

effectuates the cooperation-inducing purpose of the BIA rule.

Comment 2: The Committee contends that Boo-Kook should be treated as an uncooperative respondent in this review and receive a dumping margin based on the best information available (BIA). It argues that Boo-Kook was uncooperative since it did not respond to the Department's cost of production (COP) questionnaire and canceled the scheduled verification. The Committee states that the Department was unable to substantiate the information submitted by Boo-Kook since the Department did not verify the sales questionnaire response. Further, the Committee claims that the Department has determined that a company which does not permit verification of its response to the sales questionnaire and does not respond to the COP questionnaire must be classified as an "uncooperative" respondent, citing *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany: Final Determinations of Sales at Less Than Fair Value*, 54 FR 18992, 19033 (May 3, 1989) (*AFBs from Germany*).

In response, Boo-Kook argues that it filed timely responses to the Department's initial sales questionnaire and to the supplemental questionnaires. It states that during its preparation of the sales response it discovered that it was the victim of misconduct, including embezzlement, by the company's former chief director and the company's accountant. Due to these circumstances, Boo-Kook contends that key records were unavailable to it. Boo-Kook maintains that some of the key records were missing and it assumes that they were destroyed by the embezzler, while others were confiscated by Korean authorities as evidence. Hence, Boo-Kook argues that it was unable to undergo verification or respond to the COP questionnaire. It states further that the uncooperative (first-tier) BIA rate is intended to induce foreign manufacturers to respond and that Boo-Kook did respond to the best of its ability.

Department's Position: We agree with Boo-Kook. Boo-Kook submitted a timely response to our original and supplemental sales questionnaires. Before its cost response was due and before the verification, Boo-Kook informed us that a former president and the present chief accountant had been arrested and prosecuted for embezzlement. Boo-Kook indicated that it hoped to recover missing records and be able to respond to the cost questionnaire in 90 days.

In addition, Boo-Kook also requested that we postpone the verification for 60 to 90 days. In *Allied Signal*, the U.S. Court of Appeals ruled that "[i]n order to apply the first tier [BIA] to a particular respondent, the ITA must conclude that the respondent 'refused to cooperate with the ITA or otherwise significantly impeded' the review. However, if the respondent 'substantially cooperated * * * but failed to provide the information in a timely manner or in the format required,' the second tier (cooperative rate) is applicable." (At 1192). The court concluded, in that case, that, because respondent supplied as much of the requested information as it could and offered to provide the remaining information in a simplified form, it was unreasonable for the Department to have characterized respondent's behavior as a refusal to cooperate. Therefore, because Boo-Kook cooperated with the Department to the best of its ability, and given the unusual and extenuating circumstances, we have applied second-tier total BIA to Boo-Kook's U.S. sales.

Comment 3: The Committee contends that the Department's preliminary results regarding Jinyang Wire Rope (Jinyang), Koropec Co. (Koropec), and Sungsan Special Steel Processing Inc. (Sungsan) were erroneous. It states that the Department incorrectly applied a zero dumping margin to the companies based on the companies' claims that they had no shipments or sales of subject merchandise during the POR. The Committee states further that the Department must classify Jinyang and Koropec as uncooperative respondents because their submissions were not submitted according to the Department's regulations. It claims that it was never served with submissions from Jinyang and Koropec. Petitioner argues that it has seen in the public file a copy of a letter from the Department to Jinyang that refers to a June 22, 1994 letter from Jinyang and a copy of a letter from the Department referring to a July 28, 1994 letter from Koropec. In these letters, the Committee further argues, the Department asked Jinyang and Koropec to resubmit their letters. Since the companies neglected to do so, the petitioner believes that the Department should consider them to be uncooperative respondents and apply the first-tier BIA rate to their U.S. sales.

The Committee acknowledges that Sungsan submitted a letter on the file indicating that it sold subject merchandise during the POR that was not manufactured by Sungsan. However, the Committee notes, the Department then sent Sungsan a letter, asking it to demonstrate that the manufacturer had

knowledge of the ultimate destination of the merchandise. The Committee states that Sungsan failed to respond to the above-mentioned inquiry and thus should also be treated as an uncooperative respondent and receive the first-tier BIA rate.

Department's Position: We agree with the Committee regarding Jinyang and Koropec and we disagree regarding Sungsan. Sungsan submitted for the record on August 5, 1994, a letter and attachment indicating that the supplier of the steel wire rope that it shipped to the United States during the POR was aware at the time of purchase that the product was destined to the United States. The attached invoice from the supplier to Sungsan indicates the destination as the United States. Therefore, we have sufficient evidence on the record that the only shipments of subject merchandise that Sungsan made to the United States during the POR were manufactured by a supplier that had knowledge that the product was destined to the United States. Hence, we have not applied BIA to Sungsan's shipments.

Neither Jinyang nor Koropec properly submitted a response to our original questionnaire. In accordance with section 777(d) of the Tariff Act, we do not accept documents that are not served on all interested parties. In addition, section 777(e) of the Tariff Act states that all submissions shall be submitted in a timely manner. Jinyang submitted a letter, but did not serve it upon interested parties. Because Jinyang did not serve interested parties, we have rejected Jinyang's response and we have applied first-tier BIA to its sales of subject merchandise to the United States. Koropec submitted a late response which it also did not serve upon interested parties. Therefore, we have rejected Koropec's submission and have applied first-tier BIA to Koropec.

Comment 4: The Committee argues that Atlantic and Pacific, Dong-Il Metal, Dong Yong Rope, Kwang Shin Industries and Seo Hae Industrial (Seo Hae), which the Department classified as "unlocated companies," should be assigned a BIA rate. It argues that the Department provided no indication of whether these five companies remain functioning entities or what efforts the Department took to locate them. Further, it states that, for Dong-Il Metal, the address was set forth on the service list for this administrative review. The Committee argues that, in the absence of verified information, the Department must determine that these companies are still functioning entities and that they have refused to cooperate or have significantly impeded this proceeding