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August 27, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Gary Taverman
Senior Advisor
for Antidumping and Countervailing Duty Operations

SUBJECT: Sixth Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Issues and Decision Memorandum for the Final Results

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SUMMARY

We have analyzed the case briefs and rebuttal briefs submitted by Petitioner,[1] Domestic Processors,[2] and Hilltop International ("Hilltop") in the administrative review of certain frozen warmwater shrimp ("shrimp") from the People's Republic of China ("PRC"). The Department of Commerce ("Department") published the preliminary results of review on March 2, 2012.[3] The period of review ("POR") is February 1, 2010, through January 31, 2011. Following the Preliminary Results and analysis of the comments received, we made changes to Zhanjiang Regal Integrated Marine Resources Co., Ltd.'s ("Regal") margin calculation[4] and determined that Hilltop is part of the PRC-wide entity. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

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[1] Petitioner is the Ad Hoc Shrimp Trade Action Committee.
[2] The Domestic Processors are members of the American Shrimp Processors Association.
[3] See Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results, Partial Rescission, Extension of Time Limits for the Final Results, and Intent to Revoke, in Part, of the Sixth Antidumping Duty Administrative Review, 77 FR 12801 (March 2, 2011) ("Preliminary Results").
[4] See "Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Robert Palmer, Analyst, Office 9, Sixth Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China: Final Analysis Memo for Zhanjiang Regal Integrated Marine Resources Co., Ltd.," dated concurrently with this memo ("Regal Analysis Memo"); see also "Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Robert Palmer, Analyst, Office 9, Sixth Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China: Surrogate Values for the Final Results," dated concurrently with this memo ("Final SV Memo").

BACKGROUND:

The merchandise covered by the Order is certain frozen warmwater shrimp as described in the "Scope of the Order" section of the Preliminary Results. The period of review ("POR") is February 1, 2010, through January 31, 2011. In accordance with 19 CFR 351.309(c)(ii), the Department of Commerce ("Department") invited parties to comment on our Preliminary Results.

On March 12, 2012, Petitioner submitted information concerning recent convictions of entities/persons affiliated with Hilltop and allegations of a transshipment scheme of shrimp through the Kingdom of Cambodia ("Cambodia") in the first and second administrative reviews ("AR1" and "AR2", respectively) of this proceeding, involving Hilltop, Hilltop's U.S. affiliate Ocean Duke Corporation ("Ocean Duke"), and Ocean King (Cambodia) Co., Ltd. ("Ocean King"), a Cambodian company.[5] Between March 29 and July 11, 2012, the Department and interested parties placed additional information on the record, issued questionnaires to Hilltop and received comments regarding these allegations. For a full discussion of the information placed on the record between March 12 and July 11, 2012, see Hilltop AFA Memo.[6]

On June 19, 2012, the Department issued a letter to all interested parties establishing case and rebuttal briefs for all issues except those concerning Hilltop's U.S. sales or revocation.[7] The deadlines for case and rebuttal briefs for all issues except those concerning Hilltop's U.S. Sales or Revocation were June 26, 2012 and July 2, 2012, respectively. On June 26, 2012, Petitioner, Domestic Processors and Hilltop filed case briefs. On July 2, 2012, Petitioner, Domestic Processors, and Hilltop filed rebuttal briefs.

On July 6, 2012, the Department issued a letter to all interested parties establishing case and rebuttal briefs for issues pertaining to Hilltop's U.S. sales and revocation.[8] The deadlines for case and rebuttal briefs for issues pertaining to Hilltop's U.S. sales and revocation were July 17, 2012 and July 23, 2012, respectively.

[5] See Letter from Petitioners to the Secretary of Commerce "Certain Frozen Warmwater Shrimp from China: Comments On the Department's Preliminary Determination to Grant Hilltops' Request for Company-Specific Revocation Pursuant to 19 C.F.R. § 351.222(b)(2) and Comments in Anticipation of Hilltop's Forthcoming Verification" (March 12, 2012) ("Petitioner's March 12 Submission").

[6] See Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Kabir Archuletta, Analyst, Office 9, re: "Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Application of Adverse Facts Available to Hilltop International," dated concurrently with this notice ("Hilltop AFA Memo").

[7] See Letter from the Department to All Interested Parties, dated June 19, 2012.

[8] See Letter from the Department to All Interested Parties, dated July 6, 2012.

DISCUSSION OF THE ISSUES

Company-Specific Issues

Hilltop

Background

In its initial Section A Questionnaire response, Hilltop reported its corporate structure and affiliated companies, including those companies not involved in the sale or production of subject merchandise.[9] Hilltop stated in a supplemental questionnaire response that there were no other changes to its ownership/affiliation structure since the previous administrative review ("AR").[10]

After the Preliminary Results, on March 12, 2012, Petitioner submitted allegations of a transshipment scheme of shrimp in AR1 and AR2 of this Order, involving Hilltop, Ocean Duke, and Ocean King, a Cambodian company.[11] These allegations were largely based on documentation released in conjunction with a federal investigation of Duke Lin, president and part owner of Ocean Duke,[12] that was conducted over a five-year period and involved multiple federal agencies and resulted in a plea agreement on charges of mislabeling seafood.[13] The documentation included internal emails dated in 2004 and 2005 between Duke Lin and To Kam Keung, Hilltop's General Manager,[14] indicating that the companies were in the process of establishing a Cambodian affiliate to be named Ocean King, that they had shipped containers of shrimp from Vietnam to Cambodia for repackaging and relabeling, and that they were to ensure there was no paper trail between the Cambodian factory's supplier and Hilltop.[15] The documentation also included import data showing that between May 2004 and July 2005 Ocean Duke imported over 15 million pounds of shrimp from Cambodia, including significant quantities from Ocean King.[16] However, official government production data indicated that Cambodia produced less than 400 thousand pounds of shrimp during all of 2004 and 2005.[17]

In its comments regarding U.S. Customs and Border Protection ("CBP") import data released by the Department, Hilltop stated in two submissions that it was not affiliated with Ocean King and that "neither the company, nor its owners or officers, invested any funds in Ocean King."[18]

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[9] See Letter from Hilltop to the Secretary of Commerce "Section A Response for Hilltop International" (June 15, 2011) at pg. 5, 23, and Exhibit 2.
[10] See Letter from Hilltop to the Secretary of Commerce "Supplemental Section A Response for Hilltop International" (August 15, 2011) at pg. 6.
[11] See Petitioners' March 12 Submission.
[12] See Petitioners' March 12 Submission at Exhibit 1 ("Sentencing Report") at pg. 2.
[13] See Sentencing Report.
[14] See Sentencing Report at pg. 3; Hilltop AFA Memo at 4.
[15] See Sentencing Report at Attachments 19, 14 and 20, respectively.
[16] See Sentencing Report at pg. 22 and Attachments 9 and 10.
[17] See Sentencing Report at 22-23 and Attachments 17 and 18.
[18] See Letter from Hilltop to the Secretary of Commerce "Hilltop's Response to CBP Import Data" (May 24, 2012) at pg. 2 n. 1; Letter from Hilltop to the Secretary of Commerce "Hilltop's Reply to Petitioners' Response to CBP Import Data" (May 31, 2012) at pg. 6.

On June 1, 2012, in an attempt to discern the reliability of the allegations being made against Hilltop and to provide Hilltop an opportunity to demonstrate the inaccuracy of the allegations, the Department issued a detailed supplemental questionnaire requesting further explanation of the record evidence.[19] We note that the information related to Hilltop's potential evasion of the Order in prior reviews and the possible existence of an undisclosed affiliation has a direct bearing on the decision before the Department in this review as to whether or not Hilltop's revocation request should be granted, see Comment 2, below. On June 15, 2012, Hilltop submitted a partial response in which it declined to provide responses to the majority of the requested information related to prior reviews.[20] Additionally, in its partial response, Hilltop stated the following:

- "During the period from February 1, 2008 through January 31, 2011, Hilltop and/or Ocean Duke, and/or any individuals affiliated with Hilltop and/or Ocean Duke, had no Cambodian affiliate or Cambodian affiliates."[21]
- "Ocean Duke and/or Yelin/Hilltop had no affiliation or business dealings with Ocean King (Cambodia) on or after February 1, 2008."[22]
- "Exhibit Two contains a chart showing all companies and/or entities in which Duke Lin and Peter To owned shares and/or held management positions, from February 1, 2008 to the present." The chart at Exhibit 2 did not list Ocean King.[23]

On July 19, 2012, the Department released public registration documents for Ocean King that identified To Kam Keung as a Board Member beginning in July 2005 and ending in September 2010.[24] We also sent Hilltop a supplemental questionnaire requesting again that Hilltop provide information regarding its affiliations and commercial behavior, as well as information regarding its prior statements that it was not affiliated with Ocean King.[25] Hilltop continued to refuse to provide the requested information regarding its activities prior to the revocation period (i.e., fourth administrative review ("AR4") - sixth administrative review ("AR6")), but conceded that an affiliation existed with Ocean King through September 2010.[26] During the administrative review, Hilltop was notified on at least four occasions that the Department would use facts available, and may be required to use an adverse inference in conducting its analysis, if Hilltop failed to provide the requested information.[27]

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[19] See Letter from the Catherine Bertrand, Program Manager, Office 9, regarding the Sixth Supplemental Questionnaire (June 1, 2012) ("Hilltop Sixth Supplemental Questionnaire").
[20] See Letter from Hilltop to the Secretary of Commerce "Hilltop's Response to June 1, 2012 Supplemental Questionnaire" (June 15, 2012) ("Hilltop Sixth Supplemental Response").
[21] See id. at pg. 12.
[22] See id. at pg. 14.
[23] See id. at pg. 14 and Exhibit 2.
[24] See Memo to the File from Kabir Archuletta, International Trade Analyst, Office 9 "Public Registration Documents for Ocean King (Cambodia) Co., Ltd." (June 19, 2012).
[25] See Letter from Catherine Bertrand, Program Manager, Office 9, to Hilltop "Seventh Supplemental Questionnaire" (July 19, 2012) ("Hilltop Seventh Supplemental Questionnaire").
[26] See Hilltop Sixth Supplemental Response at pg. 1; see also Hilltop Seventh Supplemental Response at pg. 2.
[27] See Memo to the File from Kabir Archuletta, International Trade Analyst, Office 9, "Sixth Supplemental Questionnaire Response Extension for Hilltop International" (June 5, 2012); Memo to the File from Kabir Archuletta, International Trade Analyst, Office 9 "Seventh Supplemental Questionnaire Response Extension for Hilltop International" (June 21, 2012); Hilltop Sixth Supplemental Questionnaire at 2-3; Hilltop Seventh Supplemental Questionnaire at pg. 2-3.

Hilltop's refusal to provide information requested by the Department regarding the allegations raised by Petitioner limited the Department's ability to investigate the relevant evidence as it pertains to this administrative review and Hilltop's request for revocation. Hilltop's pattern of trade over the life of this Order based on the facts enumerated in the Hilltop AFA Memo indicates the following:

- Hilltop is the successor-in-interest to Yelin Enterprise Co. Hong Kong ("Yelin").[28] Yelin received a preliminary rate of 98.34 percent in the PRC Shrimp LTFV Prelim[29] and Ocean Duke's imports from the PRC subsequently plummeted.[30]
- At the same time that Ocean Duke's imports from the PRC were reduced to virtually zero, Ocean Duke's imports from Cambodia skyrocketed.[31]
- During this time period, Hilltop, in consultation with Ocean Duke, established a shrimp processing plant in Cambodia, discussed sending Vietnamese products[32] to Cambodia for processing and repackaging,[33] and intentionally obscured the invoicing chain, possibly so as to mask the source of the shrimp.[34] Record evidence also confirms that Hilltop and Ocean Duke concealed this affiliate from the Department beginning in the AR1 verification and up through eight months of the current POR.[35]
- Between May 2004 and July 2005 Ocean Duke imported more than 6.8 million kg of shrimp with a declared country-of-origin Cambodia, a period during which Cambodia only produced 185,000 kg of shrimp.[36] The true country-of-origin of these imports is necessarily in question and internal communications suggest at least some imports came

[28] See Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results of Changed Circumstances Review, 72 FR 33447 (June 18, 2007).
[29] See Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China, 69 FR 42654 (July 16, 2004) ("PRC Shrimp LTFV Prelim").
[30] See Sentencing Report at Attachments 9-10.
[31] See Sentencing Report at Attachments 9-11.
[32] During this period, Vietnamese shrimp were also subject to antidumping duty proceedings.
[33] See Ocean King Email (Wherein To Kam Keung wrote to Duke Lin: "I have discussed with Truong to get some good shrimp suppliers {fr}om Vietnam and send some raw material through the border in order to let the factory have something to do {af}ter grand open in July"); Sentencing Report at Attachment 14 (In an email dated May 13, 2004, from a Yelin email address, the sender stated that they "are shipping some containers of {shrimp} from VN to Cambodia for repacking. really want to reuse all white cartons of Vietnam and stick MC labels in Cambodia…" On May 14, 2004, Roger Lin replied, with a cc to Duke Lin, "Please do NOT let them do this. They must print new master cartons for Cambodia origin products. Do NOT allow them to sticker over Product of Vietnam cartons. Thanks").
[34] See Sentencing Report at Attachment 20 (Wherein Duke Lin wrote to To Kam Keung "Cambodia Factory need set up PO to their Supplier also direct wire to their supplier, Yelin HK cannot have any Involve or any paper related!").
[35] Compare Letter from Hilltop to the Department of Commerce "Hilltop's Reply to Petitioners' Response to CBP Import Data: Sixth Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China (Review Period: 02/01/10-1/31/11)" (May 31, 2012) at Exhibit 2 pg. 4 and Exhibit 3 pg. 3; Hilltop Sixth Supplemental Response at pg. 12-14 and Exhibit 2; with Hilltop Seventh Supplemental Response at pg. 1.
[36] See Sentencing Report at pg. 5 and Attachment 18 (15 million lbs x .453592).

from Vietnam.[37] Public import data may reveal similar spikes in imports from other nearby countries.

- Hilltop certified to having no shipments from the PRC in PRC Shrimp AR2,[38] a period in which it continued to receive imports from Cambodia.[39]
- The de minimis margin calculated for Hilltop in AR1, which published on September 12, 2007,[40] and was a margin based on a period in which its PRC imports were severely curtailed,[41] had a significant effect on Hilltop's imports from the PRC.[42]
- Because Hilltop's request for review was withdrawn, its sales in the third administrative review ("AR3") were not reviewed and the cash deposit rate established in AR1 was carried forward into AR4, the first period under consideration for revocation.
- While Hilltop has noted that it had no entries of Cambodian shrimp during the periods under consideration for revocation, we note that Hilltop has indicated that it continued to sell shrimp from Cambodia into AR4.[43] This suggests that the massive amounts of shrimp it imported from Cambodia through May 2006[44] were sufficient to sustain its sales, and its customer base, through the 18-month period of AR1, the 12-month period of AR2, and the 12-month period of AR3.

The Department was prevented by Hilltop from being able to fully investigate Hilltop's entries from Cambodia during AR1 and AR2. As a result, we are unable to determine whether Hilltop had unreported entries that would have impacted the determined de minimis cash deposit rate, whether it actually had any entries of PRC-origin shrimp during AR2 in which we rescinded the review based in part on its no shipment certification, and whether we calculated an accurate margin in AR4 based on Hilltop's full universe of PRC-origin sales, which included sales of shrimp imported from Cambodia. Thus, while Hilltop argues that the revocation periods were not affected by its failure to report its affiliation with Ocean King because there were no entries of shrimp from Cambodia, we find that Hilltop's cash deposit rate during the revocation period may have been significantly affected by Hilltop's entries from Cambodia and its sales during the revocation period were certainly affected by those entries. In light of potential flaws in Hilltop's

[37] See Ocean King Email (Wherein To Kam Keung wrote to Duke Lin: "I have discussed with Truong to get some good shrimp suppliers {fr}om Vietnam and send some raw material through the border in order to let the factory have something to do {af}ter grand open in July"); Sentencing Report at Attachment 14 (In an email dated May 13, 2004, from a Yelin email address, the sender stated that they "are shipping some containers of {shrimp} from VN to Cambodia for repacking. really want to reuse all white cartons of Vietnam and stick MC labels in Cambodia…" On May 14, 2004, Roger Lin replied, with a cc to Duke Lin, "Please do NOT let them do this. They must print new master cartons for Cambodia origin products. Do NOT allow them to sticker over Product of Vietnam cartons. Thanks").

[38] See Certain Frozen Warmwater Shrimp from the People's Republic of China: Rescission of the Second Administrative Review, 72 FR 61858 (November 1, 2007) ("PRC Shrimp AR2").

[39] See Sentencing Report at Attachment 11.

[40] See Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results and Rescission, In Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 52049 (September 12, 2007).

[41] See Sentencing Report at Attachments 9-11.

[42] See Hilltop AFA Memo at pg. 9-10; and Memo to the File from Kabir Archuletta, International Trade Analyst, Office 9 "Customs Data of U.S. Imports of Certain Frozen Warmwater Shrimp from the PRC for the Period 2/1/07 – 1/31/08" (July 6, 2012).

[43] See Hilltop Seventh Supplemental at pg. 2.

[44] See Sentencing Report at Attachment 11.

AR1 cash deposit rate, its AR2 certification of no shipments, and the questionable accuracy of its AR4 margin, we cannot determine that the quantities and gross unit prices reported by Hilltop in AR4 through AR6 are accurate and thus, cannot rely on any of Hilltop's reported sales data.

In order to calculate an accurate dumping margin, the Department must determine whether affiliates[45] are involved in the sale or production of subject merchandise and whether a significant potential for manipulation of price, production, or export decisions exists. This information is essential to the Department's determination of what sales and production information must be reported and whether to treat the respondent and its affiliate(s) as a single entity for purposes of the antidumping duty proceeding.[46] As noted above, Hilltop's failure to disclose its relationship with Ocean King resulted in a potentially inaccurate cash deposit rate that persisted through to the periods under consideration for revocation and, consequently, distorted the data on the record such that it cannot be used. Further, as discussed in more detail below, because Hilltop repeatedly made material misrepresentations and refused to provide information regarding its affiliations, we cannot rely on any of the information contained in Hilltop's Section A response, which details its affiliations, corporate structure and ownership. In PRC Shrimp AR5, we found Hilltop to be part of a single entity, which included affiliates in a third country, that had extensive production facilities in the PRC.[47] In the Preliminary Results, we stated that because Hilltop had presented no additional evidence to demonstrate that it is not a part of this single entity, we continued to find that Hilltop and its affiliates were part of a single entity in this review.[48] While we note that Hilltop is located in Hong Kong, its affiliated producers are located in the PRC. As we cannot rely on any of the information provided in Hilltop's section A questionnaire responses, we cannot determine that this single entity of affiliated companies, of which Hilltop is a part, have met the criteria for a separate rate. Therefore, we are not granting a separate rate to Hilltop and its affiliates and, we find Hilltop to be part of the PRC-wide entity. Accordingly, we are unable to reach a determination as to Hilltop's eligibility for a rate separate from the PRC-wide entity and find it to be part of the PRC-wide entity.

By refusing to provide necessary information regarding its affiliations,[49] refusing to provide information regarding its prior activities relevant to our revocation analysis, and failing to submit information in a timely manner, Hilltop significantly impeded this proceeding and provided

[45] The statute defines affiliates as those that are in a "control" relationship with each other. The statutory definition of affiliates includes, among others, "(A) members of a family, including brothers,... (E) any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or share of any organization and such organization; and (F) two or more persons directly or indirectly controlling, or controlled by, or under common control with, any person." Section 771(33) of the Act; see also section 351.102(b) of the Department's regulations.

[46] See Hontex Enterprises v. United States, 342 F. Supp. 2d 1225, 1230-34 (CIT 2004); 19 CFR 351.401(f).

[47] See Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of Fifth Antidumping Duty Administrative Review, 76 FR 8338, 8339 (February 14, 2011), unchanged in Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 51940 (August 19, 2011) ("PRC Shrimp AR5").

[48] See Preliminary Results, at 12803.

[49] See Hilltop Sixth Supplemental Questionnaire at questions 9a-c (regarding the existence of a potential undisclosed Vietnamese affiliate).

information that could not be verified.[50] Therefore, application of facts available is warranted pursuant to sections 776(a)(2)(A), (B), (C), and (D) of the Tariff Act of 1930, as amended ("the Act"). Because we determine, as explained below, that the entirety of Hilltop's information is unusable, including its separate rate information, we find that Hilltop has failed to rebut the presumption that is part of the PRC-wide entity. Additionally, because Hilltop failed to cooperate to the best of its ability by withholding necessary information, application of adverse facts available, pursuant to section 776(b) of the Act, is also warranted. These findings are fully detailed below.

Comment 1: Whether the Department Should Apply Facts Available with an Adverse Inference to Hilltop

Petitioner's Argument:

- Questions concerning fraud and evasion are relevant to the Department's analysis because the de minimis margins assigned to Hilltop in AR1 and AR2 allowed it to enter commercial quantities in AR4, the fifth administrative review ("AR5"), and AR6.
- The cases upheld by the Court of International Trade ("CIT") cited by Hilltop in which the Department declined to investigate transshipment do not indicate there is any legal authority that prohibits the Department from inquiring into past fraud in a review.
- The record identifies specific instances of alleged misclassification which were further concealed by misrepresentations made by Hilltop over the course of this proceeding regarding the identities of its affiliates, a critical aspect of these proceedings.
- Hilltop repeatedly made material misrepresentations to the Department regarding its affiliation with Ocean King until confronted with contradictory evidence.
- From AR1 through this review, Hilltop has made numerous statements to the Department that are now contradicted by the Ocean King registration documents.
- Hilltop's reasoning that the absence of shipments from Cambodia in AR4, AR5 and AR6 renders its misrepresentation to the Department immaterial is flawed because those misrepresentations now cast doubt on the accuracy of all information provided by Hilltop under this Order.
- Pursuant to 19 U.S.C. 1677e(b), the prerequisites for adverse facts available ("AFA") are fully satisfied because Hilltop withheld information, impeded the proceeding, and failed to cooperate to the best of its ability.
- The Department has applied AFA when a respondent refused to provide information on the grounds that it was not relevant and the U.S. Court of Appeals for the Federal Circuit ("CAFC") has upheld such decisions.
- Total AFA is warranted because Hilltop refused to provide a full response to the Sixth Supplemental Questionnaire and the Seventh Supplemental Questionnaire.
- The Department has applied total AFA to respondents that have concealed information and failed to report affiliates, and Hilltop's misrepresentations to the Department cast doubt on

[50] See e.g., Certain Lined Paper Products from the People's Republic of China: Notice of Final Results of the Second Administrative Review of the Antidumping Order, 74 FR 63387 (December 3, 2009) ("Certain Lined Paper AR2"), affirmed in The Watanabe Group v. United States, 2010 Ct. Int. Trade LEXIS 144, Slip. Op. 2010-139 (2010).

the completeness and credibility of all Hilltop submissions in this review, including its separate rate documentation.
- The Department should employ as AFA the PRC-wide rate of 112.81% for all of Hilltop's sales, in accordance with its practice.

Domestic Processors' Argument:
- Hilltop denied any affiliation with Ocean King and only acknowledged that such a relationship existed when the Department placed evidence on the record.
- That relationship should have been disclosed in Hilltop's original Section A response but it was not revealed until the Department and other parties had placed evidence on the record more than one year later.
- As Hilltop's own general manager certified erroneous information about his own activities, this cannot be considered an inadvertent mistake or misunderstanding.
- Even if Hilltop's general manager had been an inactive board member, his resignation during the POR should have made him aware of his position.
- Regardless of intent, Hilltop's "error" falls within the definition of failing to cooperate by not acting to the best of its ability to comply with a request for information, which allows the Department to use adverse facts available.
- For its failure to act to the best of its ability, the Department should reject Hilltop's responses, which can no longer be relied upon, in toto, and apply total AFA.
- Hilltop's admission comes too late for parties and the Department to fully investigate or consider the implications of its relationship with Ocean King through the current POR.
- Given Hilltop's lack of cooperation, the Department cannot be sure how many other affiliations may result from a thorough examination of Ocean King.
- Hilltop failed to cite to any authority that allows respondents to determine what information they should provide and the Department is not obligated to explain why it requests certain information. Rather, Hilltop should have provided the requested information and then argued why they believed it was irrelevant.

Hilltop's Argument:
- A prerequisite for the use of an adverse inference is a finding that use of facts otherwise available ("FA") is necessary, which is only appropriate to fill gaps in the record where information is missing.
- The Department is required to provide parties with the opportunity to remedy or explain deficiencies in its responses, which the Department did when it issued the Seventh Supplemental Questionnaire.
- While Petitioner claim that a gap exists in the record, because Hilltop failed to report its affiliation with Ocean King, Hilltop's admission amended the record in a timely response such that the gap in the record is remedied.
- Petitioner cite cases where the Department applied FA to respondents that withheld information or impeded the investigation but none of those cases involved a respondent that provided the alleged missing information in a timely supplemental response.
- While application of FA requires that there be a gap of missing information, case law requires demonstrating that the missing information is necessary for the Department's determination before the use of FA or an adverse inference.

- The Department has applied AFA to respondents in certain cases because the missing information was necessary for an accurate calculation of the margin in that review period but none of those cases involved missing information that pre-dated the POR by years.
- The Department cannot apply FA in calculating Hilltop's final margin without a rational explanation as to why information related to periods prior to the AR4 is necessary.
- The Department can only use FA with an adverse inference for information that is missing or unusable, and may not disregard usable and accepted information on the record.
- Even if the Department were justified in applying FA because Hilltop declined to answer questions and corrected the record with respect to Ocean King, any application of FA with an adverse inference would be limited to this missing information.
- The 0.00% margin calculated for Hilltop in the Preliminary Results was based on complete and timely responses to the initial questionnaire and five supplemental questionnaires. Subsequent to the Preliminary Results, the Department did not issue any supplemental questionnaires that called for substantive revision of the data used to calculate that margin and the deficiencies claimed by Petitioner have no impact on the FOP and sales data used by the Department to calculate Hilltop's margin.
- As CBP data released by the Department indicates that there were no imports of shrimp from Cambodia during the current review, or prior two reviews, and there is no indication that Ocean King was involved in the production or sale of subject merchandise, Hilltop's allegedly misreported affiliation with Ocean King cannot result in an adverse inference.
- In another proceeding, the Department applied an adverse inference to one out of four affiliates that were not properly reported because only that single affiliate was involved in the sale or production of subject merchandise.
- The CIT stated in Ferro Union that the failure to disclose an affiliate does not automatically allow the Department to apply total AFA.[51]
- The Department's refusal to verify Hilltop's information cannot be used to argue that Hilltop's information is not verifiable, and Hilltop's oversight in reporting its Cambodian affiliate does not render its data unreliable.
- The cases cited by Petitioner in support of their argument that Hilltop's sales and FOP data are unreliable are distinguishable in that those cases all involved respondents that withheld or submitted inaccurate information that directly affected the calculation of a margin for the period of review at issue.
- While case law shows that no adverse inference is warranted, it is equally clear that application of the PRC-wide rate would be improper.
- The Department is obligated to select an adverse inference that reflects commercial reality and bears some relationship to the available sales data and must corroborate the reliability of any adverse inference used.
- As the 112.81% rate Petitioner urge the Department to apply to Hilltop was based on a normal value using Indian data, that rate can no longer be deemed reliable or have a basis in commercial reality in light of the Department's rejection of India as the primary surrogate country in this review.
- The 112.81% rate bears no relationship to commercial reality as Hilltop has received de minimis margins since AR1 and, after remand, ultimately received a rate of 8.45% in the

[51] See Ferro Union, Inc. v. United States, 23 CIT 178, (1999) ("Ferro Union").

investigation.[52] Further, the only other rate calculated for a respondent since the investigation was 9.08% in AR4.

- Even if an adverse inference were warranted, it would be inappropriate for the Department to assign Hilltop the PRC-wide rate as Hilltop has provided all of the information necessary to demonstrate independence from the PRC government in this review and none of the deficiencies claimed by Petitioner relate to this finding.
- No charges regarding shrimp were ever brought after a six-year investigation by the U.S. Department of Justice, U.S. Immigration and Customs Enforcement, and the National Oceanic and Atmospheric Administration and both the Probation Department and the sentencing court found the allegations regarding shrimp to be unsupported by reliable evidence.
- The main evidence provided by the government in its Sentencing Report supporting its claims of transshipment is an interview with the Director General of the Cambodian Fisheries Administration, and his alleged estimate of how much shrimp was harvested in Cambodia but the government failed to recount the Director General's statement that Cambodia border enforcement is very strong and it is unlikely that shrimp could be smuggled across the border into Cambodia.
- Notwithstanding the speculative nature of the allegations of transshipment, the allegations lack any implications regarding shrimp from the PRC.
- The court admonished the government for attempting to use these allegations to influence sentencing when it chose not to bring any charges on the allegations.
- Although Petitioner argue that Hilltop has identified no legal authority that prohibits the Department from inquiring about past fraud in a review, Petitioner have also failed to cite to any statutory provision that gives the Department the authority to inquire into such activities.
- The Department has a well-established policy of refusing to conduct circumvention inquiries in the context of an administrative review and the primary legal authority cited by Petitioner in support of such actions involved companies accused of duty evasion within the same country, whereas the allegations here relate to a company in a third country not subject to the Order.

Department's Position:

The Department finds that the information to construct an accurate and otherwise reliable margin is not available on the record with respect to Hilltop. Because the Department finds that necessary information is not on the record, and that Hilltop withheld information that has been requested, failed to submit information in a timely manner, significantly impeded this proceeding, and provided information that could not be verified, pursuant to sections 776(a)(1) and (2)(A), (B), (C) and (D) of the Act, the Department is using the facts otherwise available. Further, we find that Hilltop's separate rate information is no longer usable and Hilltop has failed

[52] We note that while Hilltop's LTFV investigation margin was revised on May 24, 2011, pursuant to court decision, the preliminary rate of 98.34 percent and the final rate of 82.27 percent were in effect at the time of Hilltop's entries during the AR1 POR. See Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Amended Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision, 76 FR 30100 (May 24, 2011); PRC Shrimp LTFV Prelim at 42654; Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China, 70 FR 5149 (February 1, 2005) ("PRC Shrimp LTFV Final").

to demonstrate its eligibility for a separate rate. Because the Department finds that the PRC-wide entity, which includes Hilltop, has failed to cooperate to the best of its ability by withholding necessary information, pursuant to section 776(b) of the Act, the Department has determined to use an adverse inference when applying facts available in this review. Accordingly, we are applying total AFA to the PRC-wide entity, which includes Hilltop, in these final results. For additional discussion of this issue, see Hilltop AFA Memo.

Facts Otherwise Available

Section 776(a)(1) of the Act provides that the Department shall apply "facts otherwise available" if necessary information is not on the record**.** Because Hilltop repeatedly made material misrepresentations with regard to its affiliations, while certifying to the accuracy of such false information, and because Hilltop refused our repeated requests for information that was relevant to our analysis, we find that we cannot rely on any of the information submitted by Hilltop in this review. Consequently, we cannot rely on any of the information contained in Hilltop's Section A response, which details its affiliations, corporate structure and ownership, and, thus, are unable to reach a determination as to Hilltop's eligibility for a rate separate from the PRC-wide entity. Notwithstanding that determination, we also find that Hilltop's sales data are fatally undermined by the facts noted in the Hilltop AFA Memo. Specifically, because Hilltop benefitted from a zero cash deposit rate in AR4, which was calculated on potentially false data, we cannot rely upon any of its sales data reported during AR4, AR5 or AR6.

Section 776(a)(2) of the Act provides that the Department shall also apply "facts otherwise available" if an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding, or (D) provides such information but the information cannot be verified as provided in section 782(d)(i).

We find that Hilltop repeatedly withheld accurate information regarding its affiliation with Ocean King, and repeatedly withheld information regarding alleged transshipment activities and affiliations with other third parties that was requested by the Department. Hilltop refused to provide the Department with the requested information despite our explanations as to the relevance of this information to the review proceeding. Further, Hilltop's ultimate admission that there was an affiliation with Ocean King through eight months of this twelve month period of review, which Hilltop only disclosed once faced with conclusive evidence, came too late for the Department and interested parties to fully examine the impact this relationship may have had on the sale and production of subject merchandise in this review and prior reviews. The Department recently stated that "in order for the Department to use information in an AD/CVD proceeding, it needs to be verifiable, and information that contains a material misrepresentation or omission would not be verifiable."[53] Accordingly, the record with respect to Hilltop contains

[53] See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule, 76 FR 7491, 7496 (February 10, 2011) ("Interim Final Rule")..

numerous instances of material misrepresentations and missing information and cannot be verified.[54]

Hilltop argues that because it has provided the missing information in a timely supplemental response Petitioner's references to the Light Walled Rectangular Pipe,[55] and POS Cookware,[56] cases, in which the Department applied facts available to respondents for withholding information, are not appropriate comparisons to the facts here. Contrary to Hilltop's claims, Hilltop's information is neither complete nor timely, and was not submitted to the Department within the requested deadlines for information pertaining to the Section A questionnaire information.[57] Part of the information submitted by Hilltop throughout the course of this administrative review has now been shown to be false, and consequently incomplete, and other information was never submitted and therefore, by definition, untimely and unverifiable. Further, we note that Hilltop has misrepresented its affiliations to the Department on numerous occasions throughout this proceeding, particularly at the verification of Hilltop's predecessor in interest, Yelin,[58] during AR1.[59] As such, Hilltop's characterization that this belated admission is "timely" strains credulity. Further, we note that Hilltop only provided partial, fatally deficient, responses in both its Sixth Supplemental Response and the Seventh Supplemental Response, despite the Department's assertion that the information was relevant.[60] While Hilltop claims that the admission of its error has cured the entirety of the record,[61] we note that the submission in which Hilltop conceded to the inaccuracy of its prior representations stated that "Hilltop acknowledges that the chart previously provided in the March 12, 2012, supplemental response was in error."[62] Thus, Hilltop has not cured the record, as claimed, but rather conceded that one of its many misrepresentations to the Department was in error. Consequently, numerous submissions filed by Hilltop that are tainted with inaccurate information persist on the record of this review. As these submissions also contain substantial data and details regarding Hilltop's sales and FOPs, separate rates, sales process, and merchandise, and those submissions are unusable, those submissions cannot serve as a reliable basis to calculate an accurate margin for Hilltop.

[54] See e.g., Certain Lined Paper AR2, affirmed in The Watanabe Group v. United States, 2010 Ct. Int. Trade LEXIS 144, Slip. Op. 2010-139 (2010).
[55] See Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China, 73 FR 35652 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 1 ("Light Walled Rectangular Pipe").
[56] See Porcelain-on-Steel Cooking Ware from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 71 FR 24641 (April 26, 2006) and accompanying Issues and Decision Memorandum at Comment 2 ("POS Cookware").
[57] See Letter from Hilltop to the Secretary of Commerce, "Hilltop-Specific Issues Rebuttal Brief for Hilltop International" (July 23, 2012) ("Hilltop Rebuttal Brief") at pg. 19.
[58] See Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results of Changed Circumstances Review, 72 FR 33447 (June 18, 2007).
[59] See Letter from Hilltop to the Department of Commerce "Hilltop's Reply to Petitioners' Response to CBP Import Data: Sixth Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China (Review Period: 02/01/10-1/31/11)" (May 31, 2012) at Exhibit 2 pg. 4 and Exhibit 3 pg. 3.
[60] See Hilltop Sixth Supplemental Response; see also Hilltop Seventh Supplemental Response.
[61] See Hilltop Rebuttal Brief at pg. 45.
[62] See Hilltop Seventh Supplemental Response at pg. 2.

Hilltop characterizes Petitioner's statement that the record does not allow for partial AFA[63] as an admission that the information missing from the record is unnecessary to the calculation of Hilltop's margin.[64] This argument ignores Petitioner's larger claim that the completeness and credibility of Hilltop's submissions, including its separate rate documentation, are rendered suspect by its failure to cooperate and its repeated material misrepresentations. Thus, the court cases cited by Hilltop supporting its position that the information missing from the record must be necessary to the calculation of the margin before the use of FA or an adverse inference do not apply to the circumstance in this review, in which all of Hilltop's submitted information is unusable. In Gerber, the Department's decision to apply AFA did not involve information that was wholly concealed from the Department's examination and the Department was able to resolve any inaccuracies at verification.[65] While the Department has verified Yelin, Hilltop's predecessor in interest, Hilltop itself has never been verified and its separate rate documentation has never been subject to an on-site inspection by Department personnel. While the Department intended to verify Hilltop in this review, its submissions have been shown to contain material misrepresentations and omissions, which were revealed only very late in the review, and, thus, rendered their submissions unverifiable. Similarly, Nippon Steel,[66] Ningbo Dafa,[67] and Zhejiang Dunan[68] all involved respondents whose information had been subjected to verification and the record contained usable information such that the Department was able to substitute AFA for the missing data and continue to rely on the remaining verified data.

We find the entirety of Hilltop's submissions to contain material misrepresentations and inaccuracies such that Hilltop significantly impeded this proceeding. We also note that the period under consideration for revocation has been directly affected by the accuracy of the data on which we have based our margin calculations. As described in more detail in the Hilltop AFA Memo, the rate calculated for Hilltop in AR1, Hilltop's no shipment certification, and the information submitted by Hilltop in its changed circumstances review, are all potentially tainted by the submission of false and incomplete information. Hilltop's failure to disclose its Cambodian affiliate in AR1 allowed it to ship massive amounts of shrimp, which record evidence demonstrates was highly unlikely to be of Cambodian origin, to the United States while avoiding the Department's scrutiny and antidumping duties. This enabled Hilltop to maintain its U.S. customer base until the final results of AR1 were published, when it received a de minimis margin based on relatively few entries and was able to resume its shipments from the PRC with a zero cash deposit rate. Because Hilltop claimed to have no shipments in AR2, while products of suspect origin continued to be entered from Cambodia, and its request for review was withdrawn in AR3, Hilltop's margin from AR1 was carried forward to AR4, the first period under consideration for revocation. Thus, the validity of the cash deposit rate under which Hilltop began, and continued, to enter subject merchandise throughout the periods under consideration

[63] See Letter from Petitioner to the Secretary of Commerce "Case Brief Related to Hilltop International's U.S. Sales and Revocation Request" (July 17, 2012) Petitioner Case Brief at pg. 19.
[64] See Hilltop Rebuttal Brief at pg. 15.
[65] See Gerber Food (Yunnan) Co. Ltd v. United States, 387 F. Supp. 2d 1270, 1282 (CIT 2005) ("At verification, however, other than the record evidence regarding the export agency agreement, Commerce found few discrepancies with the information that Gerber and Green Fresh provided, and Commerce resolved any inaccuracies found during verification.").
[66] See Nippon Steel Corp. v. United States, 337 F.3d 1373 (Fed. Cir. 2003)("Nippon Steel")
[67] See Ningbo Dafa Chem. Fiber Co. v. United States, 580 F.3d 1247,(Fed. Cir. 2009) ("Ningbo Dafa")
[68] See Zhejiang Dunan Hetian Metal Co. v. United States, 652 F.3d 1333 (Fed. Cir. 2011) ("Zhejiang Dunan").

for revocation, is called into question by the evidence on the record, the allegations that Hilltop refused to address and the certification of material misrepresentations that persist on the record. Because Hilltop refused to disclose its Cambodian affiliate in AR1 and beyond, and Hilltop continued to make sales of shrimp imported through Cambodia into AR4, we are unable to determine what the effects of an accurately calculated margin in AR1 would have had on the sales made during the periods of AR4 through AR6. However, we find the record evidence sufficient to suggest that it would have been unlikely for Hilltop to make sales in the quantities and at the prices it was able to during the periods under consideration for revocation had they been subjected to a higher cash deposit rate. Thus, we find that the reported quantities and gross unit prices for Hilltop's sales made during the periods under consideration are invalidated, and the record of AR4 through AR6 does not contain the information necessary to calculate an accurate margin for Hilltop and must be filled by facts otherwise available.

Section 782(c)(1) of the Act provides that, if an interested party promptly notifies the Department that it is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the Department shall take into consideration the ability of the party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party. Companion section 782(c)(2) of the Act similarly provides that the Department shall consider the ability of the party submitting the information and shall provide such interested party assistance that is practicable.

Hilltop did not claim that it was unable to submit the requested information, rather, it stated that it declined to provide that information which it believed ran contrary to its interpretation of Department policy.[69] Hilltop's refusal to respond to our requests for information is predicated upon its own analysis of Department practice and ignores the fact that it is the Department, not Hilltop, that determines what information is to be provided for an administrative review.[70] Where a respondent failed to provide information that it deemed irrelevant to the proceeding, the CIT stated that "it nonetheless should have produced it {in} the event that Commerce reached a different conclusion."[71] By refusing to respond pursuant to its own analysis, rather than provide the information and lodge its objection, Hilltop has preempted the Department's mandate to determine practice on a case by case basis, thus undermining the Department's inherent authority to protect the integrity of its proceedings from possible fraud.[72]

Hilltop's failure to disclose its relationship with Ocean King was not a mere oversight or result of inaccurate record keeping and surely demonstrates that it impeded the proceeding by not disclosing the affiliation. During the AR1 verification, To Kam Keung had been a board member of Ocean King for one and a half years,[73] and Ocean Duke had imported vast quantities

[69] See Hilltop Sixth Supplemental Response at pg. 1-9.
[70] See Ansaldo Componenti, S.p.A. v. United States, 10 CIT 28, 37, 628 F. Supp. 198, 205 (1986).
[71] See Essar Steel Ltd. v. United States, 721 F. Supp. 2d 1285, 1298-99 (CIT 2010)
[72] See Tokyo Kikai Seisakusho, Ltd. v. United States, 529 F.3d 1352, 1361-62 (Fed. Cir. 2008) ("Instead, the trial court correctly ruled that Commerce, under the circumstances presented, acted within its inherent authority to protect the integrity of its proceedings from fraud.").
[73] See Memo to the File from Kabir Archuletta, International Trade Analyst, Office 9 "Public Registration Documents for Ocean King (Cambodia) Co., Ltd." (June 19, 2012) at Attachment 1, compared to, Letter from

of shrimp from Ocean King.[74] Ocean King's statute states that board members shall meet on a yearly basis indicating that, presuming the vast sales of shrimp sourced from Ocean King were insufficient, To Kam Keung would reasonably have been reminded of his substantial investment in the company on a yearly basis.[75] Moreover, during the current POR, To Kam Keung was taking steps to divest himself of his investment in Ocean King, evidenced by his resignation as a board member in September 2010.[76] The record does not contain any reasonable explanation as to how To Kam Keung overlooked this material change in the affiliation structure of his own company. In fact, Hilltop's most substantive remarks regarding this oversight are relegated to examples of possible reasons: "Mr. To Kam Keung's prior statements on affiliation may have been in error (e.g., due to his lack of operational involvement with Ocean King **or for whatever reason**). . . ."[77] The Department afforded Hilltop numerous opportunities to recall its affiliation with and investment of $350 thousand U.S. dollars in Ocean King,[78] but Hilltop instead chose to deny any involvement or investment in Ocean King until faced with undeniable evidence. Further, we note that To Kam Keung is the official that has signed each of Hilltop's certifications of accuracy in this review,[79] a fact that further undermines the accuracy and reliability of every submission provided by Hilltop.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency 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 proceeding, as described, supra, the Department presented Hilltop with multiple opportunities to provide the requested information and to ensure that the record contained no deficiencies as to Hilltop. Hilltop, moreover, never disclosed to the Department, until faced with evidence to the contrary, that it was affiliated with Ocean King, thereby suggesting that it never intended to disclose the relationship.

Section 782(e) of the Act provides that the Department "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 established by the administering authority" if (1) the information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot be used, (4) the interested party demonstrated that it acted to the best of its ability in providing the information, and (5) the information can be used without undue difficulties. Where all of these conditions are met, the

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Hilltop to the Department of Commerce "Hilltop's Reply to Petitioners' Response to CBP Import Data: Sixth Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China (Review Period: 02/01/10-1/31/11)" (May 31, 2012) at Exhibit 2 and Exhibit 3.

[74] See Sentencing Report at Exhibits 10 and 11.

[75] See Memo to the File from Kabir Archuletta, International Trade Analyst, Office 9 "Public Registration Documents for Ocean King (Cambodia) Co., Ltd." (June 19, 2012) at Attachment 1.

[76] See Hilltop Seventh Supplemental Response at Exhibit 1.

[77] See Hilltop Rebuttal Brief at pg. 9 (emphasis added).

[78] See Hilltop Seventh Supplemental Response at Exhibit 1.

[79] See e.g., Certifications accompanying Hilltop Sixth Supplemental Response, Hilltop Seventh Supplemental Response.

statute requires the Department to use the information if it can do so without undue difficulties. Hilltop submitted information that cannot be verified and numerous submissions that now suffer the deficiencies of containing inaccurate or incomplete information. Further, Hilltop submitted unverifiable, incomplete information and did not demonstrate that it acted to the best of its ability to provide requested information. Most importantly, Hilltop's failure to disclose its relationship with Ocean King in AR1 resulted in a potentially inaccurate cash deposit rate that persisted through to the periods under consideration for revocation and, consequently, distorted the sales and quantity data on the record such that it cannot be used.

Accordingly, we have determined that the record evidence that reflects Hilltop's affiliation with Ocean King, and its potential affiliations with additional entities/persons,[80] presents a high likelihood that Ocean Duke was allowed to evade paying the correct cash deposits and potentially evade paying the correct amount of antidumping duties required under section 731 of the Act. The pattern of concealment regarding the affiliation with Ocean King has been demonstrated to undermine the credibility and reliability of Hilltop's data overall. Such actions undermine the integrity of the antidumping duty administrative review process and impede our ability to complete the administrative review, pursuant to section 751 of the Act. Further, by refusing to provide information regarding its affiliations and refusing to provide information regarding its prior activities relevant to our revocation analysis, Hilltop withheld information, failed to provide information in a timely manner, and provided information that could not be verified. Therefore, application of facts available is warranted pursuant to sections 776(a)(2)(A),(B), (C), and (D) of the Act. Because we determine that the entirety of Hilltop's information is unusable, including its separate rate information, we find that Hilltop has failed to rebut the presumption that it is part of the PRC-wide entity. Finally, because the PRC-wide entity, which includes Hilltop, failed to cooperate to the best of its ability by withholding necessary information, application of adverse facts available, pursuant to section 776(b) of the Act, is also warranted.

Use of Adverse Inferences

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[81]

Furthermore, "affirmative evidence of bad faith, or willfulness, on the part of a respondent is not required before the Department may make an adverse inference."[82] The CAFC has held that the

[80] See Hilltop Sixth Supplemental Questionnaire at questions 5d, 5e, and 9a-c (requesting information regarding Hilltop's affiliations with entities/persons noted in internal communications included in the Sentencing Report). Hilltop refused to respond to these questions in Hilltop Sixth Supplemental Response and Hilltop Seventh Supplemental Response.
[81] See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 103-316, at 870 (1994).
[82] See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997).

"best of its ability" standard "requires the respondent to do the maximum it is able to do."[83] The CAFC further elaborated:

> While the standard does not require perfection, and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping. It assumes that importers are familiar with the rules and regulations that apply to the import activities undertaken and requires that importers, to avoid a risk of an adverse inference determination in responding to Commerce's inquiries: (a) take reasonable steps to keep and maintain full and complete records documenting the information that a reasonable importer should anticipate being called upon to produce; (b) have familiarity with all of the records it maintains in its possession, custody, or control; and (c) conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of the importers' ability to do so.[84]

It is clear on the record of this review that Hilltop provided misleading or inaccurate information regarding its affiliation with Ocean King in this review and prior reviews. Hilltop also withheld and refused to provide information regarding its relationships with additional persons/entities in third countries,[85] the accuracy of its selling activities reported to the Department in prior reviews, and the allegations regarding transshipment of subject merchandise.[86]

Although Hilltop claims that the missing information in the record predated the revocation PORs and is therefore irrelevant to the revocation request, we note that the affiliation with Ocean King was concealed by Hilltop through eight months of the current POR. Moreover, the effects of Hilltop's failure to report its affiliation directly affected the period under consideration for revocation. In AR2 of this proceeding, Hilltop submitted a certification of no shipments,[87] and in AR3 its request for review was withdrawn.[88] Thus, the de minimis rate assigned to Hilltop's predecessor in interest, Yelin, in AR1,[89] which we now have reason to believe may have been severely tainted by incomplete and false information, was carried forward into AR4, the first

[83] See Nippon Steel at 1373, 1382.
[84] See id.
[85] See Hilltop Sixth Supplemental Questionnaire at questions 5d, 5e, and 9a-c (requesting information regarding Hilltop's affiliations with entities/persons noted in internal communications included in the Sentencing Report). Hilltop refused to respond to these questions in Hilltop Sixth Supplemental Response and Hilltop Seventh Supplemental Response.
[86] See Hilltop Sixth Supplemental; Hilltop Seventh Supplemental.
[87] See Certain Frozen Warmwater Shrimp from the People's Republic of China: Rescission of the Second Administrative Review, 72 FR 61858 (November 1, 2007).
[88] See Third Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 10026 (March 9, 2009); unchanged in Third Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 46565 (September 10, 2009) ("PRC Shrimp AR3").
[89] See Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results and Rescission, In Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 52049 (September 12, 2007).

period under consideration for revocation here.[90] Notwithstanding the fact that prior reviews may have been tainted, Hilltop's low cash deposit rate enabled it to maintain its customer base while it was subject to the high margin calculated in the PRC Shrimp LTFV Final[91] by offering vast quantities of merchandise from Cambodia, a country not subject to an order, despite the evidence suggesting that Cambodia is unlikely to have produced all of the shrimp sold by Ocean Duke during that period.[92]

Hilltop claims that the flaw in the government's allegations against Ocean Duke regarding transshipment through Cambodia is a remark made in an interview with a Cambodian official noting that "{Cambodian} border enforcement is very strong and {the official} does not think that they could bring in shrimp without being caught."[93] While Hilltop characterizes this statement as "clearly exculpatory information"[94] we do not find that it approaches a level sufficient to disregard the other record evidence. Hilltop's argument assumes that any subject merchandise transshipped through Cambodia must have been smuggled through the border but neglects the very real possibility that shrimp could have been legitimately imported from the PRC or Vietnam and then repackaged by the Cambodian affiliate, as the record suggests.[95] Hilltop has chosen not to provide any information regarding its activities prior to AR4 and, absent any contradictory information, the evidence weighs in favor of the conclusion that Cambodia did not produce all of the shrimp imported as Cambodian country-of-origin by Ocean Duke. While Hilltop also argues that the allegations have no merit because the government chose not to bring any charges against Duke Lin on transshipment,[96] Petitioner points to record evidence supporting a procedural issue claimed by the government that prevented such charges.[97] Petitioner also submitted information indicating that Duke Lin's defense never provided any evidence to the government indicating that the shrimp was farmed in Cambodia, as was declared.[98] While Duke Lin's defense produced export documents stamped by Cambodian officials declaring the products as Cambodian country-of-origin, record evidence indicates that Cambodian officials rely on information provided by the exporter and do not have any information as to where the shrimp was harvested when export documents are approved.[99] Thus Hilltop's argument that the government's allegations were based on sheer speculation does not convince the Department that they are unfounded in light of the record evidence and Hilltop's refusal to provide any exonerating evidence. If these allegations are based on sheer speculation, as Hilltop repeatedly claims, it would have been in Hilltop's interest to provide the requested information rather than argue that the information is irrelevant to the Department's analysis. Indeed, Hilltop's refusal to provide any explanation regarding its prior affiliations with certain people and entities that are referenced in the Sentencing Report, and its activities prior to AR4, raises questions regarding what other information is missing that could be relevant to the Department's proceeding. Further, Hilltop's claim that failure to charge or prosecute in a

[90] See Preliminary Results, at 12802-03.
[91] See PRC Shrimp LTFV Final at 5149.
[92] See Sentencing Report at pg. 5, 19-26, and Attachments 9-11, 18.
[93] See Hilltop Rebuttal Brief at pg. 32-33.
[94] See Hilltop Rebuttal Brief at pg. 33.
[95] See Sentencing Report at Attachment 14.
[96] See, e.g., Hilltop Case Brief at pg. 7-8; Rebuttal Brief at pg. 33-36.
[97] See Petitioners Rebuttal Brief at pg. 16-17.
[98] See Petitioners Rebuttal Brief at pg. 17.
[99] See Sentencing Report at Attachment 18; Petitioners Rebuttal Brief at pg. 17.

separate criminal proceeding does not mean that we cannot independently examine evidence presented on the record of this case and thereby reach our own conclusion regarding the information as it relates to our process.

Hilltop claims that the cases cited by Petitioner in support of total AFA in which a respondent withheld information are readily distinguishable. Hilltop argues that those cases involved respondents that withheld information that directly affected the calculation of the margin, whereas the circumstances here relate to "an initial error in reporting a third country affiliate."[100] Hilltop notes that none of the cases cited by Petitioner are more instructive than Butt-Weld Pipe Fittings from Taiwan[101] and Ferro Union[102] because in those cases the Department limited its application of AFA to those affiliates directly involved in the sale of merchandise that would affect the dumping margins.[103] However, in Butt-Weld Pipe Fittings from Taiwan, the Department declined to apply total AFA to the respondent that was less than forthcoming regarding its affiliations because the Department was able to sufficiently analyze the respondent's affiliations for the preliminary results and because the Department did not agree with Petitioner's position that the respondent was "totally untimely and uncooperative."[104] Here, Hilltop was not only uncooperative in disclosing the relationship with Ocean King, it did not reveal that a relationship existed with Ocean King until two months before the final results deadline[105] and only when faced with incontrovertible evidence. Further, Hilltop obstructed the Department's efforts to obtain relevant information regarding serious allegations despite the Department's repeated requests and explanation that this information was relevant to the proceeding. Ferro Union involved confusion over the definition of the newly adopted affiliation regulations, and the court held that the Department had not fully explained its expectations as to what it considered an affiliation under the new regulations, and therefore, it could not have expected the respondent to disclose the affiliation at issue. The court explained: "Commerce did not provide Saha Thai with sufficient guidance for Saha Thai to know it had to provide information on companies owned by the nephews of one of its directors."[106] The Court held that until the affiliation was clear, it could not reach the question of whether AFA was warranted. Here, Hilltop has been well aware of the Department's regulations and practice regarding affiliations throughout the proceeding and was the subject of a thorough affiliation analysis in AR5.[107] Indeed, Hilltop continually disclosed its affiliates in other third countries. Moreover, unlike in Ferro Union, there is no issue here as to whether an affiliated relationship exists between Hilltop and Ocean King, as Hilltop admits that the two companies are affiliated.[108]

Hilltop argues that the PRC-wide rate cannot be applied to Hilltop in this review because that rate has no connection to the alleged deficiencies in its responses and Hilltop has demonstrated

[100] See Hilltop Rebuttal Brief at pg. 24-25.
[101] See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan, 70 Fed. Reg. 1870 (January 11, 2005) and accompanying Issues and Decision Memorandum at Comment 1 ("Butt-Weld Pipe Fittings from Taiwan").
[102] See Ferro Union, 44 F. Supp. 2d 1310 (CIT 1999).
[103] See Hilltop Rebuttal Brief at pg. 25.
[104] See Butt-Weld Pipe Fittings from Taiwan at Comment 3.
[105] See Hilltop Seventh Supplemental Response at pg. 2.
[106] See Ferro Union, 44 F. Supp. 2d 1310, 1335 (CIT 1999).
[107] See PRC Shrimp Final AR5.
[108] See Hilltop Seventh Supplemental Response.

both de jure and de facto independence.[109] In support of this position, Hilltop cites to several cases where the CIT rejected the Department's decision to impute inaccuracies in a respondent's sales or FOP data to its separate rate responses.[110] The distinction between the cases cited to by Hilltop and this case is evident. In Qingdao Taifa and Shandong Huarong, the respondents were subjected to verification of their submitted information and the Department noted no discrepancies with the information reported in their Section A responses. Therefore, the CIT stated that the respondents' failure with respect to their sales and FOP data was not sufficient to call into question the verified Section A information.[111] The respondent in Yantai Xinke was also verified and the Department did not find any discrepancies in its questionnaire responses concerning its separate rate status.[112] Here, Hilltop's eligibility for a separate rate in every review has been determined through an analysis of its responses to the initial Section A and subsequent supplemental questionnaires. Section A requests general information about the company including the quantity and value of sales, separate rate eligibility, corporate structure and affiliations, sales process, accounting/financial practices, merchandise, and exports through intermediate countries.[113] Because Hilltop's Section A response and supplemental Section A questionnaire are the very documents in which material misrepresentations have been revealed we cannot rely on Hilltop's submitted Section A responses. Finally, although Hilltop argues that the PRC-wide rate fails to reflect commercial reality and bears no relationship to available sales data, this rate was corroborated in the LTFV investigation using a PRC exporters' data.[114] Further, the CIT has held that where a respondent is found to be part of the country-wide entity based on adverse inferences, the Department need not corroborate the country-wide rate with respect to information specific to that respondent because there is "no requirement that the country-wide entity rate based on Adverse Facts Available relate specifically to the individual company."[115]

For all of the reasons outlined above, the Department finds, pursuant to section 776(b) of the Act, the application of AFA is warranted as the Department has determined that Hilltop has

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[109] See Hilltop Rebuttal Brief at pg. 27-28.
[110] See id.
[111] See Qingdao Taifa Group Co. v. United States, 637 F. Supp. 2d 1231, 1240-41 (CIT 2009) ("Qingdao Taifa") ("Commerce's verification report 'noted no indication of government control'"); Shandong Huarong Gen. Group Corp. v. United States, 27 C.I.T. 1568 (2003) ("Shandong Huarong") ("Specifically, the record shows that the Companies each submitted evidence of their entitlement to separate rates with their questionnaire responses, and at verification Commerce found such evidence was not 'compromised.'");
[112] See Yantai Xinke Steel Structure Co. v. United States, 2012 Ct. Intl. Trade LEXIS 96 (Ct. Int'l Trade 2012) ("Yantai Xinke") ("Because Commerce has made no finding that Jiulong's questionnaire responses concerning its separate rate status were deficient in any respect, the Department's conclusion that the company was part of the PRC-wide entity is unsupported by substantial evidence."); see also Since Hardware Co. Ltd. v. United States, 2010 Ct. Intl. Trade LEXIS 119, Slip Op. 10-108 (2010) (where Commerce made no specific finding as to whether the inaccurately reported information regarding prices and country of origin related to respondent's eligibility for separate rate status).
[113] See Letter from Catherine Bertrand, Program Manager, Office 9, to Hilltop regarding the initial antidumping questionnaire for the sixth review (May 9, 2011).
[114] See PRC Shrimp LTFV Prelim; unchanged in PRC Shrimp LTFV Final.
[115] See Watanabe Group v. United States, 2010 Ct. Int. Trade LEXIS 144, Slip. Op. 2010-139 (2010); quoting Peer Bearing Co.-Changshan v. United States, 587 F. Supp. 2d 1319, 1327 (CIT 2008); Shandong Mach. Imp. & Exp. Co. v. United States, Slip Op. 09-64, 2009 Ct. Intl. Trade LEXIS 76, 2009 WL 2017042, at *8 (CIT June 24, 2009) ("Commerce has no obligation to corroborate the PRC-wide rate as to an individual party where that party has failed to qualify for a separate rate").

failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. Moreover, because the Department is unable to rely upon any of Hilltop's submitted information, we are unable to determine its eligibility for a separate rate and, thus, properly find it to be part of the PRC-wide entity. Accordingly, we are applying total AFA to the PRC-wide entity, which includes Hilltop, in these final results.

The application of AFA is necessary in this case because Hilltop has provided material misrepresentations and withheld information to the extent that the Department cannot rely upon any of Hilltop's submitted information to calculate an accurate dumping margin or to adequately determine Hilltop's ownership. Hilltop's failure to report at least one undisclosed affiliate and its refusal to provide information regarding allegations of transshipment makes it impossible for the Department to be confident that its submissions do not contain additional material misrepresentations or, consequently, calculate normal value or U.S. price. Finally, Hilltop's refusal to disclose its full universe of affiliated companies and provide information regarding its affiliations with other persons/entities calls into question Hilltop's ownership structure, and its eligibility for a separate rate.

Based on the failures enumerated above, we have determined that Hilltop failed to cooperate to the best of its ability in this administrative review. Further, because the information provided by Hilltop is incomplete and unreliable, we have determined that there is no information on the record that can be used to calculate an antidumping duty margin for Hilltop. Therefore, for the final results, the Department has determined that Hilltop is part of the PRC-wide entity, and that the application of total AFA is warranted for the PRC-wide entity pursuant to sections 776(a) and (b) of the Act.

Comment 2: Whether Hilltop's Revocation Request Should be Denied

Petitioner's Argument:

- Hilltop's revocation request should be denied because AFA is warranted.
- If the Department declines to apply AFA, Hilltop's revocation request should still be denied.
- Three consecutive periods of de minimis margins do not automatically warrant revocation. Rather, the Department must examine all relevant evidence before granting revocation and substantial, positive evidence is sufficient to rebut the presumption that the order is no longer necessary despite three periods of no dumping.
- The CIT has held that it is reasonable for the Department to consider any attempts to evade an order and all relevant evidence in the context of a revocation analysis.
- The CIT has upheld the Department's decisions to deny revocation despite three periods of zero margins when evidence of fraud in a subsequent review is uncovered, and rescind a revocation when evidence of fraud is later discovered and subjected to a self-initiated changed circumstances review.
- The Department has broad discretion as to whether to grant revocation and Hilltop has failed to cite to a single case where a court has compelled the Department to grant revocation.
- The record contains evidence that Ocean Duke and Yelin have engaged in circumvention of this Order and other orders, provided erroneous information regarding affiliations in multiple reviews, repeatedly refused to provide information requested and that CBP has determined that Ocean Duke does not have a record of compliance with customs laws and regulations.

- Evidence of duty evasion in this proceeding, and Hilltop's refusal to allow the Department's efforts to evaluate the relevance of the evidence, renders the previously assigned zero margins suspect, establishing that the continued application of the Order is necessary.
- While Hilltop claims that substantial, positive evidence does not exist on the record, Hilltop's refusal to cooperate, and its repeated denial of its relationship with Ocean King, precludes the Department from being able to fully evaluate the record facts or rely on Hilltop's claims.
- The record demonstrates that Hilltop/Yelin imported shrimp from Cambodia during AR1 and AR2 that was unlikely to have been of Cambodian origin, casting doubt on the absence of dumping, absence of shipments, and the accuracy of the certifications filed in those reviews.
- The AR1 and AR2 final results, made with Yelin having concealed its Cambodian affiliate, allowed Hilltop to ship commercial quantities of subject merchandise during AR4, AR5, and AR6 subject to a zero percent cash deposit rate. Thus, the alleged transshipment had a direct impact on the revocation period.
- Rather than accept responsibility for providing false information, Hilltop has challenged the Department's authority to investigate its actions, suggesting that further investigation would result in additional instances of fraud and evasion.
- Hilltop claims that the evidence alleged by the government was insufficient to warrant any charges or consideration in the sentencing of Duke Lin but the record shows that the government did not bring charges on that evidence due to procedural concerns arising from existing case law that could have prevented that evidence from being admissible. Subsequent to the plea agreement case law changed such that evidence of shrimp transshipment became admissible but Duke Lin's defense did not provide any evidence exonerating the defendant of those allegations.
- Hilltop and its affiliates have been found in violation of AD laws before, record evidence suggests they colluded with Ocean King to evade duties, they have lied to the Department over multiple reviews and they have been convicted of mislabeling fish fillets. Nothing suggests that Hilltop will change its behavior.
- Hilltop's claim that the Department has prejudged the issue of revocation is not supported by case law which indicates that the Department's reconsideration of a preliminary decision does not mean that respondents have been denied due process provided that the party was reasonably on notice that the Department was considering an alternative decision, as has been reflected in Petitioner's comments since the Preliminary Results.
- Hilltop and all interested parties have been provided ample opportunity to comment on the issue of Hilltop's revocation request and Hilltop has neither been prejudiced nor denied due process of law.
- Hilltop has been afforded numerous opportunities in this review to provide exonerating evidence but has elected to characterize the evidence of misconduct as inaccurate, not substantial, or sheer speculation, while refusing to provide responses to the Department's requests for further information.

Domestic Processors' Argument:

- Total AFA for Hilltop in this review would result in a finding of dumping and compel the Department to deny revocation.
- Hilltop refused to provide information requested by the Department and has provided information that has been proven unreliable, rendering the record with respect to Hilltop

incomplete, deficient and highly questionable. Verification is a requirement for revocation but there is no reason for the Department to attempt verification under these circumstances.

- Verification is not possible given Hilltop's misrepresentations and refusal to provide requested information. Absent verification of Hilltop's responses, revocation is not possible.
- Three years of zero margins do not automatically qualify a respondent for revocation as the Department must also determine whether the application of the order is otherwise (i.e., in addition to lack of dumping for three years) necessary to offset dumping.
- The CIT has recognized the Department's discretion to consider all evidence that may be relevant to the likelihood of future dumping, including a company's commercial behavior under the existing order and any attempts to evade that order.
- The record contains compelling evidence that Hilltop circumvented the Order by transshipping subject merchandise, an allegation that Hilltop has not denied on the record.
- The CIT has sustained the Department's position that the respondent is not in a position to determine what information is relevant to the Department's analysis.
- Any company seeking revocation must certify to the Department that it will refrain from future dumping and the Department must be confident in accepting such representation. Given Hilltop's behavior in this and prior reviews, the Department has no reason to be confident in the accuracy of such certifications.

Hilltop's Argument:

- The Department's decision to cancel verification, which is a prerequisite for revocation, indicates that it has prejudged the issue of whether to grant revocation before hearing Hilltop's arguments in its case brief.
- Hilltop provided complete and timely responses to the initial questionnaire and five supplemental questionnaires prior to the Department's preliminary calculation of a 0.00% margin and decision to preliminarily grant revocation.
- Hilltop remained willing to participate fully in any verification throughout the unprecedented revisions to the verification schedule and the Department did not issue any supplemental questionnaires after the Preliminary Results related to the sales and FOP data used by the Department to calculate the 0.00% margin.
- To rebut the presumption that an order should be revoked when a party has had three consecutive periods of no dumping, there must be positive, substantial evidence to support that position. The record does not contain evidence sufficient to warrant a reversal of the Department's preliminary decision.
- Petitioner's allegations are based on sheer speculation that, after five years of investigation by the Department of Justice, evidence was not sufficiently credible to warrant any charges or for a federal court to consider the sentencing of Ocean Duke's president for a misdemeanor relating to confusingly labeled fish fillets.
- The court admonished the government in Duke Lin's sentencing proceeding for attempting to influence sentencing based on transshipment allegations despite the fact that it declined to bring any charges on those allegations.
- The allegations raised by Petitioner relate to a period ending in March 2006, predating the period under consideration for revocation by almost two years.
- The Department's sole focus in a revocation analysis is whether there has been an absence of dumping for three consecutive years and it has found that information relating to conduct prior to these three reviews is not informative in its consideration of whether to revoke.

- The Department has a longstanding position that misconduct from a prior review shall not be imputed in subsequent reviews.
- Hilltop's acknowledgement that an affiliation existed with Ocean King had no affect on the sales or factors of production used to calculate the margin in the Preliminary Results.
- The import data for U.S. imports of shrimp from Cambodia for the years 2003-2011 shows that Ocean Duke made no imports of shrimp from Cambodia during the revocation period and a reconciliation shows that no sales of Cambodian shrimp were made out of inventory during this review period.
- While Hilltop has acknowledged that its prior charts and statements regarding affiliation were in error and has amended the record appropriately, this admission had no impact on the factors considered by the Department when making a revocation determination nor on the sales and FOP data used by the Department to calculate Hilltop's margin in the Preliminary Results.
- If the Department finds that Hilltop's acknowledgment of its affiliation with Ocean King was too late to be considered in this review it can only justify adjusting Hilltop's margin by demonstrating the impact it had on the margin calculation.
- The existence of an affiliation with a Cambodian shrimp producer does not prove the existence of circumvention, particularly when the government's criminal investigation did not find such activity and there were no imports of Cambodian shrimp during the period under consideration for revocation.

Department's Position:

Because we find Hilltop to be part of the PRC-wide entity, and it is therefore receiving the PRC-wide rate in this review, Hilltop does not satisfy the threshold requirement for revocation that a company must have three consecutive periods of sales at or above normal value. Notwithstanding this deficiency, we find that the record contains ample evidence to reverse our preliminary decision to grant Hilltop's revocation request, even if it were considered eligible for a separate rate, because of its failure to cooperate in this review, including its submission of material misrepresentations in this, and prior, reviews, and its refusal to sufficiently address substantive allegations regarding its prior activities under this Order. Based on this evidence, Hilltop has failed to demonstrate that the continued application of this Order is not otherwise necessary to offset dumping as to Hilltop and its request for revocation should be denied, even if it were not receiving total AFA in this review.

Company-Specific Revocation Standard

In the Preliminary Results we determined that "pursuant to section 751(d) of the Act and 19 CFR 351.222(b)(2)…the application of the antidumping duty order with respect to Hilltop is no longer warranted for the following reasons: (1) The company had a zero or de minimis margin for a period of at least three consecutive years; (2) the company has agreed to immediate reinstatement of the order if the Department finds that it has resumed making sales at less than NV; and, (3) the continued application of the order is not otherwise necessary to offset dumping."[116] Although in the Preliminary Results we found that Hilltop had satisfied the first and second clauses of that

[116] See Preliminary Results at 12803.

analysis, for these final results we find that Hilltop, as a consequence of our AFA determination, no longer satisfies the threshold requirement of three consecutive zero margins and has failed to demonstrate that the "continued application of the order is not otherwise necessary to offset dumping." Rather, we find that the deficiencies on the record of this review and prior reviews of this proceeding preclude the Department from making such a determination, in part due to Hilltop's material misrepresentations in this review and its refusal to provide information regarding its prior activities.

As a preliminary matter, we note that Hilltop's claim that the Department's decision to cancel verification is an indication that it has prejudged this issue before considering Hilltop's arguments lacks merit. The CIT has stated that a reconsideration of a preliminary decision does not mean that parties have been denied due process of law provided that the interested party was reasonably on notice that the Department was considering the alternative used in the final determination.[117] Hilltop is well aware that the Department was considering the issue of whether to reverse its preliminary decision to grant Hilltop's revocation request, as evidenced by numerous comments by Hilltop, Petitioner and Domestic Processors and the Department's line of inquiry into Hilltop's prior activities. Further, interested parties have been afforded more than sufficient opportunity to comment on Petitioner's March 12 Submission and the Department has provided numerous opportunities for comment on other evidence placed on the record of this review. Hilltop's case brief does not contain any new information or argument regarding its views on whether Hilltop should be granted revocation that has not already been presented to the Department.

Continued Application of the Order is Necessary

Hilltop points to CORE from Korea[118] to defend the position that the Department's sole focus in a revocation analysis is whether there has been an absence of dumping for three consecutive years and that information relating to prior conduct is not "informative" in our consideration of whether to revoke.[119] Contrary to Hilltop's characterization of the Department's decision in CORE from Korea that information relating to prior conduct is not "informative" to the Department's revocation analysis, we stated specifically that the most recent sunset review was "not informative in the instant case."[120] Further, we also found that the Department's determination in the sunset review alone did not rise to the level of evidence sufficient to deny revocation,[121] which is an altogether different set of circumstances than what we have here. If the mere existence of above de minimis rates over the life of an order were sufficient cause to deny a revocation request, then any company that had ever had a calculated rate would never qualify for revocation. Thus, while Hilltop's calculated margin from AR1 does not preclude Hilltop's revocation from the Order in light of its three years of consecutive zero or de minimis margins, the additional evidence on the record and the discovery that Hilltop concealed vital information regarding its affiliations is most certainly informative to our revocation analysis.

[117] See Peer Bearing Co. v. United States, 182 F. Supp. 2d 1285, 1301-02 (CIT 2001).
[118] See Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Final Results of the 2009-2010 Administrative Review and Revocation, in Part, 77 FR 14501 (March 12, 2012) at Comment 5 ("CORE from Korea").
[119] See Hilltop Case Brief at pg. 8-9.
[120] See CORE from Korea at Comment 5.
[121] See id.

Hilltop has repeatedly claimed that prior conduct is not informative to our revocation analysis.[122] However, we note that this claim neglects the reality that the Department routinely considers prior conduct in considering whether to revoke an order, in part, when it determines that a company has, or has not, made sales in commercial quantities during the three periods under consideration for revocation. This analysis is often conducted using respondent's sales quantities during the investigation as a benchmark, a period of time that frequently predates the revocation period.[123] Further, Hilltop's claim that failure to charge or prosecute in a separate criminal proceeding does not mean that we cannot independently examine evidence presented on the record of this case and thereby reach our own conclusion regarding the information as it relates to our process.

Moreover, Hilltop's argument that its failure to disclose its affiliation with Ocean King had no effect on the data used to calculate its margin in this review is a shortsighted view of the effects of the material misrepresentations that Hilltop has made during this proceeding. As discussed in the Hilltop AFA Memo, the cash deposit rate under which Hilltop's sales entered during AR4, the first period under consideration for revocation, is now known to be potentially tainted by false information.[124] This is because the de minimis margin awarded to Hilltop in AR1 may not have included its complete universe of sales and, absent any evidence to the contrary from Hilltop, provided the foundation upon which Hilltop was able to enter merchandise at above normal value during each of the three revocation periods. The massive amounts of shrimp Hilltop declared as country-of-origin Cambodia, a country not subject to an antidumping duty order, while its PRC entries were subject to the high margin calculated for Hilltop in the PRC Shrimp LTFV Final allowed Hilltop to maintain its customer base until it was able to secure a de minimis margin in AR1. The question of whether Hilltop's customers would have maintained a business relationship with Hilltop absent this supply from Cambodia is a hypothetical situation that the Department is unable to fully analyze, but one that raises significant questions as to the relevance of Hilltop's purported "Cambodian shrimp" to our revocation analysis. Further, we also note that Hilltop's sales of shrimp imported from Cambodia that were sold during AR4, which now appear to be of questionable origin, were not included in our calculation of Hilltop's AR4 margin. Consequently, we find Hilltop's sales data in this review fatally undermined by the facts noted in the Hilltop AFA Memo. Therefore, because Hilltop benefitted from a zero cash deposit rate in AR4 which was calculated based on potentially fraudulent data, and may have directly enabled Hilltop to maintain its customer base into the revocation periods, we cannot rely upon any of its sales data reported during AR4, AR5 or AR6.

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[122] See, e.g., Hilltop Case Brief at pg. 8-9; Hilltop Rebuttal Brief at pg. 40-41.

[123] See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea, 66 FR 3540, 3541 (January 16, 2001) (denying revocation to respondent POSCO Group because its sales in the fourth review, the first period of de minimis sales, were .27 percent of its sales volume during the investigation, four years earlier); Certain Pasta from Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part, 67 FR 51194 (August 7, 2002) (denying revocation to respondent Filiz because its sales in fifth review period were only .22 percent of its sales volume during the investigation), unchanged in Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part: Certain Pasta from Italy, 68 FR 6882 (February 11, 2003).

[124] See Hilltop AFA Memo at 16-18.

The CIT has held that the Department is "not automatically required to revoke an antidumping duty order where a respondent has not dumped for three consecutive years and has furnished the requisite agreements."[125] In addition to the requirement that companies maintain three consecutive periods of zero or de minimis margins, companies must also have sales in commercial quantities and agree to reinstatement of the order if it is found to be dumping, and the Department must conclude that the order is not otherwise necessary to offset dumping.[126] As published in the 1999 modification to our revocation regulation, the Department is directed to presume that, in situations where there has been an absence of dumping for three consecutive years, "an order is not necessary in the absence of additional evidence" but that if "petitioner comes forward with information demonstrating that the maintenance of the order is necessary, that initial presumption is rebutted, and the burden of production shifts to respondents."[127]

We agree with Domestic Processors that any company seeking revocation must certify to the Department that it will refrain from future dumping[128] and that the Department must be confident in accepting such representation. Given Hilltop's behavior in this and prior reviews, the Department has no reason to be confident in the accuracy of such certifications. A determination that the maintenance of the order is not otherwise necessary requires that the Department be sufficiently assured that the respondent has acted to the best of its ability in accordance with the appropriate laws and regulations such that future dumping would be unlikely to occur. The CIT has recognized that "predicting future behavior is not an easy task" and "necessarily involves an exercise of discretion and judgment."[129] The CIT has also recognized the Department's authority to "consider a company's commercial behavior under the existing antidumping order, and any attempts to evade that antidumping order" in conducting its revocation analysis.[130] Further the Department has stated that it will conduct a "thorough analysis of all relevant information" in reaching a determination with respect to revocation.[131]

As noted above, Petitioner's March 12 Submission included a number of allegations regarding Hilltop's commercial behavior under the existing antidumping Order, suggesting that Hilltop had provided false information regarding its affiliations and that it had possibly transshipped subject merchandise through an unreported affiliate in Cambodia, Ocean King.[132] These allegations were based on documents released in conjunction with a federal investigation of Duke Lin, president and part owner of Hilltop's U.S. affiliate, Ocean Duke, that was conducted over a five-year period and involved multiple federal agencies and resulted in a conviction on charges of mislabeling seafood.[133] For a detailed discussion of those allegations and Hilltop's conduct in this review, see Hilltop AFA Memo. Hilltop repeatedly denied any involvement or investment in

[125] See Hyundai Electronics Co., Ltd. v. United States, 53 F. Supp. 2d 1334, 1339 (CIT 1999).
[126] See 19 CFR 351.222(2)(i)(C).
[127] See Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders, 64 FR 51236, 51238 (September 22, 1999).
[128] See 19 CFR 351.222(e)(i)
[129] See Feili Group (Fujian) Co. v. United States, 724 F. Supp. 2d 1358, 1369 (CIT 2010) ("Feili")(quoting Tatung Co. v. United States, 18 CIT 1137, 1144 (1994)).
[130] See Feili, 724 F. Supp. 2d 1358, 1369 (CIT 2010) (quoting Carpenter Tech. Corp. v. United States, 31 CIT 181,183,474 F. Supp. 2d 1347 (2007)).
[131] See Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders, 64 FR 51236, 51238 (September 22, 1999).
[132] See Petitioners' March 12 Submission.
[133] See Petitioners' March 12 Submission; see also Sentencing Report.

Ocean King in its submitted comments and Sixth Supplemental Response.[134] Hilltop's ultimate admission that it was, in fact, affiliated with Ocean King from 2005 through September 2010,[135] which only came about once the Department placed evidence of such an affiliation on the record,[136] served as confirmation that at least some of the allegations made by Petitioner, and repeatedly denied by Hilltop, were accurate. The initial presumption that the Order is no longer necessary was thereby rebutted and the burden to show otherwise shifted to Hilltop to demonstrate that the allegations were baseless. Hilltop's failure to substantively address these allegations and provide the Department with the requested data and documentation fails to meet any reasonable interpretation that its burden of information production has been met.

In addition to a lengthy comment and rebuttal period, the Department provided Hilltop at least two opportunities to demonstrate the inaccuracy of Petitioner's allegations and provide exculpatory documentation.[137] On both occasions, Hilltop chose to argue that its activities prior to the three periods under consideration for revocation are irrelevant to the Department's revocation analysis.[138] This argument neglects the fact that the cash deposit rate applied to Hilltop's entries of subject merchandise during the periods under consideration for revocation was directly affected by the de minimis rate awarded in AR1 under false pretenses. Consequently, Hilltop's failure to address the allegations that it transshipped subject merchandise while subject to the discipline of the Order, which the CIT has recognized as relevant to the Department's revocation analysis,[139] precludes the Department from determining that the continued application of the Order is no longer necessary to offset dumping.

While Hilltop claims that it submitted complete and timely responses to the initial questionnaire and five supplemental questionnaires prior to the Preliminary Results, it is unclear how Hilltop can consider its responses that included inaccurate information as complete responses. The Department recently stated that "in order for the Department to use information in an AD/CVD proceeding, it needs to be verifiable, and information that contains a material misrepresentation or omission would not be verifiable."[140] Although Hilltop argues that the false information it submitted throughout the course of this review has "been cured" by its acknowledgement of the affiliation with Ocean King,[141] as discussed above, Hilltop did not amend the record, as claimed, but rather conceded that one of its many misrepresentations to the Department was in error.

The Department fully intended to verify Hilltop and its U.S. affiliates. However, the evidence placed on the record by Petitioner after the Preliminary Results raised serious concerns as to the reliability and accuracy of information submitted by Hilltop throughout the course of this

[134] See Letter from Hilltop to the Secretary of Commerce "Hilltop's Response to CBP Import Data" (May 24, 2012) at pg. 2n1; Letter from Hilltop to the Secretary of Commerce "Hilltop's Reply to Petitioners' Response to CBP Import Data" (May 31, 2012) at pg. 6; see also Hilltop Sixth Supplemental Response at pg. 12, 14, and Exhibit 2.
[135] See Hilltop Seventh Supplemental Response at pg. 2.
[136] See Memo to the File from Kabir Archuletta, International Trade Analyst, Office 9 "Public Registration Documents for Ocean King (Cambodia) Co., Ltd." (June 19, 2012).
[137] See Hilltop Sixth Supplemental Response; see also Hilltop Seventh Supplemental Response.
[138] See id.
[139] See Feili, 724 F. Supp. 2d 1358, 1369 (CIT 2010) (quoting Carpenter Tech. Corp. v. United States, 31 CIT 181,183,474 F. Supp. 2d 1347 (2007)).
[140] See Interim Final Rule at 7491, 7496.
[141] See Hilltop Rebuttal Brief at pg. 45.

proceeding. As noted above, verification of a record containing a material misrepresentation or an omission would not be possible. In consideration of our statutory deadline, we postponed the verification schedule multiple times with the goal of resolving the deficiencies on the record prior to verification.[142] However, Hilltop's refusal to provide requested information, and continual submission of inaccurate information prevented the Department from engaging in a verification of a record that had significant unresolved issues and concerns as to reliability, particularly in relation to Hilltop's affiliations with other companies/persons and the accuracy of Hilltop's reported sales in prior reviews. Thus, the Department's multiple attempts to reschedule verification and ultimate decision to forego verification and proceed with the final results of this review was appropriate given Hilltop's failure to cooperate and refusal to provide requested information.

The CIT has recognized the Department's authority to "consider a company's commercial behavior under the existing antidumping order, and any attempts to evade that antidumping order" in conducting its revocation analysis.[143] Further the Department has stated that the Department will conduct a "thorough analysis of all relevant information" in reaching a determination with respect to revocation.[144] Indeed, the Department routinely examines a respondent's past behavior when conducting its revocation analysis. In a number of cases the Department has granted or denied revocation due to the existence or absence of sales in commercial quantities and the Department has used as a baseline for comparison the respondents' commercial behavior during the six-month investigation period, a period that often predates the three consecutive years under consideration for revocation.[145] Hilltop's reasoning that any information prior to the period under consideration for revocation in this proceeding is irrelevant would preclude the Department from making such a comparison or seeking information related to its period of investigation sales to determine whether sales were made in commercial quantities. Therefore, we find that the Department's inquiries into Hilltop's past behavior under the Order is appropriate and Hilltop has actively obstructed the Department's

[142] See Letter from Catherine Bertrand, Program Manager, Office 9, to Interested Parties "Certain Frozen Warmwater Shrimp from the People's Republic of China: Verification Schedule" (February 8, 2012); Letter from Catherine Bertrand, Program Manager, Office 9, to Interested Parties "Certain Frozen Warmwater Shrimp from the People's Republic of China: Verification Schedule" (May 11, 2012); Letter from Catherine Bertrand, Program Manager, Office 9, to Interested Parties "Certain Frozen Warmwater Shrimp from the People's Republic of China: Verification Schedule" (June 1, 2012); Letter from Catherine Bertrand, Program Manager, Office 9, to Interested Parties "Certain Frozen Warmwater Shrimp from the People's Republic of China: Verification Schedule" (June 21, 2012)

[143] See Feili, 724 F. Supp. 2d 1358, 1369 (CIT 2010) (quoting Carpenter Tech. Corp. v. United States, 31 CIT 181,183,474 F. Supp. 2d 1347 (2007)).

[144] See Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders, 64 FR 51236, 51238 (September 22, 1999).

[145] See, e.g., Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea, 66 FR 3540, 3541 (January 16, 2001) (denying revocation to respondent POSCO Group because its sales in the fourth review, the first period of de minimis sales, were .27 percent of its sales volume during the investigation, four years earlier); see also, e.g., Certain Pasta from Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part, 67 FR 51194 (August 7, 2002) (denying revocation to respondent Filiz because its sales in fifth review period were only .22 percent of its sales volume during the investigation), unchanged in Certain Pasta from Turkey: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order in Part, 68 FR 6880 (February 11, 2003).

legitimate inquiries and prevented the Department from determining whether the continued application of the Order is otherwise necessary.

Accordingly, we find that Hilltop is ineligible for revocation based on the absence of three consecutive zeros or de minimis margins. However, notwithstanding that determination, we also find that Hilltop's conduct in this review and past reviews is such that the Department would be unable to grant Hilltop's request for revocation, even if Hilltop had received a separate rate in this review and maintained its record of three consecutive zeros or de minimis margins.

Comment 3: Whether the Record Suggests a Violation of 18 U.S.C. § 1001

Petitioner's Argument:

- The certifications submitted by Hilltop throughout this review, which included certifications for documents from AR1, contained statements that criminal sanctions may be imposed on parties who knowingly make material false statements.
- The individual now known to have been a director of Ocean King, Mr. To Kam Keung, was the same individual who signed numerous certifications submitted in this review that accompanied false statements.
- The statutory provision specifically noted in the Department's certifications, 18 U.S.C. § 1001, states that any party that willfully conceals facts or makes materially false representations in any matter within the jurisdiction of the executive branch of the United States, shall be fined or imprisoned.
- Hilltop's submissions in this review challenges the significance of the Department's recently revised certification requirements and the Department should explain its intended response to a potential violation of 18 U.S.C. § 1001 and whether it intends to refer the matter to the appropriate authorities in the final results.

Hilltop's Argument:

- Petitioner's arguments are premised on their belief that any time a respondent provides information that subsequently turns out to be inaccurate a violation of U.S. code has occurred.
- The Department has recognized the reality that antidumping law is technical and complex and has allowed respondents to revise data discrepancies and mistakes.
- This policy conforms to the Department's obligation to inform respondents of deficiencies in its responses and provide an opportunity to remedy or explain those deficiencies.
- By law and practice, the Department provides parties the opportunity to correct mistakes, and Hilltop's incorrect statement that it was not affiliated with Ocean King has been cured and the record of this review no longer contains a misstatement of fact that could result in a violation of 18 U.S.C. § 1001.
- A misstatement to a government agency is not actionable under 18 U.S.C. § 1001 unless it is a material one, and the fact that Ocean King and Hilltop were affiliated is not material because it had no affect on the sales and FOP data reported by Hilltop in this review.

Department's Position:

The recent revision to the Department's certification language added the statement that individuals certifying as to the accuracy of submissions made to the Department are aware that "U.S. law (including, but not limited to, 18 U.S.C. § 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government."[146] The Department noted in issuing the interim rule that certification violations would "be referred to the appropriate offices better equipped to handle such matters, such as the Department's Office of the Inspector General. These offices would employ their normal procedures for handling possible violations of 18 U.S.C. § 1001."[147] Therefore, in accordance with the Department's Interim Rule, the Department will consider the circumstances presented in this case and whether it is appropriate to refer the matter to the Office of the Inspector General.

Comment 4: Whether the Department Should Initiate Changed Circumstances Reviews

Petitioner's Argument:

- When the Department has obtained information that a respondent has submitted false information in a prior review it has conducted a changed circumstance review ("CCR") and applied AFA.
- The CAFC has recognized the Department's authority to reconsider proceedings it later finds may have been tainted by fraud.
- The Department should initiate CCRs for AR1 through AR5 to evaluate Hilltop's submitted responses, particularly with respect to Hilltop's affiliation status, the accuracy of Hilltop's claim to be Yelin's successor-in-interest, and both parties' claims to be independent from the PRC government.
- The dumping margin awarded to Hilltop in AR1 appears to be based on a limited number of sales of subject merchandise resulting from the concealment of exports of subject merchandise through a false country-of-origin designation.
- These activities facilitated the award of future cash deposit rates premised on fraud, rates that were extended by a potentially false certification of no shipments in AR2.
- The discovery of false representations made to the Department should not result in Ocean Duke benefitting from its actions and the Department should establish margins that accurately reflect Hilltop's true sales activities in prior reviews.

Hilltop's Argument:

- A request that the Department initiate a CCR is not properly filed in a case brief in a review proceeding.
- Petitioner has the right to file a CCR request pursuant to 19 CFR 351.216 and the Department will consider whether the circumstances warrant a review.
- Hilltop's acknowledgement of an affiliation with Ocean King is irrelevant to the Department's calculation of a margin for Hilltop and, as such, did not have a material impact on the review and does not warrant a CCR.

[146] See Interim Final Rule at 7491, 7499-7500.
[147] See id.

- Hilltop's affiliation with Ocean King could only have a material impact on AR1 and AR2 if sufficient record evidence existed to conclude the PRC shrimp had been transshipped through Cambodia in those periods, evidence which does not exist on this record.
- Petitioner's allegations do not constitute changed circumstances and are merely restatements of allegations extensively analyzed by the U.S. government that were rejected by the U.S. Probation Office and Federal District Court.
- While the regulations state that interested parties may seek a CCR at any time, that does not allow Petitioner to sleep on that right for more than five years and then ask the Department to reconsider reviews that are closed. Petitioner were aware of an increase in imports from Cambodia in AR1 and AR2 and had the right to allege transshipment at that time but it does not have the right to seek a CCR because of that increase five years after the fact.
- While Petitioner cites to Printing Presses[148] in support of its request for a CCR, Printing Presses involved a criminal case against a respondent that demonstrated the respondent had provided false information to the Department in one of the reviews that comprised the revocation period. The Department declined to apply AFA in the other two reviews under consideration for revocation, and the court upheld the decision, because the record did not show that fraud had occurred in those reviews.
- Here, the evidence presented by the government was not deemed sufficient to warrant any charges and was found to be unreliable by the Probation Office and the federal court.
- CCRs are not the proper venue for the Department to address duty evasion because the Department does not re-open the administrative record and revise previously assigned margins. Rather, anti-circumvention inquiries are better suited to addressing such allegations.

Department's Position

The Department notes that Petitioner have argued that a CCR is an appropriate response to the information on the record of this review which indicates that "false and incomplete" information was submitted in prior reviews. However, the Department is not initiating a CCR at this time. Although relevant information has been placed on the record of this review, and although certain parts of such information is relevant to key aspects of this review, the issues highlighted by Petitioner in its request for a CCR with regard to Hilltop would be more appropriately considered in a separate segment should one be requested. Therefore, the Department will not examine this request to initiate a CCR within the context of the instant administrative review. The Department will, however, examine and consider requests for a CCR outside the context of this current administrative review that are filed separately and in accordance with 19 C.F.R. 351.216.

[148] See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan: Preliminary Results of Change Circumstances Review, 70 FR 54019 (September 13, 2005) ("Printing Presses").

Comment 5: Whether the Department Should Reject Petitioner's Untimely Submission of Factual Evidence

Hilltop's Argument:

- Petitioner's submitted voluminous new information on March 12, 2012, while the deadline for submitting new factual information in this review was July 18, 2011, almost eight months earlier.
- The only exception to this deadline is when the Department requests factual information, which the record confirms it did not do in this case.
- The regulation cited by Petitioner to justify its late submission that specifies a deadline of seven days prior to verification is only applicable to investigations and the regulations establishing the factual information deadline in reviews contains no qualification permitting late filing for "good cause" or because refusal would prejudice a party.
- The Department has rejected submissions that are made days, even hours, after a deadline and subjected parties to an adverse rate due to untimely filing.
- If the Department wishes to adopt an exception for "good cause" in its regulations governing the deadlines for factual information this exception must be stated clearly and applied equally to all parties.
- Failure by the Department to provide a rational explanation as to why it accepted Petitioner's submission past the deadline for factual information would confirm that the Department's decision was arbitrary and improper.
- The Department should reject Petitioner's submission as it was untimely and no valid explanation has been offered for accepting this late submission.

Petitioner's Argument:

- Documents in relation to the case against Duke Lin were first released to the public on January 23, 2012, however Hilltop was aware of this proceeding well before that time.
- Hilltop's position that this information became available after the 140-day deadline and is therefore unusable is untenable given the implications made public in these documents as to the accuracy of Hilltop's submissions in the current and preceding reviews.
- Hilltop attempts to characterize deadlines in antidumping proceedings as unyielding despite case law and precedent that support the Department's discretion to accept or reject untimely filed submissions depending on the circumstances of each case.

Domestic Processors' Argument:

- The Department has the authority to waive any deadlines it sets and must do so in certain circumstances.[149]
- The CIT has ordered the Department to accept submissions that were previously rejected on the basis of un-timeliness.[150]

[149] See, e.g., NTN Bearing Corp. v. United States, 74 F.3d 1204, 1206-07 (Fed. Cir. 1995) ("{A} regulation which is not required by statute may, in appropriate circumstances, be waived and must be waived where failure to do so would amount to an abuse of discretion.").

[150] See Grobest & I-Mei Industrial (Vietnam) Co., Ltd, et al. v. United States, 815 F.Supp.2d 1342, 1360-68 (CIT 2012).

- The Department properly accepted information that was relevant to Hilltop's revocation request and did not become available until well after the deadline for factual information.
- Information contained in Petitioner's March 12 submission led to the discovery of Hilltop's undisclosed affiliate, a relationship that persisted during the current POR and is thus relevant to the revocation request.

Department's Position:

We disagree with Hilltop that the Department erred in accepting Petitioner's new factual information filed on March 12, 2012. As an initial matter, the Department has the discretion under 19 CFR 351.203(b) to extend any deadline for good cause. We note that, at the time of submission, Petitioner asserted that good cause existed to extend the regulatory deadline and accept the information. Specifically, in their submission Petitioner stated that the information included in the submission is directly relevant to the Department's preliminary decision to revoke. Further, the information was not available until long after the factual information deadline had passed and it would be unduly prejudicial if the Department did not accept this submission considering the consequences of revocation.[151] Additionally, Petitioner submitted the information soon after it became publicly accessible to them.

We disagree with Hilltop's argument that the Department's decision to accept Petitioner's submission was "arbitrary and improper." Rather, we agree with Petitioner's assertion that the courts have stated that the Department is required to consider the specific circumstances in each case and must use its discretion rather than strictly enforcing regulatory deadlines.[152] The circumstances in this case include the fact that Petitioner submitted substantial factual information that only became available after the factual information deadline. The Department considered the relevant facts of the case in determining to accept Petitioner's submission. Therefore, we disagree that it was an arbitrary decision as Hilltop argues.

Further, given the nature and significance of the issues raised by Petitioner, we find that good cause to accept Petitioner's submission after the regulatory deadline is established. Thus, the Department properly exercised its discretion in accepting Petitioner's new factual information. Additionally, we note that we provided Hilltop multiple opportunities to respond to, and comment upon Petitioner's new factual information and allegations, and Hilltop submitted additional new factual information of its own. Finally, we note that our decision to accept the information in this case is consistent with the Department's practice in Certain Lined Paper Products[153] in that the information Petitioner submitted has provided credible evidence of misreporting by Hilltop, which has critical implications for the veracity of Hilltop's information such that the Department has cause to reconsider its preliminary decision to revoke.

[151] See Petitioners Pre-Verification Comments, dated March 12, 2012, at page 14.
[152] See Petitioners Rebuttal Brief at 3; see also NTN Bearing Corp. v. United States, 74 F.3d 1204, 1207 (Fed. Cir. 1995) (citing Technoimportexport v. United States, 766 F. Supp. 1169, 1178 (CIT 1991)).
[153] See Certain Lined Paper Products From the People's Republic of China: Notice of Final Results of the Antidumping Duty Administrative Review and Partial Rescission, 76 FR 23288 (April 26, 2011) and accompanying Issues and Decisions Memorandum at Comment 2.

Comment 6: Whether the Department Should Formally Cancel Verification of Hilltop

Petitioner's Argument:
- The Department should formally cancel verification in this review.

Domestic Processors' Argument:
- Should the Department decide to proceed with verification of Hilltop, it should allow interested parties adequate time to comment on the verification report.

Department's Position:

As the Department ultimately determined not to verify Hilltop, this issue is moot.

Regal

Comment 7: Whether to Apply AFA to Regal

Petitioner's Argument:
- To account for the discrepancy between Regal's reported U.S. sales quantity and Regal's entry data quantity provided by CBP, the Department should adjust the duty-collection method by dividing the total dumping duties owed by the entered value of dutiable entries to ensure the proper amount of duties were collected as it did in PRC Shrimp AR 3.[154]
- The Department should obtain and release additional CBP data regarding the specific 'Type 03' dutiable entries attributed to Regal and all information regarding any 'non-Type 03' entries and importer-specific information attributed to Regal during the POR to prevent an under-collection of antidumping duties.
- The Department should apply AFA to Regal's U.S. sales, because (1) Regal has provided information to the Department that fails to correspond with CBP entry data which frustrates the Department's ability to impose accurate dumping margins and (2) Regal has the capacity to ensure proper reporting to CBP as a condition of its sales to its importers, but it has not done so. Therefore, the Department should equate this facilitation of duty-evasion with a failure to cooperate.

No other party commented on this issue.

Department's Position:

We disagree with Petitioner that we should alter our duty collection methodology or apply AFA to Regal's U.S. sales to resolve the discrepancy between Regal's reported U.S. sales quantity and the CBP entry data reported for Regal. Section 776(a)(2) of the Act states that if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadline, or in the form or manner requested; (C) significantly impedes a proceeding; or (D) provides such information that

[154] Petitioner cites PRC Shrimp AR3 at Comment 7.

cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act of 1930, facts otherwise available in reaching the applicable determination.

If, after being notified by the Department of a deficiency, the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (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. Furthermore, section 776(b) of the Act provides that the Department, in selecting from the facts otherwise available, may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information.[155] The Act provides, in addition, that in selecting from among the facts available the Department may, subject to the corroboration requirements of section 776(c), rely upon information drawn from the petition, a final determination in the investigation, any previous administrative review conducted under section 751 (or section 753 for countervailing duty cases), or any other information on the record.[156]

Pursuant to section 776(b) of the Act, the Department may use information that is adverse to the interest of that party when the party fails to cooperate by not acting to the best of its ability in responding to the Department's request for information.[157] Further, 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. In selecting a rate for adverse facts available, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[158]

In this review, we find that the application of AFA to Regal's U.S. sales is not appropriate. The Department must first assess whether the use of facts available is justified, and then, whether the criteria for an adverse inference have been met, pursuant to section 776 of the Act. We find that the application of facts otherwise available is not warranted under section 776(a) of the Act because Regal: (A) submitted the requested information by the submitted deadlines; (B) provided its information in a timely manner and in the form or manner requested; and (C) did not significantly impede this proceeding under the antidumping statute. Therefore, we find that Regal complied with our requests for information and that there is no information missing from the administrative record which would require reliance on facts available.

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[155] See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H. Doc. 103-316, vol. 1 at 870, 103rd Cong., 2d Sess. (1994) ("SAA").
[156] See 776(b) of the Act.
[157] See Nippon Steel at 1373, 1382.
[158] See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (February 23, 1998) ("Semiconductors").

We further disagree with Petitioner's contention that the Department should apply an adverse inference to Regal because we do not agree with Petitioner's allegation that Regal has frustrated this review by not instituting controls to ensure that U.S. importers properly enter subject merchandise and should equate this facilitation of duty-evasion with a failure to cooperate. As noted above, Regal has cooperated with the Department and provided all requested information by the applicable deadlines. Additionally, we note that all of Regal's U.S. sales were reported on an export price ("EP") basis and Regal has reported that it does not have a U.S. affiliate which could act as an importer of record.[159] Accordingly, Regal had no control over the classification of U.S. entries of its subject merchandise made by its U.S. customers or U.S importers. Further, no record evidence demonstrates that Regal attempted to misclassify entries of subject merchandise. Moreover, there is no information on the record that indicates Regal underreported its U.S. sales information.[160] Further, we note that CBP is the U.S. government authority responsible for determining whether the importer has properly classified merchandise as subject or non-subject at time of entry.[161]

Further, we disagree with Petitioner's contention that the information provided by Regal, which fails to correspond with CBP entry data, frustrates the Department's ability to impose accurate dumping margins. The Department must calculate margins as accurately as possible and ensure that information used to calculate the margin of a respondent must correspond with the factual information provided by that respondent.[162] Regal has provided PRC export documentation which corresponds to its reported U.S. sales quantity, of subject merchandise made during the POR.[163] Moreover, there is no evidence on the record which demonstrates Regal misreported its U.S. sales information.[164] Accordingly, the Department has determined that Regal reported its quantity of U.S. sales of subject merchandise during the POR in compliance with our requests in order for the Department to calculate an accurate antidumping duty margin.

Additionally, we disagree with Petitioner that we should adjust the duty-collection methodology to account for the discrepancy between Regal's reported U.S. sales quantity and the CBP entry data. With respect to assessment rates, section 351.212(b)(1) of the Department's regulations states that the Department normally "will calculate the assessment rate by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise for normal customs duty purposes." In PRC Shrimp AR 3, the Department discovered the entered value of subject merchandise had been under reported by certain importers to CBP and the Department adjusted the duty collection methodology to ensure that the total amount of duties

[159] See Regal's First Supplemental Questionnaire Response, dated September 6, 2011 at S-3.
[160] See Regal's Second Supplemental Questionnaire Response, dated December 6, 2011 at Exhibit S2-1 and Exhibit S2-2.
[161] See e.g., Certain Steel Wheels From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances, 77 FR 17021 (March 23, 2012) and accompanying Issues and Decisions Memorandum at Comment 1.
[162] See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review, 76 FR 3086 (January 19, 2011) and accompanying Issues and Decisions Memorandum at Comment 9; citing Lasko Metal Products, Inc. v. United States, 43 F.3d 1442, 1443 (CIT 1994)
[163] See Regal's Second Supplemental Questionnaire Response, dated December 6, 2011 at Exhibit S2-1 and Exhibit S2-2.
[164] See id.

owed will be collected, regardless of whether the entries were properly classified.[165] However, in the instant review, the record does not contain importer-specific information that identifies which importers, if any, may have incorrectly classified entries related to Regal's reported U.S. sales. Therefore, because the record does not contain any importer-specific information related to Regal's U.S. sales during the instant POR, the information is not available to make a similar adjustment.

Although we find the application of facts available to Regal's U.S. sales to be inappropriate and the proposed adjustment duty-collection methodology to be unnecessary in this administrative review, we intend to refer the discrepancy between Regal's reported U.S. sales quantity and the CBP entry data to CBP because it has the broader responsibility for investigating and enforcement of classification of merchandise entering the United States.

General Issue

Comment 8: Respondent Selection Methodology

Petitioner's Argument:

- The Department ignored evidence submitted by Petitioner indicating that the Type 3 CBP data did not accurately capture the amount of subject merchandise that entered the United States during the POR and should have sent quantity and value ("Q&V") questionnaires and released Type 1 CBP data.
- The Department improperly claimed that Petitioner did not describe its data collection methodology for public import data that suggested a discrepancy with the CBP data and failed to address the ship manifest data submitted by Petitioner showing that at least two parties not included in the CBP data shipped subject merchandise during the POR.
- While the CIT upheld the Department's reliance on Type 3 data in AR4 of this Order because inaccuracies in the data during AR3 did not persist on the record of AR4, the record of this review contains evidence that subject merchandise shipped by Regal was misclassified during the POR and was not accounted for in the CBP data.[166]
- Petitioner submitted reports documenting circumvention detected by numerous federal agencies as well as data and news reports describing transshipment through Malaysia that further cast doubt on the CBP data.
- Petitioner urges the Department to consider instances of fraud in prior reviews relevant to respondent selection in light of evidence submitted by Petitioner in March 2012 indicating that subject merchandise has been transshipped through Cambodia during prior review periods.[167]

[165] See PRC Shrimp AR 3 at Comment 7.
[166] Petitioner cites Ad Hoc Shrimp Trade Action Committee v. United States, 828 F.Supp.2d 1345, 1351-52 (CIT 2012) ("Ad Hoc Shrimp")
[167] Petitioner cites Letter from Petitioner to the Department, re: "Certain Warmwater Shrimp from China: Comments On the Department's Preliminary Determination to Grant Hilltop's Request for Company-Specific Revocation Pursuant to 19 CFR 351.222(b)(2) and Comments in Anticipation of Hilltop's Forthcoming Verification," dated March 12, 2012 at Exhibit 1.

- The CIT has held that Q&V questionnaires are more comprehensive and thorough for gathering relevant information than are CBP Form 7501's.[168]
- The CIT has held that one way to corroborate Type 3 CBP data is through the release of Type 1 CBP data, and the record of this review demonstrates the relevancy of Type 1 data in light of Regal's Type 3 discrepancies.
- In respondent selection, the Department ignored Petitioner's contention that limiting the examination of respondents was contrary to CIT precedent given the number of producers/exporters reflected in the CBP Type 3 data.[169]

No other party commented on this issue.

Department's Position:

The Department disagrees with Petitioner that our respondent selection methodology employed in this proceeding was flawed. As we stated in our respondent selection memorandum, section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies.[170] Because the Department initiated this administrative review with respect to 84 companies, it was not practicable or feasible to individually examine all of them. Under section 777A(c)(2)(B) of the Act, the statute allows the Department to limit examination of exporters or producers to those accounting for the largest volume of subject merchandise exported during the POR that can reasonably be examined. The statute is silent as to how the Department must determine which producers or exporters account for the largest volume of subject merchandise.[171] Therefore, the Department has discretion to choose which particular method to use when determining which respondents account for the largest volume of subject merchandise. The Department notes that our practice in selecting respondents in administrative reviews has been to examine CBP data of subject entries and select respondents accounting for the largest volume of exports of subject merchandise, as directed by section 777A(c)(2)(B) of the Act.[172] Therefore,

[168] Petitioner cites Ad Hoc Shrimp at 1345, 1356.
[169] Petitioner cites Letter from Petitioner to the Department, "Certain Frozen Warmwater Shrimp from the People's Republic of China: Comments Regarding the CBP data and Respondent Selection," dated April 15, 2011 ("Petitioner CBP Comments") at 24-25, quoting Zhejiang Native Produce & Animal By-Products Import & Export Corp. v. United States, 637 F.Supp. 2d 1260, 1264 (CIT 2009) ("Zhejiang Native"); Carpenter Technology Corporation v. United States, 662 F.Supp.2d.1337, 1342-45 (CIT 2009) ("Carpenter Technology"); Asahi Seiko Co., Ltd. v. United States, 751 F.Supp2d 1335, 1340-41 (CIT 2010) ("Asahi I"), and; Asahi Seiko Co., Ltd. v. United States, 755 F.Supp.2d. 1316, 1325 (CIT 2011) ("Asahi II").
[170] See, e.g., "Memorandum to James Doyle, Director, Office 9, from Bob Palmer, Case Analyst, Office 9, Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Selection of Respondents for Individual Review," dated May 09, 2011 ("Respondent Selection Memo").
[171] See U.S. Steel Corp. v. United States, 621 F.3d 1351, 1357 (CAFC 2010) ("The court must, as we do, defer to Commerce's reasonable construction of its governing statute where Congress leaves a gap in the construction of the statute that the administrative agency is explicitly authorized to fill or implicitly delegates legislative authority, as evidenced by the agency's generally conferred authority and other statutory circumstances.") (citations and quotation marks omitted).
[172] See, e.g., Certain Lined Paper Products from the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review, 73 FR 58540 (October 7, 2008) unchanged in Certain Lined Paper

pursuant to section 777A(c)(2)(B) of the Act, we selected the largest exporters for individual review, thereby reviewing the exporters accounting for the largest export volume of subject merchandise that could be reasonably examined.[173]

We disagree with Petitioner that precedent demonstrates that the Department improperly limited its examination of respondents in this administrative review because the number of companies identified in the CBP data was not large. Section 777A(c)(2) of the Act allows the Department to limit its examination of the exporters and producers if "{i}t is not practicable to make individual weighted average dumping margin determinations…because of the large number of exporters or producers involved in the investigation or review." There were over 80 exporters for which a review was requested, which we expressly identified as a large number of companies.[174] This is the number we consider at the respondent selection phase because this reflects the number of companies under review at that time. As explained above, the Department selected Hilltop and Regal, the two exporters that accounted for the largest volume of exports of subject merchandise, as directed by section 777A(c)(2)(B) of the Act.[175] Moreover, the CBP data demonstrates that Hilltop and Regal account for the overwhelming majority of the total reported quantity of imports of subject merchandise to the United States during the POR.[176] With respect to our reliance upon limited resources as part of our basis for limiting the number of respondents, the CAFC has recognized the Department is afforded broad discretion in allocating its enforcement resources.[177] With respect to Petitioner's reliance on two CIT cases, we do not consider those cases to be applicable here. We note that the Zhejiang Native case was dismissed pursuant to the plaintiff's request. With respect to Petitioner's reliance upon Carpenter Technology, although the Department conducted additional analysis on remand regarding the reasonableness of its respondent selection methodologies, the case was dismissed before the Court could enter judgment on the Department's remand findings.

Here, the Department selected the two exporters/producers that account for the overwhelming majority of the total reported quantity of imports of subject merchandise during the POR. With regard to the remaining quantity identified in the CBP data, the Department finds that it would be an unnecessary allocation of the Department's limited resources to individually examine the remaining quantity as it is extremely small.[178] Further, we note that by not selecting all the companies identified in the CBP data run, the Department has not deterred Petitioner from seeking relief from imports of the subject merchandise. All 84 companies listed in the Initiation[179] remained under review and were responsible for submitting separate rate information or certifications of no shipments.[180]

Products from the People's Republic of China: Notice of Final Results of the Antidumping Duty Administrative Review, 74 FR 17160 (April 14, 2009) ("Lined Paper").

[173] See Respondent Selection Memo at 7.

[174] See Respondent Selection Memo at 1-3.

[175] See id.

[176] See id. at Attachment 1.

[177] See Torrington v. United States, 68 F.3d 1347, 1351 (1995) (citing Heckler v. Chaney, 470 U.S. 821, 831 (1985)).

[178] See id.

[179] Initiation of Antidumping Duty Administrative Reviews, Requests for Revocation in Part, and Deferral of Administrative Review, 76 FR 17825, 17826 (March 31, 2011) ("Initiation"); see also Initiation of Antidumping and Countervailing Duty Administrative Reviews; Correction, 76 FR 24855 (May 3, 2011).

[180] See Preliminary Results at12801, 12804.

We disagree with Petitioner that record evidence casted doubt on the quality of the CBP data.[181] When using CBP data, the Department obtains from CBP a listing of all entries during the POR made in each of the USHTS[182] categories referenced in the scope of the order that are designated as Type 3. Type 3 data are limited to subject merchandise that has been suspended for final determination of liability for antidumping and/or countervailing duties. It is the Department's longstanding practice to not conduct reviews for companies that do not have any suspended entries because there are no entries for which the Department can issue assessment instructions.[183] One of the Department's primary functions in the course of an administrative review is to determine the appropriate antidumping duty margin to apply to subject merchandise, for the purpose of directing CBP to liquidate suspended entries of subject merchandise at that rate.[184] As such, Type 3 data are a specific and reliable source of the relative volume of shipments of subject merchandise that have been suspended and are subject to review and assessment.

Moreover, as the respondent selection data are used only to rank the exporters under review by volume of shipments during the POR so that the Department can make a selection determination under section 777A(c)(2)(B) of the Act early in the review, the Department does not and cannot require that the data be flawless.[185] Definitive determinations as to whether merchandise is subject to an order often take significant time to resolve and are done pursuant to separate requests and during specific proceeding segments.[186] The chosen respondent selection data are

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[181] See Respondent Selection Memo at 5-6.

[182] U.S. Harmonized Tariff Schedule.

[183] See, e.g., Certain Tissue Paper Products from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 18497 (April 4, 2008), unchanged in Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review, 73 FR 58113 (October 6, 2008) (rescinding the review of Guilin Qifeng after finding that its reported sales were liquidated as not subject to antidumping duties and notifying CBP of potentially misclassified entries) .

[184] See section 751(a)(2)(C) of the Act (stating that one of the purposes of an administrative review is to assess the current amount of antidumping duties on entries of subject merchandise).

[185] See Final Results of Remand Redetermination Pursuant to Court Remand, in Ad Hoc Shrimp, available at http://ia/ita.doc.gov/remands/11-106.pdf

[186] For example, the Department normally resolves any significant scope questions for reporting purposes (e.g., determinations regarding the proper country of origin if merchandise has been processed in a third country, or determinations as to whether the merchandise is subject to an exclusion) in a separate scope segment of the proceeding. Another remedy available under the dumping law is pursuit of an anti-circumvention inquiry. In PRC Shrimp AR4, we stated that the statute:

> provides for remedies from alleged circumvention of antidumping duty orders in section 781 of the Act. In addition, the Department's regulations provide for circumvention inquiries to be conducted as separate segments of the proceeding. See 19 CFR 351.225. Because the Department has neither received a request to initiate an anti-circumvention inquiry nor self-initiated a separate anti-circumvention inquiry for the antidumping duty order on shrimp from the PRC, Petitioners' comments are misplaced here and will not be addressed further.

See Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 49460 (August 13, 2010) ("PRC Shrimp AR4") and accompanying Issues and Decisions Memorandum at Comment 1. The Department notes that, to date, Petitioner has yet to file a request for the Department to conduct an anti-circumvention inquiry in the PRC shrimp case.

not used to *definitively* determine any particular respondent's actual quantity of subject merchandise shipped during the POR. In fact, the Department requires exporters who believe they had no shipments during the POR to file no-shipment certifications, and does not simply rely on the absence of shipments in the CBP data before determining whether that party has any entries subject to review.[187] Thus, the Department recognizes that while any data set (whether Type 1, Type 3 or Q&V questionnaire responses) it uses may contain some errors, it should nevertheless be a reasonably accurate reflection of the relative position of the exporters under review.

The CIT recently reviewed and upheld the Department's preference for using CBP data as a reliable data source for respondent selection purposes in Pakfood.[188] Agreeing with the Department's reasoning that CBP data are reliable because they are "based on information required by and provided to the U.S. government" for "the same entries upon which the antidumping duties determined by this review will be assessed," the CIT held that it was reasonable for the Department to rely upon CBP data "{i}n the absence of evidence in the record that the CBP data – for merchandise entered during the relevant POR and subject to the AD order at issue – are in some way inaccurate or distortive."[189] The CIT also noted that CBP data were "collected in the regular course of business under penalty of law for fraud and/or negligence" and thus subject to the "general presumption of regularity" attaching to actions taken by customs officers "{i}n the absence of clear evidence to the contrary."[190] As stated above, the Department was unaware of any irregularities in the CBP data that would have led the Department to doubt the reliability of the CBP data at the time of respondent selection in this review.

Additionally, we disagree with Petitioner that the Department should have issued Q&V questionnaires to the respondents in this review. Selecting respondents from CBP data is normally as accurate and reliable as Q&V data, and is much more administratively practicable. The data are readily available to the Department while relying on quantity and value responses requires significant resources to send and track the delivery of the questionnaires and responses, and to aggregate and analyze the numerous responses. Our intended respondent selection methodology was clearly stated in the Initiation.[191] Interested parties were invited to comment on the respondent selection methodology, and their comments were addressed in the Respondent Selection Memo and the Preliminary Results. Petitioner has not provided any compelling arguments that have not already been addressed that would make the Department abandon its practice in favor of Petitioner's methodology.

We do not believe that Type 1 entry data ought to be compiled and released along with Type 3 entry data during the respondent selection process. In Ad Hoc Shrimp, the CIT agreed with the

[187] See, e.g., Preliminary Results at 12803, where we stated that "the Department sent an inquiry to CBP to determine whether CBP entry data is consistent with Shantou Yuexing Enterprise Company's no shipment certification and received no information contrary to that statement."
[188] See Pakfood Pub. Co., Ltd. v. United States, 753 F. Supp. 2d 1334, 1345-46 (CIT 2011); Ad Hoc Shrimp at 1345, 1354.
[189] See id.
[190] See id.
[191] See Initiation at 17826.

Department that Type 1 data is not useful in the respondent selection process.[192] Further, Type 1 data would not provide a more reliable or accurate means by which to determine the relative positions of exporters of subject merchandise, properly suspended, during the POR than Type 3 data. Petitioner did not provide any guidance as to the purpose of obtaining and releasing Type 1 data to interested parties in ascertaining the largest volume of subject merchandise exports for respondent selection, as directed by the statute. If the Department were to obtain this data, it would include a listing from CBP of all the entries made during the POR under the USHTS categories referenced in the scope of the Order that are designated as Type 1. The classification of whether a particular entry of merchandise is Type 1 (not subject to AD duties) or Type 3 (subject to AD duties) is recorded on CBP 7501 forms by the importer of record. The classification itself does not yield any specific information that would assist the Department in expeditiously determining whether merchandise should have been reported as Type 3, or making any modifications to the Type 3 data for purposes of respondent selection. The Department disagrees with Petitioner that Type 1 data could corroborate the Type 3 data already on the record. Type 1 and Type 3 data are, by definition, mutually exclusive. Type 1 data are comprised of entries classified as non-subject merchandise; Type 3 data are comprised of entries classified as subject merchandise. The Department does not know, and Petitioner do not suggest, a way that the two datasets could be used to verify or corroborate each other. While the Department may examine certain specific data to determine if a given entry or sale should be included in its examination, complaints of deliberate misclassification of entries or fraudulent activity regarding entries into the United States should be properly lodged with CBP.[193]

With respect to Petitioner's argument that the CBP data is inaccurate because of the discrepancy with Regal's reported sales quantity, we note the discrepancy between Regal's CBP data and sales quantity was not available when we conducted respondent selection, but was only revealed during the course of the review. Further, the discrepancy between the CBP data and Regal's sales quantity would not have precluded the Department from selecting Regal, but would have strengthened the Department's determination to select Regal as a mandatory respondent in this administrative review.

Further, we continue to find Home Products inapplicable in this case.[194] In Home Products, the CAFC held that the Department has the inherent authority to reopen a case to consider new evidence that its proceedings were tainted by fraud and that the Department's authority to reopen cases is not limited to cases in which a determination of fraud has been made in a separate proceeding.[195] In Home Products, the party was able to specifically tie the false documents in one review to the same false documents in a previous review.[196] Here, although the Department found evidence of importer misclassification in AR 3 PRC Shrimp and a discrepancy between the CBP data and Regal's sales quantity, there is no evidence on the record of fraud that rebuts the Department's general reliability on the CBP data used for respondent selection in this administrative review.

[192] See Ad Hoc Shrimp at 1345, 1355.
[193] The CIT upheld the Department's position that CBP has more expansive authority to investigate misclassification claims. See Globe Metallurgical Inc., v. United States, 722 F.Supp.2d 1372, 1381 (CIT 2010) ("Globe Metallurgical").
[194] See Home Products International, Inc. v. United States, 633 F.3d 1369 (Fed. Cir. 2011) ("Home Products").
[195] See id.
[196] See id.

During the course of the review, although the Department discovered a discrepancy between Regal's sales quantity and the CBP data reported for Regal, the Department continues to find CBP data represents a reliable source, as a whole, for purposes of respondent selection. Consequently, for the reasons stated above, we continue to find it inappropriate to release CBP "Type 1" entries under APO to interested parties or to issue Q&V questionnaires to any exporters or producers subject to the instant segment of the proceeding.

Surrogate Values

Comment 9: Shrimp Larvae

Petitioner's Argument:

- While Hilltop claims that it fully addressed the Department's concerns regarding its proposed source for shrimp larvae by placing the entire report on the record of this review, Hilltop failed to provide an English translation of the Thai report and has provided no new evidence on the record than existed at the Preliminary Results.
- Because Hilltop has only placed the cover page and a single page excerpt of this report in English on the record of this review, Hilltop has failed to address the Department's stated concerns with regard to its inability to determine the parameters and methodology of the study.

Domestic Processors' Argument:

- The Department stated at the Preliminary Results that it would not rely on the Thai Pollution Control Department report submitted by Hilltop to value shrimp larvae because it could not determine the parameters and methodology of the source and because it was not contemporaneous.
- Hilltop has not provided any translated portions of the report that satisfy the Department's concerns and, unlike the source used in the preliminary results, it is not contemporaneous.

Hilltop's Argument:

- The Department should value shrimp larvae using the "Aquaculture Under the Low-Salted System in Fresh Water Area" report compiled by the Thai Ministry of Natural Resources and Environment, Pollution Control Department, submitted by Hilltop.
- Hilltop fully addressed the Department's concerns regarding the public availability of its shrimp larvae surrogate value source.
- The Thai Pollution Control Department report is superior to the Aqua Culture Asia Pacific ("ACAP") article relied upon by the Department because it provides country-wide data and crucial supplementary information regarding larvae sizes, stocking density, loading times, curatorship and pestilence issues where as the ACAP article provides prices for one local area and no additional information.
- While Hilltop's source is from 2008 and therefore not contemporaneous, there is no record evidence indicating major price fluctuations from that period to the POR that would suggest that inflating this value would produce unreliable results.

Department's Position:

Because Hilltop is found to be part of the PRC-wide entity in this administrative review and Hilltop was the only respondent which used the surrogate value for shrimp larvae to value its shrimp larvae input, we find a discussion regarding the appropriate surrogate value for shrimp larvae is unnecessary because there are no other respondents which require a surrogate value for shrimp larvae.

Comment 10: Shrimp Feed

Domestic Processors' Argument:

- The Department should not depart from the primary surrogate country, Thailand, for the valuation of shrimp feed in this review because the Thai data is not necessarily unreliable.
- The price volatility of Thai import data average unit values ("AUV") for shrimp feed is due to the Department's exclusion of Thai re-imports, which made up 93 percent and 90 percent of Thai import data in the current and previous administrative review periods, respectively.
- If Thai re-imports are included in the data, AUVs over the periods analyzed by the Department are remarkably consistent.
- Domestic Processors are unable to determine why a higher volume of imports were classified as Thai re-imports in the current and previous administrative review periods or what the actual countries of origin were for those imports.
- The Department should either rely on contemporaneous Thai import data, including Thai re-imports, for the valuation of shrimp feed in this review, or inflate the AR4 Thai import data to the current POR, because Thai re-imports in that period made up a small percentage of overall imports such that excluding them would not materially alter the reliability of the data.
- In addition to the Department's preference for using surrogate values from the primary surrogate country, the Thai import data is more specific to the input used by respondents as Thailand produced 25 percent more farmed shrimp than Indonesia and twice the volume of farmed white shrimp than Indonesia over the periods examined by the Department.
- The record of this review demonstrates that the costs associated with producing white shrimp versus other types of shrimp are substantially different, particularly with respect to feed.

Hilltop's Argument:

- Domestic Processors' suggestion that the Department include Thai re-imports as a remedy to the price volatility of the Thai import data goes against the Department's policy of excluding Thai re-imports from import data without providing a rationale for a departure from this policy.
- Domestic Processors' admission that the reason for the unusual spike in Thai re-imports is unknown, as is the country of origin of those re-imports, substantiates the Department's decision to rely on import data for shrimp feed outside of the primary surrogate country.
- Domestic Processors' suggestion that the Department inflate the AR4 Thai import data to the current POR does not provide any explanation as to the high degree of inconsistency between AR4-AR6 data, and does not remedy the Department's concerns with this data set as a whole.
- Domestic Processors' claim that the Thai import data is more specific to the white shrimp produced by respondents and that differences in production costs warrant use of a shrimp

feed surrogate value ("SV") specific to white shrimp neglects the record evidence indicating that feed for white shrimp has a lower protein content and should, therefore, be less expensive than the Indonesian SV, which is not the case.

Department's Position:

In the Preliminary Results, the Department valued shrimp feed using Global Trade Atlas ("GTA") - Indonesia import data under HTS 2309.90.1300 that is contemporaneous with the POR, specific to the input and tax and duty exclusive, because the GTA – Thai import data demonstrated considerable price volatility than the import statistics of other potential surrogate countries.[197]

The Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available and contemporaneous with the POR, and tax/duty-exclusive.[198] The Department undertakes its analysis of valuing FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.[199] While there is no hierarchy for applying the SV selection criteria, "the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the 'best' surrogate value is for each input."[200] Further, it is the Department's preference to value all FOPs in a single surrogate country, when possible, consistent with section 351.408(c)(2) of the Department's regulations. However, where no suitable SV is available from the primary surrogate country, the Department has valued FOPs in other countries that have been found to be significant producers of comparable merchandise and economically comparable to the NME country in question.[201]

Domestic Processors contend that the Department should use Thai import data to value feed and adjust for any price volatility in the Thai import data by including Thai re-imports of shrimp feed identified in the GTA data. We disagree with Domestic Processors that GTA-Thai import data for shrimp feed represents the best available information to value shrimp feed. As an initial

[197] Thailand is the primary surrogate country chosen in this administrative review. See Prelim SV Memo at 6 and Exhibits 8a-d.

[198] See, e.g., First Administrative Review of Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 1336 (January 11, 2010), ("PSF AR1") and accompanying Issues and Decision Memorandum at Comment 1.

[199] See Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 47176 (August 12, 2005), ("Glycine 2005") and accompanying Issues and Decisions Memorandum at Comment 1.

[200] Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 55039 (September 24, 2008) ("PET Film") and accompanying Issues and Decisions Memorandum at Comment 2.

[201] See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order, 75 FR 844 (January 6, 2010) ("Tapered Roller Bearings"), and accompanying Issues and Decision Memorandum at Comment 3; Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 70 FR 12651 (March 15, 2005) ("Carbon Steel Plate"), and accompanying Issues and Decision Memorandum at Comment 3; see also Prelim SV Memo at 5-6.

matter, the Department has a long-standing practice of disregarding import data if it has a reason to believe or suspect the source data may be subsidized.[202] The Department has previously found that it is appropriate to disregard such information from Thailand because the Department has determined that this country maintains broadly available, non-industry specific export subsidies.[203] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from Thailand may have benefitted from these subsidies, including re-imports of shrimp feed.[204] Further, there is no record evidence that the shrimp feed classified as imports from Thailand into Thailand, are re-importations, another category of unspecified imports, or the result of an error in reporting.[205] Because the constitution of this data is unclear, and because there continue to be inconsistencies with the data that cannot be explained by the parties nor by the Department, we do not find that it represents the best available information upon which to rely for valuation purposes. We also find that making the Domestic Producers' suggested adjustments to the Thai import data do not alleviate our concerns that the underlying reasons for these inconsistencies are unknown. Consequently, for these final results the Department continues to find that it is appropriate to exclude imports from Thailand into Thailand for surrogate valuation purposes for shrimp feed.[206]

Domestic Processors further contend that the Department could rely on Thai import data from AR4. They argue that during that review, the import volume classified as imports from Thailand into Thailand is small enough that excluding this volume does not impact the reliability of the data. Domestic Producers contend that such an approach would be consistent with the Department's preference to use SVs from the primary surrogate country. We disagree with Domestic Processors that Thai import data from AR4 are more reliable than the Indonesian import data used in the Preliminary Results. While the Department has stated that it prefers to use SV data from the primary surrogate country,[207] the Department will consider alternative sources when suitable data from the primary surrogate country does not exist on the record.[208] Further, the CIT has held that the Department is permitted to select surrogate values from sources other than the primary surrogate country when there are other methods available to

[202] See Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) ("OTCA 1988") at 590.
[203] See, e.g., Expedited Sunset Review of the Countervailing Duty Order on Carbazole Violet Pigment 23 from India, 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at pages 4-5; Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia, 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at page 4; see also Certain Hot-Rolled Carbon Steel Flat Products From Thailand: Final Results of Countervailing Duty Determination, 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at page 23.
[204] See Preliminary Results at 12801, 12805.
[205] Domestic Processors refer to Thai imports of shrimp feed from Thailand as re-imports.
[206] See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 47771 (August 9, 2010) and accompanying Issues and Decisions Memorandum at Comment 6.
[207] See Certain Fish Fillets From the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review, 77 FR 15039 (March 14, 2012) and accompanying Issues and Decisions Memorandum at Comment II D. 1.
[208] See e.g., Tapered Roller Bearings at Comment 3 and Carbon Steel Plate at Comment 3.

determine the best available information.[209] In this instance, the Department has analyzed POR and historical shrimp feed import data for Thailand, the Philippines, and Indonesia,[210] for the periods corresponding to AR4, AR5, and AR6.[211] In our analysis of the shrimp import data from these countries, we excluded Thai imports in accordance with Department practice, see above. Based on that data, it is clear that the AUVs of shrimp feed into Thailand over the periods examined demonstrate considerably more price volatility than the other countries that are economically comparable to Thailand.[212] Domestic Processors' contention that including import volumes classified as imports from Thailand into Thailand for the current and previous review periods demonstrates consistent AUVs over the entire three-year period[213] further serves to demonstrate that Thailand's use of subsidies distorts the AUV of the GTA-Thai import data for shrimp feed. This would lead the Department to make unsubstantiated assumptions as to the reliability of the Thai feed import data. The legislative history states in relevant part that when selecting from the information on the record for the best information available for SV selection, "{the Department} shall avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices."[214] Accordingly, because the Thai import data have demonstrated considerable price volatility, based on historical data and compared with imports made during the POR by economically comparable countries, we find that the GTA-Thai import data for shrimp feed is unreliable as a whole.

Additionally, Domestic Processors' claim that the Thai SV for shrimp feed is more specific to the feed input based on the dominance of white shrimp (the only shrimp produced by the respondents) production in Thailand, ignores record evidence that feed for white shrimp should be lower priced than feed for other species, such as black tiger shrimp.[215] Because shrimp produced in Thailand requires feed with lower protein content than feed for black tiger shrimp[216] one would expect to see lower prices for feed where white shrimp is the primary species produced. The fact that the Indonesian SV, where white shrimp and black tiger comprised 88% of farmed shrimp, is significantly cheaper than the Thai SV's from AR4, AR5, and AR6 for

[209] See Shakeproof Assembly Components v. United States, 268 F.3d 1376, 1381-82 (Fed.Cir.2001) ("We have specifically held that Commerce may depart from surrogate values when there are other methods of determining the 'best available information' regarding the values of the factors of production.").
[210] These countries are considered economically comparable to Thailand. See Letter from Catherine Bertrand, Program Manager, Office 9, to Interested Parties regarding Request for Comments on Surrogate Countries, dated June 21, 2011, at Attachment I.
[211] See Prelim SV Memo at Exhibit 4a.
[212] See Prelim SV Memo at 5-6 and Exhibit 4a.
[213] See Letter from Domestic Processors, dated June 26, 2012 at 3 and Letter from Domestic Processors, re: Post-Preliminary Submission of Publically Available Information to Value the Factors of Production, dated April 26, 2012 at Exhibit 1.
[214] See Omnibus Trade and Competitiveness Act of 1988, H.R. Conf. Rep. No. 100-576 at 590-591 (1988).
[215] See Letter from Domestic Processors, re: Information to Rebut, Correct, and Clarify Hilltop's Post-Preliminary Submission of Publically Available Information to Value the Factors of Production, dated May 7, 2012 at Exhibit 2-3.
[216] See Letter from Hilltop to the Secretary of Commerce "First Surrogate Value Rebuttal: Sixth Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China" (October 12, 2011) at Exhibit 1A-1B.

shrimp underscores the unreliability of the Thai import data, and thus, precludes any determination as to the specificity of the Thai source over the Indonesian source.[217]

Therefore, because the Department finds the Thai import data for shrimp feed to be unreliable in this review, based on historical data and compared to imports made during the POR by economically comparable countries, the Department continues to find that the GTA-Indonesian import data for shrimp feed is the best available information to value shrimp feed because it is publicly available, specific to the input, contemporaneous and tax and duty exclusive.[218]

Comment 11: Labor Surrogate Value

Petitioner's Argument:

- In the Preliminary Results, the Department improperly used International Labor Organization ("ILO") data from a single country to derive its wage rate, when it should use ILO data from multiple countries due to the extreme variances in labor wage rates in market economies.
- In accordance with the Department's determination in PRC Shrimp AR 4,[219] where the Department declined to use a single country to value labor because it was arbitrary, the Department should use data from Ecuador, Jordan, Peru, the Philippines, and Thailand to value labor and minimize the differences in wages across comparable countries. Doing so satisfies the statutory requirement in section 773(c)(B)(2) of the Act, that the Department use costs of factors of production from a surrogate that is at a level of economic development comparable to that of the nonmarket economy and is a significant producer of comparable merchandise.
- Judicial precedent does not support using a single country to value labor and the CIT has upheld the Department's ability to value labor using multiple countries.[220]

Hilltop's Argument:

- Petitioner's case brief does not dispute that the use of Thai wage data satisfies the statutory guidelines and cites to no other statute or regulation to support its claim that using only wage data from Thailand is improper.
- In PRC Shrimp AR 5,[221] the Department provided a clear explanation for its decision to use data from only one surrogate country to value wage labor in light of the CIT ruling in Shandong Rongxin.
- The Department has noted that it prefers to use wage data from the primary surrogate country in order to maintain a similar analysis to that of the other factors of production being used from the primary surrogate country.[222]

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[217] See Letter from Domestic Processors to the Secretary of Commerce "Information to Rebut, Correct, and Clarify Hilltop's Post-Preliminary Submission of Publicly Available Information to Value the Factors of Production" (May 7, 2012) at Exhibit 1; see also Prelim SV Memo at Exhibit 4b.
[218] See Prelim SV Memo at 5-6.
[219] Petitioner cites PRC Shrimp AR4 at Comment 8.
[220] Petitioner cites e.g., Shangdong Rongxin Imp. & Exp. Co. v. United States, 774 F. Supp. 2d 1307, 1314 (CIT 2011) ("Shandong Rongxing"), Home Products International, Inc. v. United States, 810 F. Supp.2d 1373, 1377-80 (CIT 2012), Grobest & I-Mei Industrial (Vietnam) Co., Ltd., et al., v. United States, 815 F. Supp.2d 1342, 1356-60 (CIT 2012), and Dongguan Sunrise Furniture Co., Ltd. v. United States, Slip Op. 12-79, June 6, 2012 (CIT 2012) ("Dongguan Sunrise").
[221] Hilltop cites PRC Shrimp AR5 at Comment 5.

Department's Position:

We disagree with Petitioner and continue to rely on industry-specific labor data from Chapter 6A of the International Labor Organization's ("ILO") Yearbook of Labor Statistics reported for the primary surrogate country because it represents the best available information for valuing the labor input in these final results. Our selected SV for labor is fully consistent with section 773(c) of the Act, and is similar to the Department's approach for valuing all other FOPs.

Further, we disagree with Petitioner that the Department should revert to the multiple-country methodology to derive labor rates in this review, because of the variability that exists across wages from countries with similar gross national income. In the past the Department has relied on wage data from multiple countries to help minimize the effects of the variability that exists between wage data of comparable countries,[223] however, the Department has determined that relying on labor data from the primary surrogate country is the preferable approach.[224] The Department reached this conclusion, following the Federal Circuit's decision in Dorbest IV, which invalidated the Department's regression methodology, because the regression method required reliance on data from countries that were not economically comparable or significant producers.[225] Following Dorbest IV, the Department initially continued the multi-country approach, but indicated that it would continue to evaluate whether other alternatives were more appropriate.[226] Specifically, the Department questioned the benefits of the multi-country approach since the amount of available data was more limited than it was under the regression method.[227] Additionally, the Department questioned the administrative feasibility of adopting the multi-country approach for the long-term given that even with a restricted basket, it required screening hundreds of data points in each case to arrive at industry-specific data.[228] Subsequently, in Shandong Rongxin, the CIT further restricted how the Department could define what countries are significant producers. When deciding on a permanent wage methodology, the Department concluded that to achieve compliance with the statute and court precedent, it would not rely on the multi-country average approach. The Department determined that the base for an average wage calculation would be so limited that there would be little, if any, benefit to relying on an average of wages from multiple countries and the goal of minimizing the variability that occurs in wages across countries could not be achieved using that method.[229] Therefore, in light of this and after having gained experience in applying a multi-country averaging method, the Department decided that valuing labor with data from the primary surrogate value would be the preferable approach.[230]

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[222] Hilltop cites Taian Ziyang Food Co. v. United States, 783 F. Supp. 2d 1292, 1330 (CIT 2011).
[223] See PRC Shrimp AR 4 at 49461 and accompanying Issues and Decisions Memorandum at Comment 8.
[224] See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092, 36093 (June 21, 2011) ("Labor Methodologies").
[225] See Dorbest Ltd. v. United States, 604 F.3d 1363 (Fed. Cir. 2010) ("DorbestIV").
[226] See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, 75 FR 64259 (October 19, 2010); see also, Activated Carbon AR2 at Comment 4f.
[227] See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor; Request for Comment, 76 FR 9544, 9546 (February 18, 2011).
[228] See id.
[229] See PRC Shrimp AR 5 at Comment 8.
[230] See id.; see also Labor Methodologies at 36093.

Additionally, we disagree with Petitioner that judicial precedent does not support the single country approach. Although the CIT has indicated that section 773(c)(B)(2) of the Act permits the use of multi-country data to calculate the surrogate labor rate if the Department finds this possible and appropriate,[231] the court has affirmed the Department's single country approach described in Labor Methodologies.[232]

We disagree with Petitioner that the Department should rely on labor data from outside the primary surrogate country, Thailand. It is the Department's preference to value all FOPs utilizing data from the primary surrogate country and to consider alternative sources only when a suitable value from the primary surrogate country does not exist on the record.[233] In this review, the record contains a suitable value for labor from the primary surrogate country. Petitioner has provided no evidence that impugns the Thai labor data derived from Chapter 6A of the ILO's Yearbook of Labor Statistics.

Comment 12: Surrogate Financial Statement Selection

Petitioner's Argument:

- The Department should use the financial statement of Surapon Foods Public Company Limited ("Surapon") to calculate surrogate financial ratios because it includes a value for energy input costs and is for an integrated producer of shrimp, unlike the financial statements of Kiang Huat Sea Gull Trading Frozen Food Public Co. Ltd.'s ("Kiang Huat") used in the Preliminary Results.
- Nothing on the record indicates that the surrogate companies Sea Bonanza Foods Company Ltd. ("Sea Bonanza") or Siam Ocean Foods Company Ltd. ("Siam Ocean") processed shrimp, and the Department has previously declined to use financial statements when those statements and administrative record did not conclusively demonstrate that the company was a processor of shrimp.[234]
- The Department should not use the financial statements of Kongphop Frozen Foods Company Ltd. ("Kongphop") because, like Kiang Huat, Kongphop is a non-integrated processor of shrimp and its financial statements do not identify energy costs separately. The Department should only use Surapon's financial statement.

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[231] See Dongguan Sunrise at 10.

[232] See Certain Cased Pencils from the People's Republic of China, Final Results of Remand Redetermination Pursuant to Remand, August 4, 2011, available at http://ia.ita.doc.gov/remands/11-45.pdf, affirmed in Shandong Rongxing Import & Export Co., Ltd. v. United States, Slip Op. 11-108, August 30, 2011 (CIT 2011); see also Certain Activated Carbon From the People's Republic of China, Final Results of Remand Redetermination Pursuant to Remand, July 25, 2011, available at http://ia.ita.doc.gov/remands/11-21.pdf, affirmed in Hebei Foreign Trade and Advertising Corp. v. United States, 807 F.Supp.2d 1317, 1319 (CIT 2011).

[233] See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review, 76 FR 15941 (March 22, 2011) ("Fish Fillets AR6") and accompanying Issues and Decisions Memorandum at Comment IV.I.i; see also, Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China, 69 FR 67313 (November 17, 2004) ("Bedroom Furniture LTFV") and accompanying Issues and Decisions Memorandum at Comment 3.

[234] Petitioner cites Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 47771 (August 9, 2010) and accompanying Issues and Decisions Memorandum at Comment 3D; see also Grobest&I-Mei Industrial (Vietnam) Co., Ltd. v. United States, 815 F. Supp. 2d 1342, 1254-55 (CIT 2012).

Domestic Processors' Argument:

- Kongphop, Sea Bonanza, and Siam Ocean all produce and/or sell merchandise that is not specific to the frozen shrimp sold by the mandatory respondents. Because it is the Department's policy to decline financial statements that contain non-comparable merchandise, even if the surrogate company also produces some subject merchandise, when there are other useable financial statements available,[235] the Department should not use the financial statements of Kongphop, Sea Bonanza, or Siam Ocean in this review.

Hilltop's Argument:

- The Department should use the financial statements of Kongphop, Sea Bonanza, and Siam Ocean to calculate the surrogate financial ratios for the final results. All three companies are shrimp processors which were profitable in 2010, with audited financial statements contemporaneous with the POR.
- The financial statements of Sea Bonanza and Siam Ocean identify energy costs separately from other production costs, which make them preferable to King Huat's statement which does not list energy costs separately.
- Siam Ocean has previously participated as a producer/exporter in Thai Frozen Shrimp antidumping reviews.
- The Department should not use Surapon's 2010 financial statement because the statement refers to the Industrial Investment Promotion Action B.E. 2520, and the Investment Promotion Act ("IPA") is on the Department's list of countervailable subsidies from Thailand.
- The Department's Thai countervailable subsidies list also includes other programs (e.g. "Import Duty and Tax Exemption for Machinery" (Section 28), "Income Tax Exemption" (Section 31), and permission to deduct double the costs of transportation (Section 35)) which are also included in Surapon's financial statement.

Department's Position:

In post-preliminary surrogate value submissions, four additional surrogate financial ratio companies were placed on the record. These companies are: 1) Kongphop, 2) Sea Bonanza, 3) Siam Ocean, and 5) Surapon.[236] The Department reviewed each of these financial statements for consideration in the final results.

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[235] Domestic Processors cite Wooden Bedroom Furniture from the People's Republic of China: Final Results of the 2004-2005 Semi-Annual New Shipper Reviews, 71 FR 70739 (December 6, 2006) ("Wooden Bedroom Furniture 04-05") and accompanying Issues and Decisions Memorandum at Comment 1; Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 68030 (December 5, 2003) and accompanying Issues and Decisions Memorandum at Comment 2 and Notice of Final Determination of Sales At Less Than Fair Value: Solid Agricultural Grade Ammonium Nitrate From Ukraine, 66 FR 38632 (July 25, 2001) and accompanying Issues and Decisions Memorandum at Comment 4.

[236] See Letter from Petitioner, re: "Certain Frozen Warmwater Shrimp from the People's Republic of China: Post-Prelim Data on Surrogate Values for the Sixth Administrative Review (2010-2011)," dated April 26, 2012 ("Petitioners' Post-Prelim SV Letter") at Attachment A; see also, Letter from Hilltop, re: "Post-Prelim Surrogate Value Submission: Sixth Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China," dated April 26, 2012 ("Hilltop Post-Prelim SV Letter") at Exhibits 7-9.

In the Preliminary Results, the Department used only the financial statements of Kiang Huat in calculating the surrogate financial ratios as it was the only unsubsidized financial statement on the record.[237] No party contested the Department's determination to reject the financial statements of both Seafresh and Thai Union because they received countervailable subsides from a Thai Board of Investment program contingent upon exports.[238] With regard to the financial statements of Kongphop, Sea Bonanza, Siam Ocean, and Surapon, placed on the record in post-preliminary surrogate values submissions, we reviewed each financial statement for the final results below.

When selecting financial statements for purposes of calculating surrogate financial ratios, the Department's policy is to use data from one or more market-economy surrogate companies based on the "specificity, contemporaneity, and quality of the data."[239] Section 773(c)(1) of the Act states that "the valuation of the factors of production shall be based on the best available information regarding the values of such factors. . . ." In accordance with 19 CFR 351.408(c)(4), the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country to value manufacturing overhead, general expenses, and profit.[240] In determining the suitability of surrogate values, the Department carefully considers the available evidence with respect to the particular facts of each case and evaluates the suitability of each source on a case-by-case basis.[241] Accordingly, when examining the merits of financial statements on the record, the Department does not have an established hierarchy that automatically gives certain characteristics more weight than others. Rather, the Department must weigh available information with respect to each situation and make a product and case-specific decision as to what constitutes the "best" available information. Furthermore, the CIT has recognized the Department's discretion in selecting the best surrogate values on the record.[242]

Surapon

Petitioner contends the Department should use Surapon's financial statements for the final results because it is from an integrated producer and itemizes energy costs. The Department has reviewed Surapon's financial statements placed on the record by Petitioner and determined that

[237] See Preliminary Results at 12801, 12809; see also, Prelim SV Memo at 10-11.
[238] See id.
[239] See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances,71 FR 29303 (May 22, 2006), and accompanying Issues and Decision Memorandum at Comment 1.
[240] See PRC Shrimp AR3 at Comment 2.
[241] See Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review, 71 FR 40477 (July 17, 2006), and accompanying Issues and Decision Memorandum at Comment 1; see also Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002) and accompanying Issues and Decision Memorandum at Comment 2.
[242] The CIT has upheld its previous determinations that "when Commerce is faced with the decision to choose between two reasonable alternatives and one alternative is favored over the other in their eyes, then they have the discretion to choose accordingly." See FMC Corp. v. United States, 27 CIT 240, 241 (CIT 2003), affirmed, 87 Fed. Appx. 753 (Fed. Cir. 2004) (citing Technoimportexport, UCF America Inc. v. United States, 783 F. Supp. 1401, 1406 (CIT 1992)).

Surapon's[243] statements indicate that it received a countervailable subsidy during the POR, from a program previously investigated by the Department.[244] Section 773(c)(1) of the Act directs Commerce to base the valuation of the factors of production on "the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate. . . ." Moreover, in valuing such factors, Congress has directed Commerce to "avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices."[245] Therefore, where the Department has a reason to believe that a company received subsidies, the Department may find that the financial ratios derived from that company's financial statements are less representative of the financial experience of the company or the relevant industry compared to ratios derived from financial statements that do not contain evidence of subsidies.[246] As stated above, the CIT has held that the Department is "neither required to duplicate the exact production experience of the integrated manufacturers, nor undergo an item by item analysis in calculating factory overhead."[247] Moreover, it has been our experience that it is rarely possible to achieve exact symmetry between the NME producer and the surrogate producer.[248] Here, the Department finds that Surapon received a Thai Board of Investment program contingent upon exports, which are countervailable subsidies previously investigated by the Department.[249] Therefore, we find that the Department's legislative obligation to avoid using values potentially distorted by subsidies outweighs the differences in levels of integration between Surapon and Regal and that Surapon itemizes energy costs. Accordingly, for these final results, we find Surapon's surrogate financial statements do not constitute the best available information to calculate the surrogate financial ratios.

Siam Ocean

We have evaluated the financial statements of Siam Ocean which Hilltop placed on the record of this review in its post-preliminary surrogate value submission.[250] We find that the financial statements from Siam Ocean are not suitable for use in these final results. Siam Ocean's financial statement is incomplete as it is missing auditor's notes. Specifically, notes 10 and 11 of Siam Ocean's 2010 financial statement are missing.[251] The Department prefers financial statements to be complete, free of evidence of receipt of countervailable subsidies, and

[243] See Petitioners' Post-Prelim SV Letter at Attachment A, 44-45 (Board of Investment program and income tax exemption that is contingent upon export).
[244] See Final Negative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Thailand, 70 FR 13462 (March 21, 2005); see also Ball Bearings and Parts Thereof From Thailand: Final Results of Countervailing Duty Administrative Review, 61 FR 728 (January 6, 1997).
[245] See Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 576, 100th Cong., 2nd Sess., at 590-91 (1988).
[246] See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results and Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 19174 (April 17, 2007), and accompanying Issues and Decision Memorandum at Comment 1.
[247] See Rhodia at 1247.
[248] See Bulk Aspirin from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 48337 (August 13, 2003), and accompanying Issues and Decision Memorandum at Comment 2.
[249] See Final Negative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Thailand, 70 FR 13462 (March 21, 2005); see also Ball Bearings and Parts Thereof From Thailand: Final Results of Countervailing Duty Administrative Review, 61 FR 728 (January 6, 1997).
[250] See Hilltop Post-Prelim SV Letter at Exhibits 8-9.
[251] See id.

contemporaneous.[252] Therefore, because Siam Ocean's financial statements are incomplete, we determine that these financial statements do not represent the best available information to calculate the surrogate financial ratios.

Kongphop and Sea Bonanza

We have determined to include the 2010 financial statements of Kongphop and Sea Bonanza in the calculation of the surrogate financial ratios, because these financial statements are publicly available, contemporaneous with the POR, complete and audited, and representative of the industry because they are processors of frozen shrimp.[253] The Department's standard criteria for selecting financial statements in calculating surrogate financial ratios also includes examining the level of integration of the surrogate company in order to approximate the overhead costs, selling, general and administrative ("SG&A"), and profit levels of the respondent.[254] The CIT has held that the Department is "neither required to duplicate the exact production experience of the integrated manufacturers, nor undergo an item by item analysis in calculating factory overhead."[255] Moreover, it has been our experience that it is rarely possible to achieve exact symmetry between the NME producer and the surrogate producer.[256] Domestic Processors argue the Department should not use Kongphop or Sea Bonanza's financial statements because the quantity of shrimp they produced and sold is not identifiable in its financial statements. Domestic Processors also argue that they produce other non-subject merchandise products in addition to frozen shrimp. We note, however, that the record demonstrates that both Kongphop and Sea Bonanza are processors of frozen shrimp[257] and the Department has a preference for using financial statements from surrogate companies with similar production processes.[258] Although the respondents in this case are integrated producers of frozen shrimp, we note that the production processes of Kongphop and Sea Bonanza, as non-integrated producers of frozen shrimp, represent the best match out of available surrogate companies which meet the Department's surrogate financial statement selection criteria. While Domestic Processors cite to Wooden Bedroom Furniture in support of their contention that the Department disregards financial statements that contain data for non-comparable merchandise, we note that the Department stated in Wooden Bedroom Furniture that in circumstances where multiple surrogate financial statements from producers of identical or comparable merchandise are not available,

[252] See Citric Acid at Comment 1; Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review, 76 FR 9753 (February 22, 2011) ("PET Film") and accompanying Issues and Decision Memorandum at Issue 1.

[253] See Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China, 70 FR 24502 (May 10, 2005) and accompanying Issues and Decision Memorandum at Comment 3.

[254] See Drill Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances, 76 FR 1966 (January 11, 2011), and accompanying Issues and Decision Memorandum at Comment 5.

[255] See Rhodia, Inc. v. United States, 240 F. Supp. 2d 1247 (CIT 2002) ("Rhodia").

[256] See Bulk Aspirin from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 48337 (August 13, 2003), and accompanying Issues and Decision Memorandum at Comment 2.

[257] Hilltop Post-Prelim SV Letter at Exhibit 7.

[258] See Fresh Garlic From the People's Republic of China: Final Results of the 2009-2010 Administrative Review of the Antidumping Duty Order, 77 FR 34346 (June 11, 2012) ("Garlic") and accompanying Issues and Decisions Memorandum at Comment 8; see also Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 6836 (February 9, 2005) ("Persulfates") and accompanying Issues and Decision Memorandum at Comment 1.

the Department may find the best available information on the record is from producers of multiple products.[259] In circumstances such as this one, where the Department had only one useable surrogate financial statement in the Preliminary Results, the Department finds it appropriate to include the statements of Kongphop and Sea Bonanza as the record demonstrates that these surrogate companies produce and sell frozen shrimp and that their statements contain no subsidies.

Further, we disagree with Petitioner's contention that the Department should not use Kongphop because its financial statement does not identify energy costs. While the Department would generally prefer financial statements which identify energy costs, the Department also prefers to use multiple financial statements.[260] In this instance, we find that including Kongphop and using multiple surrogate financial statements to calculate the surrogate financial ratios, outweighs the Department's reservations that Kongphop does not itemize energy. Further, we note that when the Department is unable to segregate and, therefore, exclude energy costs from the calculation of the surrogate financial ratio, it is the Department's practice to disregard the respondents' energy inputs in the calculation of normal value in order to avoid double-counting energy costs which have necessarily been captured in the surrogate financial ratios.[261] Therefore, because Kongphop's 2010 financial statement is contemporaneous, audited, profitable, contains useable data to calculate surrogate financial ratios, and Kongphop is a processor of shrimp, the Department will include Kongphop in the calculation of the surrogate financial ratios. Further, we note that because Sea Bonanza's line item "electricity water supply and communications" contains 'communications' we cannot definitively determine whether this line item is only energy related. Therefore, we intend to categorize this line item as raw materials in the surrogate financial ratio calculation.[262] Further, we note that because Kiang Huat, Kongphop, and Sea Bonanza do not itemize electricity in their financial statements, we will disregard Regal's energy inputs in the calculation of normal value in order to avoid double-counting energy costs which have necessarily been captured in the surrogate financial ratios.[263]

Therefore, because the financial statements of Kiang Huat, Kongphop, and Sea Bonanza are audited, contemporaneous, contain useable data and have a similar production process as Regal, and represent the best available information on the record, we will calculate the surrogate financial ratios using average of the ratios derived from the financial statements of Kiang Huat, Kongphop, and Sea Bonanza.

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[259] See Wooden Bedroom Furniture04-05 at Comment 1.
[260] See Certain Oil Country Tubular Goods From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010) and accompanying Issues and Decisions Memorandum at Comment 13.
[261] See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, 74 FR 16838, 16839 (April 13, 2009) ("Citric Acid"), and accompanying Issues and Decision Memorandum at Comment 2; see also Final SV Memo at 2 and Exhibit 3b-c.
[262] See Final SV Memo at 2 and Exhibit 3d.
[263] See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, 74 FR 16838, 16839 (April 13, 2009), and accompanying Issues and Decision Memorandum at Comment 2.

Comment 13: Surrogate Financial Ratio Adjustment

Domestic Processors' Argument:

- The Department inadvertently excluded 125,015,622 baht in selling expenses from the amount of SG&A expenses in Kiang Huat's financial statement. The correct SG&A total should be 164.4 million baht instead of 39.4 million baht.

Hilltop's Argument:

- The Department did not inadvertently exclude 125,015,622 baht in selling expenses from the SG&A because they were accounted for in the "Expenses by Nature" section of the financial statement and are detailed in notes 15 and 20 of Kiang Huat's financial statement.[264] Therefore, including the aggregate "Selling Expense" total from the Statement of Income would be double counting those expenses.

Department's Position:

We agree with Domestic Processors in part, that the Department inadvertently excluded Kiang Huat's "selling expenses" from the SG&A ratio calculation. In the Preliminary Results, the Department excluded Kiang Huat's selling expense from the SG&A ratio calculation because Kiang Huat's financial statement had included "commission expenses" in its schedule labeled "Expenses by Nature."[265] However, after further review, the Department has determined a portion of Kiang Huat's selling expenses should be included in SG&A.

In deriving appropriate surrogate values for overhead, SG&A, and profit, the Department typically examines the financial statements on the record of the proceeding and categorizes expenses as they relate to materials, labor, and energy, factory overhead ("OH"), SG&A and profit, and excludes certain expenses (e.g., movement expenses) consistent with the Department's practice of accounting for these latter expenses elsewhere.[266] However, in NME cases, it is impossible for the Department to further dissect the financial statements of a surrogate company as if the surrogate company were an interested party to the proceeding, because the Department does not seek information from or verify the information from the surrogate company.[267] Therefore, in calculating surrogate overhead and SG&A ratios, it is the Department's practice to accept data from the surrogate producer's financial statements in toto, rather than performing a line-by-line analysis of the types of expenses included in each

[264] See Hilltop's September 26, 2011, Surrogate Value Submission at Exhibit 17B, page 5 of Kiang Huat Financial Report.
[265] See Prelim SV Memo at Exhibit 10.
[266] See Certain New Pneumatic Off - The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) ("Tires") at Comment 18A.
[267] See id.

category.[268] As stated by the CIT, the Department is "neither required to 'duplicate the exact production experience of the Chinese manufacturers,' nor undergo 'an item-by-item analysis in calculating factory overhead.'"[269]

We agree with Domestic Processors, in part, that the Department inadvertently excluded Kiang Huat's "selling expenses" from the SG&A ratio calculation. As explained below, the Department finds that it is inappropriate to include the entire line item "selling expenses" in the SG&A ratio calculation. As an initial matter, regarding whether Kiang Huat's total "selling expenses" identified in its profit and loss statement should be categorized as SG&A, the Department must correct an inadvertent error it made in the Preliminary Results. Specifically, we inadvertently excluded the line item "export expenses" from Kiang Huat's SG&A surrogate financial ratio calculation.[270] It is the Department's practice to include export expenses in SG&A when there is no clear detail in the financial statements that the costs associated with "export expenses" can be traced to a particular non-general operation of the company (such as truck freight or brokerage and handling). [271] Therefore, in accordance with the Department's practice, "export expenses" should be reflected in the SG&A expense ratio for this company. Consequently, for the final results, we will classify "export expenses" as an SG&A expense.[272]

In the Preliminary Results, the Department excluded the line item "selling expenses" from the SG&A ratio calculation because Kiang Huat's financial statement had included "commission expenses" in its schedule labeled "Expenses by Nature." We had incorrectly considered this expense to be the total of Kiang Huat's selling expenses.[273] Because we cannot "look behind" the financial statements to see which specific expenses are included in a category, we analyze the financial statements to determine whether to include an item in the financial ratio calculations. Specifically, we look at the information provided to determine the nature of the activity generating the potential adjustment to see if a relationship exists between the activity and the principal operations of the company.[274] Here, "selling expenses," identified under the profit and loss statement, and "commission expenses" and "export expenses," identified under Schedule 15, "Expenses by Nature," all relate to the general selling activity of Kiang Huat. However, Kiang Huat's total selling expenses are not fully accounted for under the schedule "Expenses by Nature." In order to calculate Kiang Huat's total selling expenses, we subtracted "commission expenses" and "export expenses" from the profit and loss line item "selling expenses." There are no details in Kiang Huat's financial statements that indicate that the remaining unidentified selling expenses are unrelated to the company's general selling activity or that the remaining unidentified selling expenses are accounted for elsewhere in the Department's calculations. Therefore, we have included the remaining unidentified portion of Kiang Huat's "selling

[268] See Rhodia at 1250 -1251; see also Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 15.
[269] See Rhodia at 1250.
[270] See Prelim SV Memo at Exhibit 10.
[271] See Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Second Administrative Review, 75 FR 70208 (November 17, 2010) and accompanying Issues and Decisions Memorandum at Comment 4e.
[272] See id.
[273] See Prelim SV Memo at Exhibit 10.
[274] See, e.g., Tires at Comment 18A.

expenses," its "commission expenses," and "export expenses" as SG&A to account for all the selling expenses experienced by Kiang Huat.

Additionally, we determine that several other changes to our preliminary calculation of Kiang Huat's surrogate financial ratios are necessary. In the Preliminary Results, the Department had incorrectly excluded the line item "other income" identified in Kiang Huat's profit and loss statement and under Schedule 4, "Related parties and transactions and balances."[275] It is the Department's practice to include miscellaneous revenues as an offset to SG&A expenses when we cannot determine that the revenues are related to specific manufacturing or selling activities.[276] In this instance, we have not found any information in Kiang Huat's financial statement or other record information to indicate that its "other income" is not related to the general operations of the company or is related to specific manufacturing or selling activities. Therefore, we have treated "other income" as an offset to SG&A expenses in the surrogate financial ratio calculations.

Further, the Department inadvertently did not include Kiang Huat's line item "financial expenses" in the surrogate financial ratio calculation.[277] It is the Department's longstanding practice to 1) include all interest expenses from the financial statements in the financial ratio calculations; 2) disaggregate interest income between short-term and long-term income where it has the information to do so; and 3) offset interest expense with only the short-term interest revenue earned on working capital.[278] Accordingly, the Department will reduce interest and financial expenses by amounts for interest income only to the extent it can determine from those statements that the interest income was short-term in nature.[279] Consistent with the Department's practice, for the final results, we have included Kiang Huat's financial expenses in SG&A.[280] In addition, because there is nothing to indicate whether Kiang Huat's interest income is long-term or short-term in nature, no interest income offset can be made to interest expense.[281]

Additionally, consistent with Department practice, we have included Kiang Huat's amortization expense in Kiang Huat's SG&A ratio calculation. The Department considers this cost to be related to the general operations of the company as a whole and has revised Kiang Huat's SG&A calculation to include this cost.[282]

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[275] See Prelim SV Memo at Exhibit10; see also, Hilltop's September 26, 2011, Surrogate Value Submission at Exhibit 17B.
[276] See Tires at Comment 18B.
[277] See Prelim SV Memo at Exhibit10
[278] See Citric Acid at Comment 3.
[279] See Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review, 73 FR 14216 (March 17, 2008) ("Poly Bags") and accompanying Issues and Decision Memorandum at Comment 1 and Notice of Final Determination of Sales at Less than Fair Value: Honey From the People's Republic of China, 66 FR 50608 (October 4, 2001), and accompanying Issues and Decision Memorandum at Comment 3 (stating that we did not offset interest expense because the financial statements did not provide sufficient data for us to identify short-term interest revenue.)
[280] See Final SV Memo at Exhibit 3b..
[281] See, e.g., Tires at Comment 18-D and Poly Bags at Comment 1.
[282] See Notice of Final Determination of Sales at Less Than Faire Value: Certain Hot-Rolled Carbon-Quality Steel Products from Brazil, 64 FR 38756 (July 19, 1999) and accompanying Issues and Decisions Memorandum at Comment 56.

In the Preliminary Results, the Department included an "Inventories" section in the calculation of Kiang Huat's surrogate financial ratio spreadsheet.[283] For the final results, the Department has determined to remove this section of Kiang Huat's surrogate financial ratio calculation becauseof double counting. Accordingly, we removed the "Inventories" section of the surrogate financial ratio calculation because raw materials and consumables and changes in inventories of finished goods and work in progress are captured in Schedule 15, "Expenses by Nature."[284] Further, to account for all manufacturing expenses incurred by Kiang Huat, the Department categorized as overhead "other expenses" because these manufacturing expenses are not otherwise identified as raw materials or other specific manufacturing expenses. To calculate "other expenses," the Department totaled cost of sales, selling, and administrative expenses identified under the profit and loss statement and subtracted the total of "Expenses by Nature," the selling expenses identified above, "administrative expenses," and "management compensation."[285]

Finally, the Department corrected two errors in copying. In the Preliminary Results, we copied "Raw materials and consumables used" as 2,961,169,000 and "machinery and equipment" as 27,989,000 when Kiang Huat's financial statement reports 2,691,169,000 and 2,225,000 respectively.[286] Therefore, pursuant to section 751(h) of the Act, the Department will correct these inadvertent errors in Kiang Huat's financial ratio calculation.[287]

Comment 14: Surrogate Value Calculation for Ice

Petitioner's Argument:

- The Department erred in calculating the value for ice, using the Thai government import statistics from GTA under HTS 220190. Excluding Thai imports from NMEs and those with non-industry specific export subsidies (India, Indonesia, South Korea and Thailand),[288] the unit value should be 24.00 baht/L for ice rather than 22.00 baht/L.

Department's Position:

We agree with Petitioner that we made an inadvertent error calculating the SV for ice. We have corrected this inadvertent arithmetic error in the surrogate value calculation for ice for the final results. The unit value for ice should be 24.00 baht/per liter.[289]

[283] See Prelim SV Memo at Exhibit10.
[284] See Hilltop's September 26, 2011, Surrogate Value Submission at Exhibit 17B.
[285] See Final SV Memo at Exhibit 3b.
[286] See Prelim SV Memo at Exhibit 10; see also Hilltop's September 26, 2011, Surrogate Value Submission at Exhibit 17B.
[287] See Final SV Memo at Exhibit 3b..
[288] Petitioner cites China Nat'l Mach. Import & Export Corp. v. United States, CIT 01-1114, 293 F. Supp. 2d at 1334 (CIT 2003), aff'd 104 Fed. Appx. 183 (Fed. Cir. 2004) and Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 70 FR 12651 (March 15, 2005) and accompanying Issues and Decisions Memorandum at Comment 4.
[289] See Final SV Memo at 2 and Exhibit 2.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation program accordingly. If accepted, we will publish the final results of review and the final dumping margins in the Federal Register.

AGREE ✓ DISAGREE _____

Paul Piquado
Assistant Secretary
for Import Administration

27 August 2012
Date