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MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration, Group III

SUBJECT: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China: September 1, 2000 through August 31, 2001

SUMMARY:

We have analyzed the case and rebuttal briefs of interested parties in response to Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review, 67 FR 63877 (October 16, 2002) (Preliminary Results). As a result of our analysis, we have made changes from the Preliminary Results. The specific changes are discussed in this memorandum. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this administrative review:

Comments

1. Valuation of the raw crawfish input
2. Cash deposit rates for producing and non-producing supplier combinations (Combination Rates)
3. Application of facts available to Qingdao Rirong Foodstuff Co., Ltd. (Qingdao Rirong) because it withheld information concerning its corporate affiliations
4. Application of facts available to Qingdao Rirong because it engages in a pattern of noncompliance with regulations governing business proprietary information (BPI)
5. If Qingdao Rirong's margin is not based on adverse facts available, what should be used as partial facts available in calculating Qingdao Rirong's margin
6. Whether the Department improperly applied facts available to Yancheng Yaou Seafood Co., Ltd.
7. Application of adverse facts available to China Kingdom Import & Export Co., Ltd. (China Kingdom)

DISCUSSION OF THE ISSUES

Comment 1: Valuation of the raw crawfish input

The Crawfish Processors Alliance, its members (with the Louisiana Department of Agriculture and Forestry, Bob Odom, Commissioner), and the Domestic Parties (collectively, the Domestic Interested Parties) argue that the Department of Commerce (the Department) should not use Spanish import statistics issued by the Agencia Estatal de Administracion Tributaria (Agencia Tributaria), the Spanish government agency responsible for trade statistics, for the valuation of whole, live, freshwater crawfish exported to the United States from the People's Republic of China (PRC). The Domestic Interested Parties argue that, because the import data for January 2001 and beyond are still provisional, these data cannot provide a reliable basis upon which the Department can base its determination for the final results of this administrative review. Referring to the 1998-1999 administrative review, where the record demonstrated a significant change in import volume from the Agencia Tributaria's publication of its provisional data to final data, the Domestic Interested Parties argue that provisional Spanish import data is unreliable because it can change drastically. See Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review, 66 FR 20634 (April 24, 2001) (Final Results AR & NSR 98-99) and accompanying "Issues and Decision Memorandum" at 11-14. According to the Domestic Interested Parties, the Department used revised final Spanish import data in the 1998-1999 review "only because the Department was satisfied that the revision represented final data" (emphasis in Domestic Interested Parties' Brief).

The Domestic Interested Parties contend that, since the Spanish import data for the years 2001 and 2002 are provisional and could change drastically with the publication of the final data, it is too early to conclude that the volume of imports of whole, live, freshwater crawfish has recovered considerably from the period of the September 1, 1999 - March 31, 2000 new shipper review, in which the Department rejected Spanish import data because it deemed imports insignificant. The Domestic Interested Parties also argue that the Department should not use unreliable provisional data for September 2001 through April 2002 to conclude that the Spanish import recovery is not likely to be an aberration, particularly since the provisional quantities reported by the Agencia Tributaria in the statistics at issue in the instant case remain relatively small despite the apparent increase from previous periods in which the Department declined to use Agencia Tributaria data. The Domestic Interested Parties further argue that a change in the provisional data could demonstrate that Spanish imports have not recovered.

The Domestic Interested Parties contend that, in the absence of proper justification for reliance on Spanish import statistics, the Department should rely instead on statistics published by the Australian Bureau of Agricultural and Resource Economics (ABARE) as the most appropriate data to value whole, live, freshwater crawfish on the record of this review. The Domestic Interested Parties argue that the ABARE statistics should be adjusted downward to eliminate depot charges. The Domestic Interested Parties also argue that, if the Department uses the price list of Mulataga Pty. Ltd. (Mulataga), an Australian crawfish processor, for the surrogate valuation of whole live freshwater crawfish, the Department should use an average of all prices for crawfish with a live weight of 70 grams or less, regardless of grade. According to the Domestic Interested Parties, the grades used by Mulataga reflect the presence or absence of aesthetic blemishes. Because there is no evidence that Chinese processors use only blemished crawfish in the production of tail meat, the Domestic Interested Parties argue, the surrogate value used should include both blemished and unblemished crawfish.

Finally, the Domestic Interested Parties contend that, if the Department decides to use Spanish import data, it should use only final data from the Agencia Tributaria. The Domestic Interested Parties suggest that the Department should use data for January through December 2000 imports, which it argues is the most recent twelve-month period for which final figures are available.

Respondent Qingdao Rirong argues that the Department should continue to use Spanish import statistics in its surrogate valuation of whole, live, freshwater crawfish because Spanish import volumes have recovered significantly. Comparing the Spanish and Australian data, Qingdao Rirong points out that Spanish import statistics relate to crawfish comparable to the Chinese crawfish under review, while the crawfish covered by the Australian data is of a species or genus unlike the Chinese crawfish, is harvested and sold mostly in live form, and is not normally processed into tail meat.

Qingdao Rirong argues that the Department's concerns about the reliability of Spanish import data, as expressed in the 1998-1999 review, focused on the low volumes of imports, not on the provisional character of the data. See Final Results AR & NSR 98-99. According to Qingdao Rirong, the Department used Australian data only when Spanish import volumes became so low as to be unreliable for surrogate valuation purposes. See 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) (Final Results AR 99-00). Referring to the Domestic Interested Parties' contention that changes in provisional data could result in lower volumes, Qingdao Rirong points out that the change made during the 1998-1999 reviews resulted in higher volumes, and that the Domestic Interested Parties have not shown any instance where the volume of imports was lowered when the data was finalized.

Department's Position: Because we are not basing the dumping margins for any company in this administrative review on a calculated rate and are instead applying margins based on adverse facts available, this issue is not relevant to the final results of this review, and is therefore moot.

Comment 2: Cash deposit rates for producing and non-producing supplier combinations (Combination Rates)

The Domestic Interested Parties argue that each exporter-producer combination should have its own cash deposit rate. According to the Domestic Interested Parties, individual rates are based on a specific set of factors of production, which vary from one producer to the next, independently of the exporter's pricing decisions for U.S. sales. In making this argument, the Domestic Interested Parties point out that the Department's regulations allow for combination rates (see 19 C.F.R. 351.107(b)), and that the Department has expressed concern over a producer's ability to avoid its own high rate by selling to the United States through an exporter with a lower rate (see Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27303 (May 19, 1997) (Final Rule)).

According to the Domestic Interested Parties, the Department has a policy of declining to issue combination rates in most non-market economy (NME) cases because it presumes the exporter will set his U.S. sale prices at a level that would avoid liability for antidumping duties. The Domestic Interested Parties argue that this policy should be changed because exporters cannot know enough about a supplier's factors to estimate that supplier's future margin. The Domestic Interested Parties contend that it would be more accurate to apply to each producer or exporter-producer combination a cash deposit rate based on its own factors.

Respondent Qingdao Rirong argues that the Department should reject the Domestic Interested Parties' request for combination deposit rates. According to Qingdao Rirong, the Department's policy of declining to apply combination rates in NME cases is based not only on the presumption that exporters will price their U.S. sales appropriately to avoid antidumping duty liability, but also on various presumptions of how an NME operates. Qingdao Rirong points out that the Department presumes all companies in an NME are controlled by the central government, and that an NME exporter must prove its de facto and de jure independence from the central government in order to qualify for a separate rate. According to Qingdao Rirong, only NME exporters, not producers, are required by the Department to prove separate rates; therefore, the exporter has the responsibility to provide factors of production for any new producer it acquires. In addition, Qingdao Rirong argues that antidumping duties are retroactive, and therefore reflect both the factors of production of a particular supplier and the exporter's U.S. pricing. Therefore, Qingdao Rirong disagrees with the Domestic Interested Parties' concern that suppliers with high dumping margins will be able to avoid antidumping duties by selling through exporters with low dumping margins.

Department's Position: Since all companies under review are receiving the same adverse facts available rate of 223.01 percent, which is the highest rate applicable in this proceeding, the Domestic Interested Parties' concern regarding the possibility of companies with high margins channeling sales through exporters with low dumping margins is no longer at issue in this review, and the issue is

therefore moot.

Comment 3: **Application of facts available to Qingdao Rirong because it withheld information concerning its corporate affiliations**

Domestic Interested Parties question Qingdao Rirong's assertions that it has provided the Department with complete and consistent information regarding its corporate structure, that no affiliated companies were involved in the manufacture or sale of subject merchandise, and that Qingdao Rirong sold subject merchandise directly to its unaffiliated customers in the United States. The Domestic Interested Parties further state that, based on publicly available information from the Port Import Export Reporting Service (PIERS), "virtually all" shipments from Qingdao Rirong entering the United States during the period of review (POR) were imported by Y&Z International Trade Inc. (Y&Z).

Based on the results of an on-line search of New York State corporations records conducted by the Domestic Interested Parties, Y&Z's papers were filed with the New York Department of State on March 26, 1998. The Domestic Interested Parties state that, based on the state records, the chief executive officer of Y&Z is Yubin Yao of 42-42 Colden Street # F12, Flushing, New York, and that, based on the information provided by Qingdao Rirong, Yao Yubin is an owner and member of the Board of Directors of Qingdao Rirong's foreign investor. The Domestic Interested Parties point out that Qingdao Rirong gave a qualified response to the Department's request to provide a list of all third parties in which Qingdao Rirong or its owners own stock, by saying that neither Qingdao Rirong nor Yao Yubin own any companies or third parties in China. According to the Domestic Interested Parties, not only did Qingdao Rirong mislead the Department and fail to provide a complete response, but its statement that Qingdao Rirong "has no affiliated companies involved in the manufacture or sale of the merchandise under review" appears to be a false statement.

Further, the Domestic Interested Parties state that telephone records show Yao Yubin is a residential telephone subscriber with 13454 Maple Avenue in Flushing as his listed address. The telephone listing for Zhong Xiao Zhao, Deputy Manager and member of Qingdao Rirong's Board of Directors, shows the same address. The Domestic Interested Parties state that Qingdao Rirong's response to the Department's questions concerning to its relationship with Y&Z is inconsistent, referencing Qingdao Rirong's supporting documentation demonstrating the claimed transfer of ownership of Y&Z from Yao Yubin to its new proprietor. First, the Domestic Interested Parties point out, there are no jurats indicating the actual date of execution of the notarized documents, contrary to normal practice. The agreement between the parties only has a closing date, but the actual signature is not dated. The same holds true for the stock transfer certificate and the Unanimous Written Consent, included in Exhibit 2 of Qingdao Rirong's supplemental questionnaire response of November 4, 2002, none of which have a jurat date to indicate the actual date of execution. The Domestic Interested Parties further state that the individual certifying the aforementioned transactions has the same address as the company which owns Qingdao Rirong.

The Domestic Interested Parties further contend that the sole "evidence" of payment for the transfer of shares is an unauthenticated, handwritten cash receipt, and ask why Qingdao Rirong did not use a bank statement indicating the withdrawal or deposit of the payment. In addition, the Domestic Interested Parties question whether the documents Qingdao Rirong filed as evidence of change of ownership of Y&Z, namely, the "Change of Business Information" and the biennial statement, updating the name and address, were ever filed with the respective New York State authorities, because there is no evidence of a filing. In fact, the New York Secretary of State still lists the previous address. Furthermore, the Domestic Interested Parties draw attention to Qingdao Rirong's latest response, which indicates that the post-ownership transfer address for Y&Z (for the year 2001-2002) is identical to the address of Yao Yubin and Zhong Xiao Zhao, as listed in the telephone directories, referring to the Domestic Interested Parties' submission of November 14, 2002. The Domestic Interested Parties state that Qingdao Rirong did not disclose the nature of the relationship of Wang Hong Chao, the reported new owner of Y&Z, with Yao Yubin, the owner of the company that owns Qingdao Rirong, and Qingdao Rirong, and thus there was insufficient time to evaluate the issue.

Last, the Domestic Interested Parties state that the ranged unit prices Qingdao Rirong reported in its response are at or above USD 5.00 per pound, suggesting that the transactions were not at arm's-length. For all of the above reasons, the Domestic Interested Parties argue that crawfish tail meat is a fungible commodity and that the per pound price put forth by Qingdao Rirong would not reflect the market realities. The Domestic Interested Parties conclude that Qingdao Rirong has concealed its affiliation with Y&Z, and the Department should base the final margin entirely on adverse facts available.

Qingdao Rirong counters that, contrary to the Domestic Interested Parties' allegation, the evidence on the record shows that Qingdao Rirong has been a fully cooperative respondent during this POR, and has "provided the Department with complete, accurate, and reliable information regarding the nature of its relationships with its unaffiliated U.S. importer and its U.S.-based investor." Qingdao Rirong contends that the Domestic Interested Parties did not rely on all information on the record and purposely disregarded the chronological sequence of events.

Qingdao Rirong argues that the Domestic Interested Parties, in an effort to demonstrate that Qingdao Rirong not only provided misleading but false information regarding its relationships with certain other corporate entities, recited "random information" in its case brief regarding its relationship with alleged affiliated parties. Id. at 5. Qingdao Rirong argues that throughout this POR it fully responded to all questions posed by the Department concerning Yao Yubin or any of its managers or board members, and their relationships with other producers, exporters, or importers. Further, Qingdao Rirong says that it clearly states, in its section A response to the Department's original questionnaire, that its sales were made directly to its unaffiliated customer in the United States, and that it did not make any sales through affiliated or unaffiliated resellers. Id. at 5. Qingdao Rirong argues that it provided detailed

information regarding its board members and their affiliation with Qingdao Rirong, and truthfully always responded with "no" to the Department's questions as to whether Qingdao Rirong's owners, managers, or board members have any relationship with other companies involved in the production, sale, or importation of crawfish tail meat.

Qingdao Rirong argues that it answered "no" because Yao Yubin ceased all affiliation with Y&Z, Qingdao Rirong's importer during the POR, on April 1, 2000 (i.e., before the POR). Qingdao Rirong further states that "{w}hen Yao Yubin served as Y&Z's owner, Y&Z was not involved in any way with the merchandise subject to this administrative review," and that Y&Z entered the crawfish tail meat business only after Yao Yubin relinquished his ownership interest in the company. Reiterating that it fully disclosed all existing affiliations between the company's owners, managers, and board members, including Yao Yubin, and other companies involved in the crawfish tail meat business, Qingdao Rirong states that the Department should not be distracted by the Domestic Interested Parties' randomly collected and unsupported information about Yao Yubin and Y&Z, presented to justify the claim that Qingdao Rirong was not forthcoming in providing all information concerning affiliation requested by the Department.

Further, Qingdao Rirong states that the Domestic Interested Parties' claim that it had not fully disclosed all information on company relationships is flawed, because the Domestic Interested Parties disregarded the fact that Yao Yubin sold its shares to the new proprietor on April 1, 2000, long before the present POR (September 1, 2000 through August 31, 2001). Qingdao Rirong argues it explained, in the supplemental response of November 4, 2002, that Yao Yubin was the sole shareholder and held all officer positions in Y&Z from its formation until he sold and transferred his shares in April 2000, complete documentation of which Qingdao Rirong had provided with its November 4, 2002 supplemental response.

Qingdao Rirong claims that the information it presented on November 4, 2002, is relatively simple: Yao Yubin owned Y&Z until April 1, 2000, a date that is outside the relevant POR. During the time it was owned and operated by Yao Yubin, Y&Z did not import subject merchandise from Qingdao Rirong. After Yao Yubin sold his shares in Y&Z, Y&Z's new owner began importing subject merchandise from Qingdao Rirong. Therefore, Qingdao Rirong argues, the sales it made to Y&Z during the instant POR are unrelated to Yao Yubin.

Qingdao Rirong argues that Yao Yubin sold all his shares in Y&Z to its new proprietor on April 1, 2000, and thus cannot be held responsible for Y&Z's actions after that date. According to Qingdao Rirong, in the past the Department has found that no affiliation existed if an individual's common ownership in two related companies ceased prior to the relevant POR. According to Qingdao Rirong, in the preliminary results of Stainless Steel Sheet in Strip and Coil from Taiwan:Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 45472 (July 9, 2002), the Department determined that, although Yieh United Steel Corporation (YUSCO, the respondent in that proceeding), and its customer had been affiliated during a portion of the POR, they were no longer

affiliated at the time of the relevant sale.

In response to the Domestic Interested Parties' complaint that there are no jurats indicating the actual date of execution of the notarized documents, Qingdao Rirong argues that the documents show the effective date as April 1, 2000, and the Domestic Interested Parties have not shown that the date is made effective by a jurat date.

With regard to Y&Z's telephone number remaining the same and in the name of Yao Yubin after April 1, 2000, Qingdao Rirong argues that the number did not change upon the transfer of shares, so there was no need for the new owner to re-register that number under his own name. To illustrate, Qingdao Rirong gives the example of a house with a regular turnover of residents, where the telephone will remain registered in the name of one tenant even after that tenant moves out; to avoid the cost of registering a new phone number, the current residents will pay the phone bill registered under the name of the previous tenant. Qingdao Rirong also points out that, although Y&Z changed its physical location from Colden Street to Maple Street, the address did not change for state registration purposes.

According to Qingdao Rirong, in this administrative review the Department has scrutinized in depth Qingdao Rirong's corporate structure and, in the preliminary results, determined that Qingdao Rirong's sales during the POR were made to unaffiliated customers. Qingdao Rirong argues that the record shows it has responded fully to the Department's inquiries and has provided a "complete, consistent and accurate description of {Qingdao} Rirong's corporate structure." Id. at 11). Therefore, Qingdao Rirong contends, it should not receive a final antidumping margin based entirely on adverse facts available.

In response to the Domestic Interested Parties' claim that Qingdao Rirong's U.S. prices suggest that the transactions during the POR were not made at arm's length, Qingdao Rirong argues that the mere fact that its U.S. prices were higher than the typical prices during the POR does not mean the transactions were not made at arm's length. In addition, Qingdao Rirong points out that the Department's verification did not find any evidence that would suggest the sales transactions were not conducted at arm's length.

Department's Position:

For the reasons articulated both below and in the memorandum concerning Freshwater Crawfish Tail Meat from the People's Republic of China (PRC): Treatment of Qingdao Rirong Foodstuff Co., Ltd. in the Final Results of the Administrative Review for the Period 9/1/00 - 8/31/01, dated April 9, 2003 (Qingdao Rirong Memo), we agree with the Domestic Interested Parties that Qingdao Rirong withheld information concerning the relationship between Qingdao Rirong and Y&Z, and that pursuant to section 776(a)(2)(A) and section 776(b) of the Tariff Act, as amended (the Act), the final margin for Qingdao Rirong should be based entirely on adverse facts available. See Qingdao Rirong Memo for further analysis.

On December 31, 2002, the Department released its Memorandum from Elfi Blum and Scot Fullerton,Case Analysts, through Maureen Flannery, Program Manager, Office of AD/CVD Enforcement VII, to Barbara Tillman, Director, Office of AD/CVD Enforcement VII: Freshwater Crawfish Tail Meat from the People's Republic of China for the period of September 1, 2000, through August 31, 2001 (A-570-848): Analysis of Relationship between Qingdao Rirong Foodstuff, Co., Ltd., and Y&Z International Trade Inc. (Affiliation Memo) to the interested parties, along with a cover letter in which the Department took the additional step of soliciting, from all parties, initial and rebuttal comments on the information and findings contained within the Affiliation Memo. On January 14, 2003, Qingdao Rirong submitted comments on the Affiliation Memo. In addition, Qingdao Rirong submitted new factual information to rebut or clarify information placed on the record by the Department in its affiliation analysis. See Qingdao Rirong Affiliation Comments, dated January 14, 2003.[1] On January 27, 2003, Domestic Interested Parties provided rebuttal comments to the Qingdao Rirong Affiliation Comments, dated January 14, 2003, as well as new factual information to rebut or clarify new information placed on the record by Qingdao Rirong in the Qingdao Rirong Affiliation Comments. See Domestic Interested Parties's Affiliation Rebuttal Comments, dated January 27, 2003. For a summary of these comments, and a full discussion of the Department's analysis, see Qingdao Rirong Memo.

In the Affiliation Memo, the Department explained that Qingdao Rirong withheld information concerning its relationship with its importer, and consequently withheld information on the sales made by Y&Z to the first unaffiliated purchaser in the United States. For the aforementioned reasons, in accordance with section 776(a)(2)(A) of the Act, the application of facts otherwise available is warranted.

One of the most fundamental decisions the Department must make in every antidumping duty investigation or administrative review involves determining whether its dumping analysis should be based on a comparison of normal value (NV) to export price (EP) or NV to constructed export price (CEP). To make this determination, the Department must carefully analyze complete information concerning the nature of the relationship between the exporter and its importer. Furthermore, complete information concerning a respondent's U.S. sales to the first unaffiliated purchaser is essential for the Department's calculation of an accurate dumping margin. Without this information, the Department is precluded from calculating a reliable margin. Qingdao Rirong's failure to provide essential information in an accurate and timely manner prevented the Department from calculating dumping margins for this company. Therefore, as discussed in more detail below, we determine that Qingdao Rirong did not cooperate to the best of its ability within the meaning of 776(b) of the Act, and that the application of total adverse facts available for Qingdao Rirong is warranted.

[1] This submission was amended by Qingdao Rirong on January 24, and February 3, 2003, to address bracketing issues pertaining to business proprietary information.

Throughout the course of this administrative review, Qingdao Rirong claimed that it made U.S. sales on an export price (EP) basis, to an unaffiliated U.S. importer: Y&Z, a New York corporation. In the Preliminary Results, the Department treated all of Qingdao Rirong's U.S. sales to Y&Z as EP sales. We agree with the Domestic Interested Parties that, contrary to what it claims in its rebuttal comments, Qingdao Rirong did not fully cooperate with the Department by providing a complete, accurate, and reliable response to the Department. Subsequent to the publication of its Preliminary Results, the Department continued to examine the issue of a possible relationship between Qingdao Rirong and its importer. Through research into public records, the Department found previously unreported information concerning the relationship between Qingdao Rirong and Y&Z. Much of this information conflicted with information previously reported to the Department by Qingdao Rirong. This prompted the Department to issue another supplemental questionnaire to Qingdao Rirong on October 24, 2002, and to perform further research on its own. After an analysis of all information on the record concerning the relationship between Qingdao Rirong and Y&Z, the Department determined that, at least through December 16, 2002, Qingdao Rirong was affiliated with Y&Z under section 771(33) of the Act. Affiliation Memo.

As noted above, subsequent to the release of the Affiliation Memo, both Qingdao Rirong and the Domestic Interested Parties submitted comments and new factual information on January 14, and January 27, 2003, respectively.[2] After further analysis and consideration of all evidence on the record, the Department concluded that there is substantial evidence indicating that Qingdao Rirong and Y&Z are affiliated, and that the evidence indicating that Qingdao Rirong and Y&Z are affiliated outweighs the evidence and arguments provided by Qingdao Rirong in support of its argument that it is not affiliated with Y&Z. See Qingdao Rirong Memo. Thus, we agree with the Domestic Interested Parties that Qingdao Rirong did not sell directly to an unaffiliated customer.

For the reasons described in detail above, we conclude that Qingdao Rirong failed to cooperate to the best of its ability. Qingdao Rirong's failure to provide essential information in an accurate and timely manner precluded the Department from accurately calculating dumping margins for this company. We therefore determine that Qingdao Rirong did not cooperate to the best of its ability within the meaning of 776(b) of the Act, and that the application of total adverse facts available for Qingdao Rirong is warranted. For further details, see Qingdao Rirong Memo.
As adverse facts available, the Department is assigning Qingdao Rirong the rate of 223.01 percent–the highest rate determined in any segment of this proceeding. See Qingdao Rirong Memo. As discussed further below, this rate has been corroborated. Qingdao Rirong received a separate rate in the Preliminary Results, and this determination remains unchanged for these final results.

[2] Qingdao Rirong's January 14, 2003 submission was amended on January 24, and February 3, 2003. The Domestic Interested Parties' January 27, 2003 submission was resubmitted on April 10, 2003. These amendments and re-submission were made to address bracketing issues pertaining to business proprietary information.

Furthermore, we disagree with Qingdao Rirong that the allegations of affiliation made with respect to YUSCO are similar to Qingdao Rirong's circumstances, as claimed in its rebuttal brief. First of all, the affiliation that existed between YUSCO and its U.S. customer during the POR was indirect, *i.e.*, this affiliation existed through YUSCO's affiliation with a third party, which was affiliated with the U.S. customer. More importantly, YUSCO disclosed that information in its original section A response, and the Department was able to verify that information. In addition, at verification the Department was able to confirm that the affiliation had been terminated prior to YUSCO's sales to the U.S. customer. See Stainless Steel Sheet and Strip in Coils From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 76721 (December 13, 2002) (SSPC Taiwan) and the accompanying Issues and Decision Memorandum, Comment 3, at pages 12 and 13. To the contrary, Qingdao Rirong withheld the information regarding its relationship with its U.S. importer. As the record indicates, the Department provided Qingdao Rirong with ample opportunity to disclose all information concerning its relationship with its importer, Y&Z, which Qingdao Rirong failed to do. Following the Preliminary Results, the Department discovered through public corporation records maintained by the New York Department of State, Division of Corporations, further information on both Qingdao Rirong's owner and its importer, Y&Z. On October 24, 2002, the Department issued a fourth supplemental questionnaire, requesting clarification of information placed on the official record by Qingdao Rirong, as it relates to the information obtained by the Department from the New York Department of State (NYDOS) pertaining to Yao Yubin and the ownership of Y&Z, Qingdao Rirong, and the company that owns Qingdao Rirong. The information Qingdao Rirong provided to the Department in response to the above supplemental questionnaire was incomplete.

The Department's January 30, 2002 initial questionnaire expressly requested information on the history of ownership and management of Qingdao Rirong. It also included a glossary clearly explaining that affiliation is not based solely on ownership. This definition, based on section 771(33) of the Act, states that "affiliated persons (affiliates) include (1) members of a family,
(2) an officer or director of an organization and that organization, (3) partners, (4) employers and their employees, and (5) any person or organization directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and that organization. In addition, affiliates include (6) any person who controls any other person and that other person, and (7) any two or more persons who directly control, are controlled by, or are under common control with, any person. 'Control' exists where one person or organization is legally or operationally in a position to exercise restraint or direction over the other person or organization." In accordance with section 771(33), and as made clear in the above definition from the initial questionnaire, even if we were to agree with Qingdao Rirong's claim that Yao Yubin sold his interest in Y&Z prior to the POR, that does not necessarily mean that Qindgao Rirong and Y&Z are not affiliated, and does not relieve Qingdao Rirong of its obligation to report all information pertaining to its relationship with Y&Z. Qingdao Rirong was obligated to fully report the facts of its relationship with Y&Z. As demonstrated by all the facts now on record, it failed to do so.

Because Qingdao Rirong withheld information concerning the relationship between Qingdao Rirong and Y&Z, and did not cooperate to the best of its ability within the meaning of section 776(b), we determine that, in accordance with sections 776(a)(2)(A) and 776(b) of the Act, the use of adverse facts available is appropriate for the final results for Qingdao Rirong.

Comment 4: Application of facts available to Qingdao Rirong because it engaged in a pattern of noncompliance with regulations governing business proprietary information (BPI)

The Domestic Interested Parties contend that Qingdao Rirong consistently failed to comply with the Department's regulations governing submissions of BPI and the preparation of public summaries, and that Qingdao Rirong's persistent pattern has hindered the Domestic Interested Parties from fully participating and gathering factual information needed to refute Qingdao Rirong's claims. Therefore, the Domestic Interested Parties filed a continuing objection to Qingdao Rirong's pattern of noncompliance with the regulations governing BPI and to the Department's tolerance of such noncompliance, on April 5, 2002. The Domestic Interested Parties want the Department to reject all of Qingdao Rirong's questionnaire responses and base its final margin on facts available.

Qingdao Rirong argues that, although the Department has asked for bracketing revisions in certain submissions, the Department has never completely rejected any of these submissions for improper bracketing. Relying on the Department's regulations, Qingdao Rirong contends that parties who improperly bracket BPI or provide inadequate public versions are given the opportunity to make corrections. Therefore, alleged flaws in bracketing and public versions of Qingdao Rirong's submissions do not provide a basis for the application of total adverse facts available.

Department's Position: The Department requested Qingdao Rirong in numerous instances to re-bracket its responses, in accordance with section 777(b)(1)(B) of the Act and section 351.304(c)(1) of the Department's regulations. However, the Department never entirely rejected any of Qingdao Rirong's responses, and ultimately accepted corrected versions. Therefore, it would not be appropriate to use facts available for the reasons put forth by the Domestic Interested Parties.

Comment 5: If Qingdao Rirong's margin is not based on adverse facts available, what should be used as partial facts available in calculating Qingdao Rirong's margin

The Domestic Interested Parties state that in the preliminary results the Department, based on its findings at verification that Qingdao Rirong had failed to report two months of its production and consumption data for all factors, correctly concluded that Qingdao Rirong did not act to the best of its ability to comply with its request for information and that an adverse inference was warranted. The

Domestic Interested Parties claim that the Department, by applying the highest monthly factor value of one of the remaining months of production in the preliminary results, did not really apply adverse facts available to fill the missing months. The Domestic Interested Parties argue that it is impossible for the Department to conclude that the highest monthly factor value of one of the remaining months of production would result in a higher margin than would have been calculated if Qingdao Rirong had provided the data for the missing two months. In lieu of the missing two months of production and consumption data, the Domestic Interested Parties suggest that the Department treat all sales having a September or October 2000[3] sale date as having margins equal to the PRC-wide rate.

Qingdao Rirong argues that it would be unreasonable to apply the PRC-wide rate to each of its sales in September-October 2000. First, according to Qingdao Rirong, the Domestic Interested Parties' proposal is unreasonable because it ignores the specific nature of Qingdao Rirong's error for which the Department chose to apply adverse facts available (i.e., the omission of data on factors of production). Qingdao Rirong states that Domestic Interested Parties' proposal is based on sales. In addition, Qingdao Rirong points out that the Department was able to verify Qingdao Rirong's sales response. Therefore, Qingdao Rirong argues, adverse facts available should not be based on sales.

Department's Position: As discussed in Comment 3, the Department is applying total adverse facts available to Qingdao Rirong. This issue is therefore moot.

Comment 6: Whether the Department improperly applied facts available to Yancheng Yaou Seafood Co., Ltd. (Yancheng Yaou)

Qingdao Zhengri/Yancheng Yaou (Qingdao Zhengri/Yancheng Yaou) contests the Department's application of facts available to Yancheng Yaou. Qingdao Zhengri/Yancheng Yaou notes that the Department determined that Qingdao Zhengri and Yancheng Yaou should be treated as a single entity for purposes of this administrative review. Qingdao Zhengri/Yancheng Yaou points out that Qingdao Zhengri is a Chinese exporter of subject merchandise, while Yancheng Yaou is a Chinese exporter and producer of subject merchandise. Qingdao Zhengri/Yancheng Yaou notes that Qingdao Zhengri and Yancheng Yaou submitted a consolidated response to sections C and D of the Department's questionnaire because of their "special" relationship.

Qingdao Zhengri/Yancheng Yaou claims that, because Yancheng Yaou acted to the best of its ability in cooperating with the Department's requests for information and made very clear that it would fully participate in the Department's verification process, the Department should not apply an adverse inference and use of best information available (the predecessor to facts available). Qingdao

[3]Domestic Interested Parties are referring to the two months (September and October 2000) for which Qingdao Rirong failed to timely provide the production quantity and factors of production to the Department in this review.

Zhengri/Yancheng Yaou notes that even though Qingdao Zhengri informed the Department that it would not participate in verification on June 4, 2002, Yancheng Yaou made it clear that it would participate in any verification of questionnaire responses that the Department desired. Qingdao Zhengri/Yancheng Yaou continues that Yancheng Yaou did not deliberately withhold information from the Department or impede its investigation.

Qingdao Zhengri/Yancheng Yaou further argues that the Uruguay Round Agreements Act directs the Department to take an adverse inference only where it can determine that an interested party has "failed to cooperate by not acting to the best of its ability to comply with a request for information" from the Department. Qingdao Zhengri/Yancheng Yaou points out that of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping Agreement), Annex II, 5 states:

> Even though the information provided may not be ideal in all respects, this should not justify the authorities from disregarding it, provided the interested party has acted to the best of its ability.

Qingdao Zhengri/Yancheng Yaou contends that the Department must provide a reasoned analysis based on substantial evidence on the record as to why it has determined that Yancheng Yaou did not act to the best of its ability. Qingdao Zhengri/Yancheng Yaou contends that the Department must establish a willful decision on the part of an interested party to not comply with the Department's requests for information, citing opinions from the Court of International Trade (CIT) in Nippon Steel Corp. v. the United States., 118 F. Supp. 2d 1366 (Oct. 26, 2000) (Nippon Steel), and Borden Inc. vs. the United States, 4 F. Supp.1221 (CIT 1998) (Borden). According to Qingdao Zhengri/ Yancheng Yaou, the Court in Nippon Steel discussed the standard by which the Department must determine that a party failed to cooperate to the best of its ability before making a determination that the application of adverse facts available was warranted. Nippon Steel, 4 F. Supp. 1377-78 and Borden.

Qingdao Zhengri/Yancheng Yaou explains that Chinese crawfish processors are not as large as companies such as Nippon Steel, and therefore should not be measured by the same standards applied to large multinational corporations. Qingdao Zhengri/Yancheng Yaou further claims that at no time did Yancheng Yaou refuse the Department's verification of the company's questionnaire responses, but that it was the Department which declined to verify Yancheng Yaou's questionnaire responses.

Qingdao Zhengri/Yancheng Yaou further argues that the antidumping law is not a penal statute, but a remedial statute, which requires that the Department determine a dumping margin as accurately as possible. See NTN Bearing Corp. v. United States, 74 F.3d. 1204 (Fed. Circ. 1995); see also Chapparal Steel Co. v. United States, 901 F.2d 1097, 1103-1104 (Fed. Cir. 1990). Qingdao Zhengri/Yancheng Yaou quotes a statement from the Federal Circuit in F.Lli De Cecco Di Filippo Fara S. Martino v. United States, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (De Cecco):

> It is clear from Congress's imposition of the corroboration requirement in 19 U.S.C. § 1677e(c) that it intended for an adverse facts available rate to be a reasonably accurate estimate of the respondent's actual rate, albeit with a built-in increase intended as a deterrent to non-compliance. Congress could not have intended for Commerce's discretion to include the ability to select unreasonably high rates with no relationship to the respondent's actual dumping margin.

Qingdao Zhengri/Yancheng Yaou argues that the PRC-wide rate is not representative of Yancheng Yaou's subject sales. Therefore, Qingdao Zhengri/Yancheng Yaou concludes, the Department should not apply the PRC-wide rate to all of Yancheng Yaou's subject sales. Qingdao Zhengri/Yancheng Yaou argues that instead the Department should use secondary information derived from previous administrative or new shipper reviews, or any other information placed on the record.

Domestic Interested Parties argue that the Department's treatment of Yancheng Yaou and Qingdao Zhengri as a single entity is consistent with the Department's final results in the previous administrative review, which covered the period September 1, 1999 through August 31, 2000. Domestic Interested Parties also note that Qingdao Zhengri and Yancheng Yaou subsequently filed a summons and a complaint seeking review by the CIT of various aspects of the 1999-2000 final results, but did not contest the Department's treatment of Qingdao Zhengri and Yancheng Yaou as a single entity. In the current review as well, Domestic Interested Parties note, Qingdao Zhengri and Yancheng Yaou did not contest treatment as a single entity. Domestic Interested Parties state that, as in the 1999-2000 administrative review, Qingdao Zhengri refused to cooperate with verification, and, therefore, the Department applied adverse facts available to the combined entity. Domestic Interested Parties continue that the circumstances in the current review are identical in all relevant respects and therefore call for the same result.

Domestic Interested Parties state that the case brief filed by Qingdao Zhengri/Yancheng Yaou fails to distinguish or even acknowledge the Department's previous decision to treat the companies as a single entity. Instead, respondents simply repeat the same argument that the Department rejected in the previous review – that Qingdao Zhengri's refusal to cooperate with verification should not have adverse consequences for Yancheng Yaou. Domestic Interested Parties argue that, since Qingdao Zhengri and Yancheng Yaou are not to be analyzed separately but as parts of an integral whole, the alleged cooperativeness of Yancheng Yaou cannot excuse Qingdao Zhengri's refusal to permit verification. Domestic Interested Parties claim that even if the common ownership of these two companies was disregarded, it would still be appropriate to apply adverse facts available to Yancheng Yaou, because it is the respondent's burden to demonstrate the veracity of the facts on which its margins are based. Domestic Interested Parties cite to Pacific Giant, Inc. v. United States, 223 F. Supp. 2d 1336 (August 6, 2002) (Pacific Giant), where the CIT upheld the Department's application of adverse facts available

to Huaiyin Foreign Trade Corporation 30 (HFTC 30) because it failed to cooperate to the best of its ability in obtaining information from an unrelated supplier.

Domestic Interested Parties further assert that the Qingdao Zhengri/Yancheng Yaou's attempts to paint itself as a cooperative party are inconsistent with facts on the record. Domestic Interested Parties state that the Department's decision to apply adverse facts available was not based entirely on Qingdao Zhengri's refusal to permit verification, but was also based in part on Qingdao Zhengri and Yancheng Yaou's failure to certify their submissions properly, as detailed in the September 23, 2002 memorandum from Jacqueline Arrowsmith to Joseph A. Spetrini "Freshwater Crawfish Tail Meat from the People's Republic of China (PRC): Application of Total Adverse Facts Available for Qingdao Zhengri Seafood Co., Ltd. and Yancheng Yaou Seafood Co., Ltd. in the Preliminary Results of the Administrative Review for the Period September 1, 2000 through August 31, 2001" (AFA Memo Qingdao Zhengri/Yancheng Yaou).

Domestic Interested Parties cite Pacific Giant, *supra*, where the CIT stated that a decision that a party has failed to act to the best of its ability "should include (1) a finding that a party could comply with the request for information; and (2) a finding of either a willful decision not to comply or insufficient attention to statutory duties under the unfair trade laws." Domestic Interested Parties argue that if Chung Po (the common owner of both companies) had sufficient control of the two companies to consolidate Qingdao Zhengri's [sic] with those of Yancheng Yaou, then surely Chung Po could also have compelled Qingdao Zhengri to cooperate with verification and could have ensured that proper certifications were submitted by both companies. Domestic Interested Parties continue that Qingdao Zhengri's refusal to permit verification and both companies' failure to submit proper certifications are failures that may properly be attributed to Yancheng Yaou as evidence of insufficient attention to statutory duties as well as willful decisions not to comply with the Department's requests for information. Domestic Interested Parties conclude that the Department should continue to apply adverse facts available to Qingdao Zhengri/Yancheng Yaou in the final results of this review.

Department's Position: We continue to find that the application of adverse facts available to Qingdao Zhengri/Yancheng Yaou is appropriate pursuant to sections 776(a)(2)(D) and 776(b) of the Act, as discussed in greater detail below. Qingdao Zhengri/Yancheng Yaou does not dispute that Qingdao Zhengri and Yancheng Yaou should be treated as a single entity. In their March 11, 2002 responses to section A of the Department's questionnaire, Qingdao Zhengri and Yancheng Yaou reported separately that the companies shared a common owner, a Hong Kong company named Chung Po. In its section A questionnaire response, Qingdao Zhengri states that "all sales operations of Qingdao were consolidated at Yaou."[4] Furthermore, Qingdao Zhengri's original questionnaire response says "see

[4]During the previous period of review (September 1, 1999 through August 31, 2000), Qingdao Zhengri/Yancheng Yaou reported that Chung Po had consolidated Qingdao Zhengri's selling activities with those of Yancheng Yaou. See Qingdao Zhengri's March 11, 2002 and Yancheng Yaou's March

Section A response of Yaou" in response to all of the Sales Process questions on pages 8 through 10 of the questionnaire. These facts indicate that these two companies are a single entity for purposes of this review. We also note that Qingdao Zhengri and Yancheng Yaou submitted three consolidated supplemental responses, and the June 4, 2002 letter stating that Qingdao Zhengri "does not wish to participate in verification" was submitted by Qingdao Zhengri and Yancheng Yaou together. Thus, these companies reported themselves to the Department as a single entity, and there is clear evidence on the record that they should be considered a single entity. Since Qingdao Zhengri/Yancheng Yaou constitute a single entity, we cannot calculate a separate dumping margin for a portion of the combined entity's sales.

On August 2, 2002 the Department issued a letter in response to Qingdao Zhengri/Yancheng Yaou's June 4, 2002 letter stating that Qingdao Zhengri would not be able to participate in verification. The Department's letter stated that "Qingdao Zhengri's decision not to participate in verification precludes the Department from conducting a complete verification of the consolidated responses. . . . Since it is not possible for the Department to verify only part of the consolidated responses, we must consider the entire response unverifiable." See Letter to Qingdao Zhengri/Yancheng Yaou dated August 2, 2002, at 1. In that letter, the Department also pointed out that, if a company refuses verification, the Department may disregard any or all information submitted by the company in favor of the use of facts available, in accordance with section 776(a)(2)(D) of the Act. Qingdao Zhengri/Yancheng Yaou never responded to the Department's letter, and made no subsequent efforts to contact or arrange verification with the Department. Since Qingdao Zhengri did not allow Commerce to verify its questionnaire responses, we had no choice but to resort to the use of facts otherwise available pursuant to section 776(a)(2)(D) of the Act.

In selecting from among the facts otherwise available, the Department found that Qingdao Zhengri/Yancheng Yaou failed to cooperate to the best of its ability pursuant to section 776(b) of the Act. See Preliminary Results, 67 FR at 63880. We agree with Domestic Interested Parties, who argue that it is the respondents' burden to demonstrate the veracity of the facts on which margins are based. In Pacific Giant, the CIT upheld the Department's use of adverse facts available for unverifiable labor factors for a producer that was not the exporter. In this case, Qingdao Zhengri and Yancheng Yaou are considered a single entity. See AFA Memo Qingdao Zhengri/Yancheng Yaou. Given that Chung Po, their common owner, consolidated sales operations of Qingdao Zhengri and Yancheng Yaou at Yancheng Yaou, it is reasonable to assume that Chung Po could have instructed Qingdao Zhengri to permit verification. Because Qingdao Zhengri/Yancheng Yaou refused to submit to verification, the information that was in the sole possession of Qingdao Zhengri could not be verified. In resorting to the use of facts otherwise available, the Department applied an adverse inference because respondent Qingdao Zhengri/Yancheng Yaou failed to cooperate to the best of its ability. Qingdao Zhengri/Yancheng Yaou argues that, because the Department chose not to verify Yancheng Yaou, the

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11, 2002 Section A responses.

Department has no basis for rejecting the information it submitted and relying on adverse facts available. Its argument is not supported by evidence on the record, as discussed above. The respondent's refusal to permit verification of a significant portion of its information made verification of the complete responses impossible. Verification of the respondent's information is integral to the Department's dumping analysis. It provides the only opportunity in which the Department can satisfy itself of the correctness and accuracy of the respondent's submitted questionnaire responses. Having been denied the opportunity to verify the accuracy of all the information submitted by respondent, the Department is precluded from accurately determining a dumping margin for the entity.

Furthermore, as Domestic Interested Parties noted, and as we detailed in the AFA Memo Qingdao Zhengri/Yancheng Yaou, there were inaccurate certifications submitted with Qingdao Zhengri/Yancheng Yaou's March 11, 2002, May 15, 2002, and June 4, 2002 responses. These certifications, which are mandatory under the section 353.303(g) of the Department's regulations, were signed by an official who had left the company the prior year. This section of the regulations specifies that:

> A person must file with each submission containing factual information the certification in paragraph (g)(1) of this section and, in addition, if the person has legal counsel or another representative, the certification in paragraph (g)(2) of this section:
> (1) For the person officially responsible for presentation of the factual information:
>
> I, (name and title), currently employed by (person), certify that (1) I have read the attached submission , and (2) the information is contained in this submission is, to the best of my knowledge, complete and accurate.

For further details, see the AFA Memo Qingdao Zhengri/Yancheng Yaou.

On July 23, 2002, Qingdao Zhengri/Yancheng Yaou submitted a letter from its counsel, stating that "{t}he inclusion of the company official certifications with the certifications with these {March 11, 2002, May 15, 2002, June 4, 2002 and July 2, 2002} submissions as completed by Lin Xiaoming was an error on the part of the undersigned counsel." This letter was certified by Chung Po's current director, Lam Yin Yee-Liza, but he did not certify that the March 11, 2002, May 15, 2002, June 4, 2002, and July 2, 2002, submissions were accurate and complete to the best of his knowledge. The repeated submission of inaccurate certifications indicates that Qingdao Zhengri/Yancheng Yaou paid insufficient attention to statutory duties. Thus, we continue to find that the Qingdao Zhengri/Yancheng Yaou entity did not cooperate by acting to the best of its ability in complying with the Department's requests for information both in refusing verification and in submitting erroneous certifications.

We agree with Qingdao Zhengri/Yancheng Yaou's assertion that the Department must provide a reasoned analysis; however, we disagree with its implication that we did not provide such an analysis in

the Preliminary Results. The Department's AFA Memo Qingdao Zhengri/Yancheng Yaou provides such an analysis. As summarized above and detailed further in our AFA Memo Qingdao Zhengri/Yancheng Yaou, we concluded that Qingdao Zhengri/Yancheng Yaou did not cooperate to the best of its abilities due to both its refusal to permit verification of all of its information and the combined entity's repeated submission of incorrect certifications.

We disagree with Qingdao Zhengri/Yancheng Yaou that the PRC-wide rate is not representative of Yancheng Yaou's subject sales. It is axiomatic that the Department has an obligation to "determine current margins as accurately as possible." See Rhone Poulenc, Inc. v. U.S., 899 F. 2d 1185, 1191 (Fed. Cir. 1990). The Department has satisfied its obligation in this administrative review. Although Qingdao Zhengri/Yancheng Yaou has cited De Cecco in support of its arguments, that case is inapposite. De Cecco does not substantiate Qingdao Zhengri/Yancheng Yaou's claim that the PRC-wide rate was not corroborated with respect to Qingdao Zhengri/Yancheng Yaou's sales of subject merchandise during the POR. In De Cecco, the Department conceded that the petition rate was not properly corroborated in the original determination, but argued that the trial court erred in not remanding the case to the Department under instructions that would allow it to corroborate the petition rate with further evidence or to select any other proper rate. In addition, the Department argued that the trial court erred in refusing to reconsider the petition rate in light of the corroborating evidence in the Department's remand determination. De Cecco, 216 F.3d at 1031. The appellate court's reference to the corroboration requirement was made in the context of explaining that the Department's discretion, in selecting adverse fact available that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin, is not unbounded. Id.
Section 776(c) of the Act provides that when the Department relies on facts otherwise available, and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information against independent sources reasonably available to the Department.

The Statement of Administrative Action, accompanying H.R. Rep. No. 103-316 Vol. 1 at 870 (SAA), states that "corroborate" means to determine that the information used has probative value. See SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs and selling expenses, calculated dumping margins have no independent corroborative sources. The only corroborative sources for calculated margins are administrative determinations. Thus, in an administrative review, if the Department chooses a calculated dumping margin from a prior segment of the proceeding as total adverse facts available, it is not necessary to question the reliability of the margin for that time period. See Grain-Oriented Electrical Steel From Italy: Preliminary Results of Antidumping Duty Administrative Review, 61 FR 36551, 36552 (July 11, 1996).

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably available to it to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the

Department will disregard the margin and determine an appropriate margin. For example, in Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. See D&L Supply Co. V. United States, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present here.

Moreover, as there is no information on the record of this review that demonstrates that the 223.01 percent rate (i.e., the current PRC-wide rate) is not appropriately used as adverse facts available for Qingdao Zhengri/Yancheng Yaou, we determine that this rate has probative value. Accordingly, we determine that the 223.01 percent rate is in accord with section 776(c)'s requirement that secondary information be corroborated (i.e. that it have probative value).

Thus, for these final results, we continue to find that Qingdao Zhengri/Yancheng Yaou constitutes a single entity. Its refusal to participate in verification demonstrates an unwillingness on the part of the combined entity, Qingdao Zhengri/Yancheng Yaou, to fully cooperate with the Department, pursuant to sections 776(a) and (b) of the Act, as discussed above. Given that Qingdao Zhengri/Yancheng Yaou failed to allow verification of its consolidated response, we determine that the application of adverse facts available is warranted. As adverse facts available, use of the corroborated PRC-wide margin is appropriate.

Comment 7: Application of adverse facts available to China Kingdom Import & Export Co., Ltd. (China Kingdom)

China Kingdom argues that it acted to the best of its ability to comply with the Department's requests for information, and that the Department should not apply adverse facts available to China Kingdom. As a preliminary matter, according to China Kingdom, the Department's verification report notes no discrepancies in China Kingdom's sales response. China Kingdom further argues that the verification report itself suggests that China Kingdom would be entitled to a separate rate if the Department had not determined that the factors of production of China Kingdom's producer, Chaohu Daxin Foodstuff Co., Ltd. (Daxin), were unverifiable. China Kingdom states that Daxin could not substantiate 7 of 11 factors of production originally reported by China Kingdom in its section D questionnaire response.[5]

[5] Note that, according to the Department's Memorandum to Joseph A. Spetrini: Freshwater Crawfish Tail Meat from the People's Republic of China (PRC): Application of Total Adverse Facts Available for China Kingdom Import & Export Co., Ltd. in the Preliminary Results of the Administrative Review for the Period 9/1/00 - 8/31/01 (September 30, 2002) (China Kingdom AFA Memo), China Kingdom failed to report 8 of 11 factors of production; not 7 of 11, as indicated by China Kingdom.

According to China Kingdom, it was unaware of the fact that its producer had presented factors of production for the wrong period, and "assumed the information submitted on the record was accurate." See November 18, 2002 China Kingdom et al. Case Brief (China Kingdom Brief) at 10. China Kingdom argues that it cannot be expected to have corrected unknown errors, or indicate to the Department that it was having difficulty obtaining requested data, if it thought all along that the information it submitted was accurate. China Kingdom further argues that "{a}t the first available opportunity following the discovery of the reporting error, China Kingdom provided officials from the Department with corrections to its reported figure for total production of subject merchandise during the period of review, as well as its reported factors of production for whole crawfish, direct labor, indirect labor, electricity, coal, scrap by-product and packing labor." See China Kingdom Brief at 11. China Kingdom also argues that the results of an experiment performed by the Department in the course of verification "provided significant insight into the production of crawfish tail meat and by-product scrap at the Daxin plant." Id. at 12. Finally, China Kingdom argues that the difference between the originally reported and corrected quantities for total production of subject merchandise during the POR should have no effect on China Kingdom's NV calculation because the total production figure is derived through an analysis of the factors of production.

According to China Kingdom, there "was no effort on the part of the company to mislead or deceive the Department." Id. at 15. China Kingdom argues that according to Nippon Steel, in order to apply facts available, the Department must find either a willful decision not to comply, or behavior below the standard for a reasonable respondent. China Kingdom argues that its cooperation in this proceeding, and the steps it took to correct its errors, meets the "standard of reasonableness" cited in Nippon Steel. See China Kingdom Brief at 16. China Kingdom also argues that "small, unsophisticated companies" such as itself should not be measured by the same standards applied to large, multinational corporations. Id.

According to China Kingdom, despite the broad latitude and discretion afforded the Department in choosing information it relies upon for valuing factors of production in NME cases, as indicated in Shandong Huarong General Corp. v. United States, 159 F. Supp. 2d 714, 719 (CIT, July 23, 2001) (Shandong Huarong), the Department must seek to obtain the most accurate dumping margins possible, "consistent with the underlying objective of 19 U.S.C. § 1677b(c) {section 773(c) of theAct}." Id. China Kingdom states that in the Preliminary Results of Antidumping Duty New Shipper Reviews: Freshwater Crawfish Tail Meat from the People's Republic of China, 67 FR 52442 (August 12, 2002) (Shouzhou Huaxiang Preliminary Results), the Department noted that in applying adverse facts available, section 776(b) of the Act permits the use of secondary source information derived from the petition, a final determination in an investigation, any previous review, or any other information placed on the record. Furthermore, China Kingdom states that in the Shouzhou Huaxiang Preliminary Results, the Department applied partial adverse facts available for an unverifiable factor of production by applying data from the record of the 1999-2000 administrative review. China Kingdom also argues that in its own new shipper review, the Department determined that it was appropriate to derive indirect selling expenses–for use as facts available–for China Kingdom's affiliated U.S. importer from the

company's financial records for a period outside that of the POR. In light of the aforementioned, China Kingdom argues, the Department's use of total adverse facts available is not warranted. Therefore, according to China Kingdom, the Department should not ignore the reported data, but should look to secondary sources of information where necessary.

China Kingdom further argues that the Department can assess the accuracy of China Kingdom's reported factors of production by examining the company's reporting and the results of verification from its new shipper review. China Kingdom also argues that the Department "confirmed" the yield ranges for whole live crawfish and scrap by-product in performing certain experiments detailed in the verification report of the present review. China Kingdom further claims that the Department calculated a scrap yield rate close to what China Kingdom had reported, and that the Department calculated a much higher raw crawfish input yield rate than what China Kingdom had reported. Therefore, according to China Kingdom, the Department, if it must apply facts available, should select secondary information regarding the factors of production previously supplied by China Kingdom, or by other respondent parties in any recently completed administrative or new shipper review.

The Domestic Interested Parties argue that responsibility for submission of accurate factors of production lies with the respondent seeking a rate based on such information, and that failures, even if made by an unaffiliated supplier, may provide grounds for the application of adverse facts available. See Pacific Giant. As the factors of production submitted by China Kingdom's unaffiliated supplier were unverifiable, the Domestic Interested Parties argue that it is appropriate to resort to facts available in determining China Kingdom's margin.

Furthermore, according to the Domestic Interested Parties, China Kingdom's suggestion that the Department should use the factors of production from a prior period or different producer as adverse facts available should be rejected by the Department, as the Domestic Interested Parties say it was rejected by the CIT in Pacific Giant. The Domestic Interested Parties argue that the Department should continue to use the PRC-wide rate as adverse facts available. Pacific Giant, 223 F. Supp. 2d. at 1343-1345. To not do so, the Domestic Interested Parties claim, would allow China Kingdom to manipulate the process by selectively providing verifiable data only for those suppliers likely to produce favorable results.

Finally, according to the Domestic Interested Parties, China Kingdom's plea that it and its producer are small, unsophisticated companies should be rejected by the Department, as the same plea was rejected by the CIT in Pacific Giant. The Domestic Interested Parties state that, like the plaintiff in Pacific Giant, China Kingdom did not provide notice in advance that its resources were insufficient to respond accurately and completely to the Department's questionnaires. The Domestic Interested Parties also point out that China Kingdom is represented by experienced trade counsel, that China Kingdom had the experience of being reviewed previously, and that the plaintiff in Pacific Giant was held accountable for information supplied by its processors, even though it had fourteen of them.

Department's Position: We agree with the Domestic Interested Parties that the Department should continue, in these final results, to apply the PRC-wide rate as adverse facts available to exports by China Kingdom. For the reasons discussed in detail in the China Kingdom AFA Memo, and in accordance with sections 776(a)(2)(A) and (B) of the Act, the Department continues to find that use of the facts otherwise available is warranted with respect to China Kingdom, since China Kingdom failed to provide verifiable factors of production. Section 776(b) of the Act permits the Department to apply an adverse inference if it makes the additional finding that "an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information." It is the Department's position that, in determining whether a respondent has failed to cooperate to the best of its ability, the Department need not make a determination regarding the willfulness of a respondent's conduct. Instead, the Courts have made clear that the Department must articulate its reasons for concluding that a party failed to cooperate to the best of its ability, and explain why the missing information is significant to the review. In determining whether a party failed to cooperate to the best of its ability, the Department considers whether a party could comply with the request for information, and whether a party paid insufficient attention to its statutory duties. See Pacific Giant, 223 F. Supp. 2d. at 1336, 1342. The Department may also draw some inferences from a "pattern of behavior." See Borden, Inc. v. United States, 22 C.I.T. 1153, 1154 (1998). Furthermore, to determine whether the respondent "cooperated" by "acting to the best of its ability" under section 776(b) of the Act, the Department also considers the accuracy and completeness of submitted information, and whether the respondent has hindered the calculation of accurate dumping margins. See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 62 FR 53808, 53819-53820 (October 16, 1997).

For all of the reasons articulated in the China Kingdom AFA Memo, we continue to find that China Kingdom's pattern of behavior indicates that it failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. China Kingdom was first provided with an opportunity to report the correct figures for total tail meat production and factors of production during the POR in its response to the Department's initial section D questionnaire, due February 27, 2002. As noted above, China Kingdom instead provided total tail meat production and factors of production for the wrong production period--a period prior to the POR. The instructions on pages D-1 and D-3 of the Department's initial section D questionnaire clearly directed the respondent to "calculate the per-unit factor amounts based on the actual inputs used by your company during the period of review," and to "report the total quantity of the subject merchandise produced in each factory during the POR" (emphasis added). China Kingdom had three subsequent opportunities to provide the correct information in its responses to the Department's three supplemental questionnaires.[6] Each supplemental questionnaire required China Kingdom to reexamine the information it submitted to the Department. Nevertheless, on each of these three occasions, China Kingdom failed to report the correct figures.

[6] China Kingdom submitted responses to each of the Department's three supplemental questionnaires on May 29, July 3, and July 31, 2002, respectively.

In reporting figures for total tail meat production and the usage rates for eight factors of production for the wrong production period in all of its responses to the Department's questionnaires, China Kingdom provided completely inaccurate, incorrect information for all but three relatively minor items of requested data pertaining to its POR production: the factors of production for tape, boxes, and bags. Furthermore, as China Kingdom provided the wrong information for total tail meat production, as well as for the factors of production for whole crawfish, scrap by-product, direct labor, indirect labor, packing labor, electricity, coal, and water (eight of the eleven total reported factors of production), the information China Kingdom submitted in response to the Department's initial and three supplemental questionnaires was, on the whole, inaccurate and incomplete. If China Kingdom had double-checked the reported figure for total tail meat production, or any of the eight incorrectly reported factors of production, against the appropriate accounting records, it would likely have discovered the mistake. Given that China Kingdom and its supplier, Daxin, had undergone a review and verification before, China Kingdom should have been able to comply with the Department's requests for information in an accurate and timely manner.

The missing information is significant to the review because it is fundamental to the dumping margin calculation process and is readily available only to the respondent. As noted in section 771(35)(A) of the Act, dumping margin calculations require the comparison of NV to export price EP or CEP. For cases involving NME countries, such as the PRC, the Department must determine NV "on the basis of the value of the factors of production utilized in producing the merchandise." See section 773(c)(1) of the Act. The total production for the POR and each of the eight missing factors of production are essential to the Department's calculation of NV. Without the eight factors of production and total production, the Department cannot calculate an NV for the period. Without an accurate calculation of NV, it is impossible for the Department to calculate a dumping margin in accordance with section 773(c)(1) of the Act.

We also conclude that China Kingdom could have complied with the Department's requests for the missing information. As noted above, China Kingdom and its supplier Daxin have undergone both a review and verification before. See Freshwater Crawfish Tail Meat From the People's Republic of China; Notice of Final Results of Antidumping Duty New Shipper Reviews, 66 FR 45002 (August 27, 2001) (China Kingdom New Shipper Review). Furthermore, as noted in the Antidumping Duty Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Verification Report for China Kingdom Import & Export Co., Ltd., dated September 16, 2002 (China Kingdom Verification Report), at 2, in the year 2000, China Kingdom's registered capital reached 30 million RMB (or roughly U.S. $3.63 million, using year 2000 U.S. Federal Reserve Bank exchange rates obtained from the Import Administration internet web site at http://ia.ita.doc.gov/exchange/index.html). China Kingdom had five different business departments, engaged in the import and export of a wide variety of textile products, manufacturing equipment, toys, seafood, poultry, etc., to and from Japan, Europe, and the United States. Id. China Kingdom also has branch offices in Shanghai, Dalian, and Qingdao, China, as well as part ownership of a Beijing commercial bank, a chemical, fertilizer, and pesticide manufacturer, and two restaurants. Id. Thus, contrary to China Kingdom's arguments, China Kingdom is not a "small, unsophisticated" company

that "should not be measured by the same standards applied to large, multinational corporations." See China Kingdom Brief at 16. China Kingdom had both the resources and the experience necessary to comply with the Department's requests.

If China Kingdom had double-checked the reported figure for total tail meat production, or any of the eight incorrect factors of production, against the appropriate accounting records, it would likely have discovered that it reported this information for the wrong period. Given all of this, China Kingdom should have been able to comply with the Department's requests for information in an accurate and timely manner. Furthermore, in light of China Kingdom's failure to provide accurate figures for total production and eight of eleven factors of production, and considering the ease with which the failure likely could have been detected, we find that China Kingdom paid insufficient attention to its statutory duty to comply with the Department's requests for information, as did Daxin.

As noted in the China Kingdom AFA Memo, in accordance with section 19 CFR 351.301(b)(2) of the Department's regulations, any submission of factual information is due no later than 140 days after the last day of the anniversary month—in this case, January 18, 2002—unless specifically requested by the Department. As noted above, the Department was first presented with figures for total production and factors of production, ostensibly for the proper POR, on August 8, 2002 (the first day of the factors of production portion of verification, and the third day of verification in general), nearly seven months beyond the regulatory deadline. Furthermore, China Kingdom had numerous opportunities to submit the requested information subsequent to the January 18, 2002 regulatory deadline by virtue of the Department's three supplemental questionnaires (issued May 8, June 18, and July 24, 2002), but failed to do so. The Department therefore concluded that the information China Kingdom offered as minor corrections at the outset of the factors of production verification at Daxin encompassed an untimely, unsolicited submission of entirely new factual information.

At no point in the administrative review, prior to verification, did China Kingdom notify the Department of the existence of any corrections to its production and factors of production information, or seek guidance on the applicable reporting requirements, as contemplated in section 782(c)(1) of the Act. Since the information was submitted during verification, instead of in a response to one of the several questionnaires issued to China Kingdom, the Department did not have an opportunity to analyze the information in the context of this review. China Kingdom did not indicate that it was having any difficulty in supplying information until the third day of verification.

We disagree with China Kingdom that its failure to provide accurate factors of production can be considered in any way insignificant or easily remedied through the presentation of minor corrections at verification. The new figures provided at verification for total tail meat production, and eight of eleven factors of production, did not represent minor corrections to previously submitted data, necessitated by minor errors in calculation or minor oversights. They were instead complete and total replacements for what was found to be entirely wrong information. As noted in the China Kingdom AFA Memo, at the outset of the factors of production verification at China Kingdom's producer, China Kingdom provided corrections to its reported figure for total production of subject merchandise during the POR, as well as

its reported factors of production for whole crawfish, scrap by-product, direct labor, indirect labor, packing labor, electricity, coal, and water. The verification team found that the reported figure for total production of subject merchandise during the POR, as well as all eight of the aforementioned factors of production, were calculated on the basis of production for the wrong period–a production period prior the POR–and therefore could not be verified. The information submitted as minor corrections therefore did not consist of figures corrected for clerical or arithmetic errors, but instead consisted of an entirely new set of data–from an entirely different production period–for total tail meat production, and eight of the eleven reported factors of production. See China Kingdom AFA Memo at 1.

We disagree with China Kingdom's contention that the Department, in applying facts available, should not "ignore the reported data," but should look to secondary sources of information where necessary, as China Kingdom argues the Department did in both its own new shipper review, and in the Shouzhou Huaxiang Preliminary Results. First, the two proceedings noted by China Kingdom differ from the current proceeding in that the Department applied partial adverse facts available for minor deficiencies or failures. In the Shouzhou Huaxiang Preliminary Results, the Department applied partial adverse facts available to a single unverifiable factor of production. Id. at 52445. In China Kingdom's new shipper review, the Department applied partial adverse facts available only to indirect selling expenses. China Kingdom New Shipper Review at 18607. Second, it is the Department's practice to assign the highest rate from any segment of a proceeding as total adverse facts available when a respondent fails to cooperate to the best of its ability. (See, e.g., Certain Forged Stainless Steel Flanges From India; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 10358, 10360 (March 7, 2002) ("Because we were unable to calculate margins for these respondents, we have assigned them the highest margin from any segment of this proceeding, in accordance with our practice."); Stainless Steel Plate in Coils From Taiwan; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review, 67 FR 5789, 5790 (February 7, 2002) ("Consistent with Department practice in cases where a respondent fails to cooperate to the best of its ability, and in keeping with section 776(b)(3) of the Act, as adverse facts available we have applied a margin based on the highest margin from this or any prior segment of the proceeding."); Certain Cased Pencils From the People's Republic of China; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review, 67 FR 2402, 2407 (January 17, 2002) ("Specifically, for adverse facts available for the PRC-wide entity, we have applied the highest rate from any prior segment of this proceeding, 53.65 percent, which is the current PRC-wide rate."); Heavy Forged Hand Tools From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 66 FR 48026 (September 17, 2001) ("Accordingly, for each class or kind of HFHTs for which we have resorted to adverse facts available, we have used the highest margin from this or any prior segment of the proceeding as the margin for these final results because there is no evidence on the record indicating that such margins are not appropriate as adverse facts available.") and Frozen Concentrated Orange Juice From Brazil; Final Results of Antidumping Duty Administrative Review, 64 FR 43650, 43651 (August 11, 1999) ("In situations involving non-cooperative respondents of this type, it is the Department's normal practice to select as adverse facts available the highest margin from the current or any prior segment of the same proceeding."). In keeping with Department practice, for the instant administrative review, we have

determined that it is appropriate to assign China Kingdom the rate of 223.01 percent–the highest rate determined in any segment of this proceeding. See Final Results AR 99-00.

We agree with the Domestic Interested Parties' contention that responsibility for submission of accurate factors of production lies with the respondent seeking a rate based on such information, and that failures, even if made by a supplier, may provide grounds for the application of adverse facts available. As noted on page 12 of the Department's Final Results of Determination Pursuant to Court Remand: Pacific Giant, Inc., Worldwide Link, Inc., Ocean Duke Corp. v. United States, Slip Op. 02-83, Court No. 01-00340 (October 15, 2002), ultimately the respondent "is the party who is responsible for ensuring the accuracy and completeness of all of its processors' factors of production data." These final results on remand were affirmed in their entirety by the CIT on December 2, 2002. See Pacific Giant, Inc. v. United States, No. 01-00340, slip op. 02-140 (Ct. Int'l Trade Dec. 2, 2002) (this case is presently on appeal to the United States Court of Appeals for the Federal Circuit, docket number 03-1254, dated February 13, 2003). As the factors of production submitted by China Kingdom's supplier were unverifiable, it is appropriate to resort to adverse facts available in determining China Kingdom's margin.

Recommendation

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

Agree_____ Disagree _____

_____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

_____

Date