evidence on the record of this review that would challenge the relevance of the margin we proposed in the Preliminary Results to use as an adverse facts-available rate for Sidenor in this review.

Moreover, Sidenor's reliance on Shandong is misplaced. In Shandong, the Department selected, as adverse facts available, a rate from a previous review that was applied to a respondent unrelated to two respondents in that case, LMC and Huarong. In order to establish the relevance of the selected rate to the respondents in the contested review, the Department established first that, had these respondents cooperated, their rates would resemble the highest weighted-average margin the Department had calculated for them in a prior review. Next, the Department established that the difference between these rates and the adverse facts-available rate represents a built-in increase to deter any non-compliance. See Shandong at *10. To test the relevance of that additional amount of increase to the respondents, the Department examined the respondents' transaction-specific margins. That is, to determine an appropriate amount to add to the rates calculated previously for the respondents, the Department compared the respondents' highest transaction-specific margins to the selected adverse facts-available rate. The Department determined that, based on a comparison of the selected adverse facts-available rate to the respondents' transaction-specific margins, the respective percentage increases (i.e., the difference between the adverse facts-available rate and the respondents' rates calculated in a prior review) for both respondents would serve as an appropriate deterrent for non-compliance. See id. at *14-

15. In sum, in Shandong the court upheld the Department's methodology supporting the relevance of its corroboration analysis using the respondents' calculated rates and transaction-specific margins obtained from the prior review.

The facts in the instant case are distinguishable from those in Shandong. Specifically, we have never calculated a rate for Sidenor in prior reviews and, consequently, do not have Sidenor's transaction-specific data from prior reviews. Further, it would not be appropriate to use the rate we calculated for another company in the LTFV (Roldan) or the all-others rate as a surrogate for what Sidenor's rate could have been in this review, had it cooperated, because we still cannot derive or measure an appropriate increase to these rates (in order to quantify an appropriate adverse-inference element for Sidenor's noncompliance). Specifically, the difficulty stems from the fact that Sidenor's current transaction-specific data in this review are compromised because we found Sidenor's reported cost data unusable. Therefore, Sidenor's proposition that the adverse facts-available rate should reasonably reflect the rate that would have applied if the company's data were used and include an additional amount to deter non-compliance is not practicable here. As such, Sidenor's reliance on Shandong is not applicable to the facts of this review.

Further, as we stated in the Preliminary Results, "in accordance with F. LII De Cecco Di Filippo Fara S. Martino S.p.A v. United States, 216 F. 3d. 1027, 1030 (Fed. Cir. June 16, 2000), we must examine whether information on the record would support the selected rates as reasonable facts available. In the investigation, we determined that the calculation of 62.85 percent reflects commercial practices of the particular industry during the period of investigation and, as such, was relevant to mandatory respondents that failed to participate in the investigation." Preliminary Results, 72 FR at 14524. In fact, the courts have acknowledged that the consideration of the commercial behavior inherent in the industry is paramount in determining the relevance of the selected adverse facts-available rate to the uncooperative respondent by virtue of it belonging to the same industry. Such consideration encompasses typically the commercial behavior of other respondents and the selected adverse facts-available rate is gauged against that respondent's calculated margin, whether in a prior or a concurrent review. For example, in Ferro Union, Inc. v. United States, 44 F. Supp. 2d 1310, 1334 (1999) (Ferro Union), the court did not challenge our definition of "relevancy" in the context "that the prior margin should reflect the sales practices of the industry under examination." Further, the court opined in Ferro Union that "Commerce has rejected prior margins which are not reflective of an industry's sales practices" (citing to Flowers From Mexico at 6814 (rejection of a rate because it was "unrepresentative of the other companies in that review, and by extension, of the entire flower industry")). See Ferro Union at 1334. As such, the court's logic implies that, because the underlying derivation of the rate selected as adverse facts available is based on the commercial practices of the particular industry, it is relevant to an uncooperative respondent. Moreover, because no information has been presented in the current review that calls into question the relevance of this information to Sidenor, for the final results of this review we determine that the adverse facts-available rate we corroborated in the investigation is relevant to Sidenor in this administrative review of the order.

In sum, as we stated in the Preliminary Results, "...because this is the first review of Sidenor (and because Acenor S.A. failed to participate in the investigation), there are no

probative alternatives.” Preliminary Results, 72 FR at 14524. See also Notice of Preliminary Results of Antidumping Duty Administrative Review: Polyethylene Retail Carrier Bags from Thailand, 71 FR 53405 (September 11, 2006). With respect to a reference in the SAA to published price lists, official import statistics, and customs data as means of corroborating secondary information, we find that an examination of such data, even when practicable to obtain, is not helpful here, given that over a decade has elapsed since the less-than-fair-value investigation. Clearly, the exercise of comparing prices and/or import statistics for the period of investigation in the LTFV (July 1, 1993, through December 31, 1993) with prices and/or import statistics for the period of the instant review introduces many inherent obstacles, alleviation of which would be impracticable because they would require the Department to first collect and then adjust data for producer-price inflation in both markets, the terms of sale, the channels of distribution, the production processes, and so forth. As we stated further in the Preliminary Results, “...by using information that was corroborated in the investigation and preliminarily determined to be relevant to Sidenor in this review, we have corroborated the adverse facts-available rate ‘to the extent practicable.’” Preliminary Results, 72 FR at 14524. See section 776(c) of the Act, 19 CFR 351.308(d), and NSK Ltd. v. United States, 347 F. Supp. 2d 1312, 1336 (CIT 2004) (stating that “pursuant to the ‘to the extent practicable’ language...the corroboration requirement itself is not mandatory when not feasible”). For the final results of this review, we continue to find the adverse facts-available rate of 62.85 percent appropriate for Sidenor.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of the review in the Federal Register.

Agree _____

Disagree _____

David M. Spooner
Assistant Secretary
for Import Administration

Date