UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-863
ARP: 12/1/10 – 11/30/11
**Public Document**
IA/NME/9: RJP

November 19, 2012

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Administrative Review of Honey from the People's Republic of China: Issues and Decision Memorandum for the Final Results

---

## SUMMARY

We have analyzed the case and rebuttal briefs submitted by Dongtai Peak Honey Industry Co., Ltd. ("Peak") and Petitioners[1] in the administrative review of honey from the People's Republic of China ("PRC"). The Department of Commerce ("Department") published the preliminary results of review on August 6, 2012.[2] As a result of our analysis, we have not made any changes to the Preliminary Results and continue to find Peak part of the PRC-wide entity. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

## BACKGROUND:

The merchandise covered by the order is honey as described below. The period of review ("POR") is December 1, 2010, through November 30, 2011. In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on our Preliminary Results. On September 5, 2012, Peak filed a case brief. On September 10, 2012, Petitioners filed a rebuttal brief.

### Scope of the Order

The products covered by this order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent

[1] Petitioners are the American Honey Producers Association and Sioux Honey Association.
[2] See Honey from the People's Republic of China: Preliminary Results of Review, 77 FR 46699 (August 6, 2012) ("Preliminary Results").

natural honey by weight and flavored honey.[3] The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this order is currently classifiable under subheadings 0409.00.00, 1702.90.90 and 2106.90.99 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under order is dispositive.

Peak Case Timeline

On March 2, 2012, the Department issued an antidumping duty questionnaire to Peak.[4] On March 23, 2012, Peak responded to Section A of the Department's questionnaire.[5] On April 9, 2012, Peak submitted a request for a one-day extension of the deadline to file its response to Sections C and D of the Department's questionnaire, less than 6 minutes before the deadline,[6] requesting a new deadline of April 10, 2012. When the Department granted Peak's extension request, the Department advised Peak to file any future extension requests as soon as it suspects additional time may be necessary.[7] On April 9, 2012, Peak responded to Sections C and D of the Department's questionnaire.[8] The Department accepted Peak's April 9, 2012, filing. On April 3, 2012, the Department issued Peak a supplemental Section A questionnaire with a deadline of April 17, 2012.[9] Peak did not submit a response to the Supplemental A questionnaire nor request an extension by April 17, 2012. Instead, on April 19, 2012, Peak submitted a request for an extension of 10 days for the Supplemental A questionnaire, which would have made the new due date April 27, 2012. On April 20, 2012, Petitioners submitted an objection to the untimely extension request by Peak.[10] On April 24, 2012, Peak submitted a rebuttal to Petitioners' Objection to Untimely Extension Request.[11] On April 27, 2012, Peak requested a second extension of one day, until April 28, 2012, and submitted its supplemental Section A questionnaire response ("SAQR") after 5:00 P.M. ET, the close of business on April 27, 2012,

[3] The Department recently determined that blends of honey and rice syrup, regardless of the percentage of honey they contain, from the PRC are later-developed merchandise within the meaning of section 781(d) of the Act, and are within the scope of the Order. See Honey From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order, 77 FR 50464 (August 21, 2012) ("Order").
[4] See Letter from Catherine Bertrand, Program Manager, Office 9, to Peak, "Honey from the People's Republic of China ("PRC"): Non-Market Economy Questionnaire," dated March 2, 2012.
[5] See Letter from Peak to the Secretary of Commerce regarding Section A Response, dated March 23, 2012.
[6] See Memo to the File from Kabir Archuletta, International Trade Analyst, Office 9, "IA ACCESS Submission Confirmation for Dongtai Peak Honey Industry Co., Ltd., Section C and D Questionnaire Response Extension" dated July 30, 2012.
[7] See Memo to the File from Kabir Archuletta, International Trade Analyst, Office 9, "Dongtai Peak Honey Industry Co., Ltd., Questionnaire Extension," dated April 9, 2012 ("April 9 Extension Memo").
[8] See Letter from Peak to the Secretary of Commerce regarding Section C and D Response, dated April 9, 2012.
[9] See Letter from Catherine Bertrand, Program Manager, Office 9, to Peak regarding Supplemental Section A Questionnaire, dated April 3, 2012 ("Peak Supplemental Section A").
[10] See Letter from Petitioners to the Secretary of Commerce regarding objection to extension request by Peak, dated April 20, 2012.
[11] See Letter from Peak to the Secretary of Commerce regarding Peak's rebuttal to Petitioners' objection, dated April 24, 2012.

without the Department having granted any extensions.[12] On May 22, 2012, the Department rejected, and removed from the record, both of Peak's untimely filed extension requests and its untimely filed SAQR pursuant to 19 CFR 351.302(d).[13]

## DISCUSSION OF THE ISSUES

### Comment 1: Whether the Department Properly Rejected Peak's Extension Request

*Peak's Argument:*

- The Department improperly rejected and removed Peak's extension request from the record because the Department has a longstanding practice to rule on extension requests subsequent to the involved deadlines.
- The Department offered no explanation as to how or why time pressures warranted denial of the extension request.
- Peak provided "good cause" for why the April 19, 2012, extension request was filed after the April 17, 2012, deadline for the SAQR.

*Petitioners' Argument:*

- Consistent with its general practice, the Department properly rejected and removed Peak's untimely extension request from the record because Peak failed to submit the extension request before passing of the existing deadline and failed to present "good cause" reasons for excusing the untimely extension request.
- The Department has no policy of accepting extension requests after existing deadlines without good cause demonstrated and Peak provided no examples to the contrary.

**Department's Position:**

The Department agrees with Petitioners and continues to find that Peak's extension request was properly rejected and removed from the record in accordance with the Department's practice and regulations. In the Preliminary Results, the Department rejected Peak's April 19, 2012, supplemental section A questionnaire extension request, because Peak did not submit the extension request in a timely manner pursuant to 19 CFR 352.302(c), nor provided good cause pursuant to 19 CFR 351.302(b).[14]

The Department's regulations provide that the agency "may, for good cause, extend any time limit established by this part."[15] Further, parties requesting an extension are required to submit a written request "before the time limit specified" by the Department, and must "state the reasons for the request."[16] As noted by the CIT in Grobest, the Department has the discretion to "set and

[12] See Letter from Catherine Bertrand, Program Manager, Office 9, to Peak "Tenth Administrative Review of Honey from the People's Republic of China ("PRC"): Rejection of Supplemental Section A Questionnaire Response and Removal from the Record," dated May 22, 2012 ("Untimely Extension Request Rejection Letter").
[13] See Untimely Extension Request Rejection Letter. On June 7, 2012, Peak filed a request for reconsideration of the Department's decision to reject Peak's submissions, which we declined. See also Letter from Peak to the Secretary of Commerce regarding Peak's request for reconsideration of rejected documents, dated June 7, 2012.
[14] See Preliminary Results, 77 FR at 46701.
[15] See 19 CFR 351.302(b).
[16] See 19 CFR 351.302(c).

enforce deadlines."[17] Furthermore, 19 CFR 351.302(d) states that the "Secretary will not consider or retain in the official record" any "untimely filed factual information, written argument, or other materials" that the Secretary rejects,[18] otherwise any party would be allowed to provide the Department with information at the parties' leisure and expect the agency to review the information timely and issue a binding determination.[19]

As previously noted above and in the Preliminary Results, when the Department granted Peak's extension request for its section C&D questionnaire response, the Department advised Peak to file any future extension requests as soon as it suspects additional time may be necessary.[20] On April 3, 2012, the Department issued Peak a supplemental Section A questionnaire with a deadline of April 17, 2012.[21] The letter cautioned that if Peak was unable to respond by the established deadline it must so notify the Department and submit a request for an extension of the deadline.[22] The Peak Supplemental Section A questionnaire went on to instruct Peak that if the Department did not receive either the requested information or a written request before 5:00 p.m. ET on the established deadline, the Department may conclude that Peak declined to cooperate and will reject any submissions after the deadline in accordance with 19 CFR 351.302(d).[23] Therefore, Peak was on notice that it must timely file either a request for an extension or the response to the questionnaire before the 5:00 p.m. deadline on April 17, 2012. Peak did not submit a response nor request an extension by April 17, 2012. Instead, on April 19, 2012, Peak submitted a request for an extension of 10 days, which would have made the new due date April 27, 2012. On April 27, 2012, Peak requested a second extension of one day, until April 28, 2012, and submitted its SAQR after the close of business on April 27, 2012. On May 22, 2012, the Department properly rejected, and removed from the record, both of Peak's untimely filed extension requests and its untimely filed SAQR pursuant to 19 CFR 351.302(d).[24]

Peak argues that because the preliminary and final results of the review had not been extended as of April 2012, the Department had more than adequate time to consider its extension request and that the Department had offered no explanation as to how or why time pressures existed in this proceeding. As noted by the Court in Grobest, the Department has the discretion to "set and enforce deadlines."[25] The Department's regulations provide that the agency "may, for good cause, extend any time limit established by this part."[26] Parties requesting extensions are required to submit a written request "before the time limit specified" by the Department, and must "state the reasons for the request." As explained in the Preliminary Results and below, the Department considered Peak's untimely requests for extension and determined that Peak has not

[17] See Grobest & I-Mei Industrial (Vietnam) Co., Ltd., v. United States, 815 F. Supp. 2d 1342, 1365 (CIT 2012) ("Grobest").
[18] See 19 CFR 351.302(d).
[19] See 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) ("Wooden Bedroom Furniture LTFV") and accompanying Issues and Decision Memorandum ("IDM") at Comment 82.
[20] See Preliminary Results, 77 FR at 46699 and April 9 Extension Memo; see also 19 CFR 351.302(c) "{b}efore the applicable time limit specified under 19 CFR 351.301 expires, a party may request an extension…"
[21] See Preliminary Results, 77 FR at 46699 and Peak Supplemental Section A.
[22] See Peak Supplemental Section A at 2.
[23] See id.
[24] See Preliminary Results, 77 FR at 46699-700; see also Untimely Extension Request Rejection Letter.
[25] See Grobest, 815 F. Supp. 2d at 1365.
[26] See 19 CFR 351.302(b).

provided good cause for submitting its extension requests in an untimely manner.[27] In the Preliminary Results, the Department clearly explained that the deadlines in this proceeding were established after careful consideration of the time and resources that were needed to complete a review of Peak's sales during the POR.[28] The Department explained why deadlines in this case are important given that Peak's U.S. sales have been found non-bona fide in two prior reviews,[29] a determination that requires careful consideration of the totality of circumstances, including: (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arms-length basis;[30] (6) as well as the business practices of the importer and U.S. customers.[31] The supplemental Section A questionnaire that Peak failed to submit in a timely manner would have provided information regarding Peak's reported quantity and value, its separate rate status, structure and affiliations, sales process, accounting and financial practices, and merchandising. This information has proven vital to the Department's prior non-bona fide analyses.

Moreover, the Department requires a significant amount of time and effort to gather the necessary information, consider the facts of the record, and provide interested parties with an appropriate period for comments and rebuttal comments. For example, in the ninth administrative review of this proceeding the Department issued its initial questionnaire to Peak in February 2011, and continued to request and receive supplemental questionnaire responses until December 13, 2011, just 10 days before the preliminary results were signed.[32] In order to properly analyze and consider submissions from Peak and Petitioners, and provide an opportunity for interested parties to comment, the Department was required to extend both its preliminary and final results.[33]

The establishment of deadlines for submission of factual information in an antidumping duty review is not arbitrary.[34] Rather, deadlines are specifically designed to allow a respondent

---

[27] See Preliminary Results, 77 FR at 46701.
[28] See Preliminary Results, 77 FR at 46701.
[29] See Administrative Review of Honey from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review, In Part, 75 FR 24880, 24881 (May 6, 2010); Honey from the People's Republic of China: Final Rescission of Antidumping Duty Administrative Review, 77 FR 34343, 34344 (June 11, 2012) ("PRC Honey AR9 Final").
[30] See Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States, 366 F. Supp. 2d 1246, 1250 (CIT 2005).
[31] See Hebei New Donghua Amino Acid, Ltd., v. U.S., 374 F. Supp. 2d 1333, 1343-44 (CIT 2005).
[32] See Honey From the People's Republic of China: Preliminary Rescission of the Administrative Review, 77 FR 79, 80 (January 3, 2012) ("While the Department continued to receive submissions from both Petitioners and {Peak} through December, we were unable to take submissions submitted on or after December 13, 2011, into consideration for these preliminary results due to the close proximity to statutory deadlines").
[33] See Ninth Administrative Review of Honey From the People's Republic of China: Extension of Time Limit for the Preliminary Results, 76 FR 47238 (August 4, 2011) ("The Department requires more time to gather and analyze surrogate value information, and to review questionnaire responses and issue supplemental questionnaires."); see also Honey From the People's Republic of China: Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review, 77 FR 11489 (February 27, 2012) ("The Department requires additional time to complete this review because the Department must fully analyze and consider significant issues regarding whether the respondent's sales were bona fide. Further, the Department extended the due date for submission of the rebuttal comments to the case briefs at the request of an interested party.").
[34] See Saha Thai Steel Pipe Co., Ltd. v United States, 828 F. Supp. 57, 64 (CIT 1993) ("…the Department has honored one of the fundamental principles underlying the trade statute—accuracy. It is this endeavor for accuracy, *within the limits of strict deadlines*, that lends respectability to U.S. trade statues…")(emphasis added).

sufficient time to prepare responses to detailed requests for information, and to allow the Department to analyze and verify that information, within the statutorily-mandated timeframe for completing the review. The Department recognizes that respondents may encounter difficulties in meeting certain deadlines in the course of any segment; indeed, the Department's regulations specifically address the requirements governing requests for extensions of specific time limits (i.e., 19 CFR 351.302(c)). While the Department may extend deadlines when possible, and where there is good cause, here Peak submitted no explanation for why it was unable to submit its extension requests in a timely manner.

Peak argues that the Department improperly rejected its extension request because it had shown "good cause" for the untimely submission and the Department did not provide clear reasoning for rejecting the extension request. Peak argues that the explanation provided in its April 19, 2012, extension request was for both the extension request and the SAQR. As in the Preliminary Results, we continue to find that the reasoning provided in Peak's April 19th Extension Request relate to reasons to grant an extension of the SAQR and not reasons why the extension request itself was untimely. Peak provided a variety of reasons including computer failure, overseas communication difficulties, a four-day long Chinese holiday, and the unexpected burden of having to prepare responses to the supplemental Section A questionnaire and its section C and D questionnaire responses over an overlapping timeframe.[35] However, none of these reasons explained why Peak was unable to file the extension request before the existing April 17, 2012, deadline and none of these reasons constitute "good cause" to grant a late-filed extension request, especially in the context of an administrative review it requested itself. Specifically, it appears Peak was aware of the upcoming Chinese holiday as it occurred prior to the deadline for the SAQR and that it would have to work simultaneously on the supplemental Section A questionnaire and its Section C and D questionnaire responses.[36] While Peak asserts for the first time in its case brief that its counsel was not informed of Peak's difficulties and inability to get the response filed on time,[37] the Department does not find that these communication issues between Peak and its counsel constitute good cause to extend the deadline. If Peak and its counsel suspected or encountered difficulties completing its SAQR, they could have submitted a brief letter requesting an extension in advance of the April 17, 2012, deadline. In this regard, Peak filed an extension request for its Section C and D questionnaire responses in a timely manner, eight days before its SAQR was due.[38] Therefore, we continue to find that it is appropriate to reject Peak's extension request as untimely under section 19 CFR 351.302(c) and reject the extension request because it did not provide "good cause" pursuant to section 19 CFR 351.302(b).

Peak argues that it is the Department's longstanding practice to rule on extension requests subsequent to the involved deadlines. Peak further asserts that it is common for respondents to submit extension requests before involved deadlines and for the Department to approve them despite the time of the submissions. While the Department does rule on such extension requests,

[35] See Letter from Peak to the Department, re: "Honey from the People's Republic of China Administrative Review," dated June 7, 2012 and attached April 19, 2012 letter; see also Peak's Case Brief at 6-7.
[36] See id.
[37] See Peak's Case Brief at 7.
[38] See Memorandum to the File from Kabir Archuletta, International Trade Analyst, Office 9, "IA ACCESS Submission Confirmation for Dongtai Peak Honey Industry Co., Ltd., Section C and D Questionnaire Response Extension" dated July 30, 2012.

both to reject and grant extension requests submitted after the involved deadlines, the Department does so after considering whether the late extension request provided good cause for extending the deadline for the request consistent with 19 CFR 351.302(b). However, Peak provides no examples supporting its assertion that the Department accepts extension requests without good cause. As Petitioners point out, the Department's decision to reject the submissions at issue is consistent with the general practice of rejecting untimely filed questionnaire responses.[39] The Department establishes appropriate deadlines to ensure that its ability to complete the proceeding is not jeopardized. We note that the CIT has long recognized the need to establish, and enforce, time limits for filing questionnaire responses, the purpose of which is to aid the Department in the administration of the dumping laws.[40]

We disagree with Peak that there was no legal reason to remove its extension requests from the record. We further disagree with Peak that the Department has a practice of retaining extension requests on the record. As explained above, the Department rejected Peak's extension requests pursuant to 19 CFR 351.302(b) and 351.302(c). Section 351.302(d) of the Department's regulations states that the Secretary will not consider or retain in the official record "untimely filed factual information, written argument, or other material that the Secretary rejects."[41] Consistent with this regulatory provision, the Department routinely removes untimely filed submissions from the record of antidumping duty and countervailing duty proceedings.[42] Therefore, because Peak's extension requests were untimely filed material the Department rejected, we removed the extension requests in accordance with the Department's regulations.[43] Consistent with the Department's regulations, the Department continues to find it appropriate to reject and remove from the record of this review Peak's Section A questionnaire extension requests.

**Comment 2: Whether the Department Properly Rejected Peak's SAQR**

*Peak's Argument:*

- It is the Department's longstanding policy to accept untimely filed documents if there is good cause.[44]

[39] See, e.g., Wooden Bedroom Furniture LTFV and accompanying IDM at Comment 82; see also, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Ukraine, 66 FR 50401 (October 3, 2001) ("Ukraine Hot-Rolled") and accompanying IDM at Comment 5;.

[40] See e.g. Nippon Steel Corp. v. United States, 118 F. Supp. 2d 1366, 1377 (CIT 2000) ("Nippon Steel"); and Seattle Marine Fishing Supply, et al. v. United States, 679 F. Supp. 1119, 1128 (CIT 1998) (it was not unreasonable for the Department to refuse to accept untimely filed responses, where "the record displays the ITA followed statutory procedure" and the respondent "was afforded its chance to respond to the questionnaires, which it failed to do.")

[41] See 19 CRF 351.302(d) and 19 CRF 351.302(d)(i); see also 19 CFR 351.104(a)(2) ("The Secretary, in making any determination under this part, will not use factual information, written argument, or other material that the Secretary rejects").

[42] See, e.g., Narrow Woven Ribbons with Woven Selvedge From the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 77 FR 47363-364 (August 8, 2012); see also Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 77 FR 32539, 32542-543 (June 1, 2012); see also Ukraine Hot-Rolled and accompanying IDM at Comment 5.

[43] See Preliminary Results, 77 FR at 46702 and Untimely Extension Request Rejection Letter.

[44] Peak cites Ukraine Hot-Rolled and Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from South Africa, 66 FR 37022 (July 16, 2001) ("South Africa Hot-Rolled").

- The Department has a longstanding practice of extending deadlines when requests for extensions are not submitted until after the involved deadlines, or are never submitted at all.[45]
- In Grobest, the CIT ordered the Department to accept a submission filed after the involved deadline and that similar to Grobest, administrative burden to review the SAQR out-weights the harm to Peak. Further, because several months could have remained in the review, it is an abuse of discretion to not accept Peak's SAQR.[46]
- Reasonableness and fairness considerations require that the Department grant the extension to the deadline for Peak's SAQR and resume the review, because the Department has not explained why the precedent of calculating antidumping duties on a fair and equitable basis does not apply to this case.[47]

*Petitioners' Argument:*

- Consistent with its general practice, the Department properly rejected Peak's SAQR because it failed to make an extension request before the deadline, did not show good cause for the untimely submission, and failed to submit its SAQR before the deadline.
- The cases relied upon by Peak do not support its assertion that the Department has a longstanding practice of accepting untimely filed documents. Rather, the cases provided by Peak demonstrate the Department has accepted untimely documents within its discretion.
- In PSC VSMPO,[48] the Court of Appeals for the Federal Circuit ("Federal Circuit") recently struck down the Court of International Trade ("CIT" or "Court") decision in Grobest[49] that requires the Department to balance its decision to reject Peak's document with lack of finality concerns, the duty to determine an accurate margin, and the remedial, non-punitive nature of the dumping law.
- There is nothing unfair about Peak's treatment in this case because it had notice of the requirements as well as an opportunity to comply and be heard.

**Department's Position:**

The Department continues to find it appropriate to reject and remove Peak's untimely filed SAQR in accordance with the Department's regulations and practice. In the Preliminary Results, we rejected and removed from the record Peak's SAQR, because it was submitted eleven days after the original deadline, without the Department having granted Peak's two untimely extension requests.[50]

As explained above, Peak did not submit timely extension requests or demonstrate good cause for its untimely extension requests, which were rejected consistent with the Department's practice and regulations. As Peak's SAQR was filed after the Department's deadline, without a

[45] Peak cites Certain Pasta From Italy: Notice of Final Results of the Fourteenth Antidumping Duty Administrative Review, 76 FR 76937 (December 9, 2011) ("Pasta from Italy").
[46] Peak cites Grobest 815 F. Supp. 2d at 1365-66 and Notice of Preliminary Determination of Sales at Less Than Fair Value: Glycine from Japan, 72 FR 52349, 52350 (September 13, 2007) ("Japan Glycine").
[47] Peak cites SNR Roulements v. United States, 402 F.3d 1358 (Federal Circuit 2005).
[48] Petitioners cite PSC VSMPO-Avisma Corp. v. United States, 688 F.3d 751 (Federal Circuit 2012) ("PSC VSMPO").
[49] Petitioners cite Grobest, 815 F. Supp. 2d at 1342.
[50] See Preliminary Results, 77 FR at 46702.

timely extension request on the record, the Department rejected the SAQR as untimely consistent with the Department's regulations and practice.[51]

Peak asserts that the Department has a general practice of accepting untimely filed submissions. However, as explained above, the Department's regulations at 19 CFR 351.302(d) requires the Department to reject untimely filed submissions unless the Department extends the time limit. As explained above, Peak has not provided good cause to extend the deadline, so the Department is not doing so. Moreover, there are numerous examples where the Department has rejected untimely filed submissions. For example, in Ukraine Hot-Rolled, the Department granted timely extension requests for questionnaire responses, but rejected three submissions that were received well past the established deadlines.[52] Similarly, in Wooden Bedroom Furniture LTFV, the Department rejected Section A and supplemental Section A questionnaire responses that parties did not file by their respective deadlines, noting:

> The Department's antidumping regulations provide that factual information solicited through the use of questionnaires must be submitted by the deadline stated in such questionnaires. By not submitting complete questionnaire responses in a timely manner, the respondents did not provide the Department with the information necessary to perform a separate-rates analysis. Furthermore, section 351.302(d) of the Department's regulations addresses untimely filed submissions and states that, unless an applicable time limit is extended, the Department will not consider or retain on the record untimely filed factual information. Otherwise, any party would be allowed to provide the Department with "information at the party's leisure and yet can expect the agency to review the information timely and issue a binding determination."[53]

As previously noted, the Department establishes deadlines to ensure that its ability to complete the proceeding is not jeopardized.[54] The CIT has long recognized the need to establish, and enforce, time limits for filing questionnaire responses, the purpose of which is to aid the Department in the administration of the dumping laws.[55] Further, the Federal Circuit in PSC VSMPO affirmed "Commerce's power to apply its own procedures for the timely resolution of antidumping reviews."[56]

Peak cites to Ukraine Hot-Rolled, Japan Glycine, Pasta from Italy and South Africa Hot-Rolled in support of its contention that it is the Department's longstanding practice to accept untimely filed documents if there is good cause for doing so. These cases are inapposite because the

[51] See 19 CFR 351.302(c) and Hyosung Corp. v. United States, Slip Op. 2011-34, 7-9 (CIT 2011) ("Commerce may, for good cause, extend the time limit established for submission of the requested information. See 19 CFR 351.302(b). However, in order for Commerce to grant an extension of time, the party requesting an extension must do so in writing before the applicable time limit expires, including reasons for its request. See 19 CFR 351.302(c)").
[52] See Ukraine Hot-Rolled and accompanying IDM at Comment 5.
[53] See Wooden Bedroom Furniture LTFV and accompanying IDM at Comment 82 (internal citations omitted).
[54] See Preliminary Results, 77 FR at 46702.
[55] See e.g. Nippon Steel, 118 F. Supp. 2d at 1377; and Seattle Marine Fishing Supply, et al. v. United States, 679 F. Supp. 1119, 1128 (CIT 1998) (it was not unreasonable for the Department to refuse to accept untimely filed responses, where "the record displays the ITA followed statutory procedure" and the respondent "was afforded its chance to respond to the questionnaires, which it failed to do.")
[56] See PSC VSMPO 688 F.3d at 761.

Department has determined that good cause does not exist to extend the deadline in this case. For example, in Ukraine Hot-Rolled, the Department exercised its discretion by accepting information that was inadvertently left out of a supplemental response that was timely filed three days earlier. The Department found that the fact that a great deal of information was submitted on time and only a small amount was inadvertently left out of the submission constituted good cause to extend the deadline in that case. Further, the Department allowed the factual information to be placed on the record because it did not believe it to be unreasonable to consider in light of the deadlines for completing that investigation.[57] These facts are not present in the instant administrative review.

Additionally, in Pasta from Italy, which Peak cites to support its claim that the Department has a practice of extending deadlines when requests are never submitted at all, the Department used its discretion to accept a rebuttal brief that was inadvertently filed two days late because the agency found in that case that respondent had properly explained the circumstances of its late rebuttal brief submission.[58] In this case, Peak only provided reasons why it couldn't file the entire response on time. However, Peak did not provide any reason why its extension request was late to justify the Department's acceptance of the SAQR past the established deadline. Moreover, Japan Glycine similarly fails to demonstrate a longstanding practice of accepting submissions after established deadlines. In Japan Glycine, the Department provided a respondent without counsel, who was not familiar with the Department's filing requirements, the opportunity to correct filing deficiencies (i.e., not properly marked, not served to parties on the service list, lacking certifications of completeness and accuracy).[59] In this instance, Peak has participated in previous reviews and is represented by counsel.[60] Moreover, Peak had received notice of the importance to timely file documents and to adhere to the established deadlines in this case.[61] Accordingly, the circumstances of Japan Glycine do not apply in this case and do not establish a Departmental practice of accepting submissions filed after the established deadline without good cause to extend the deadline.

Peak argues that in Grobest, the CIT ordered the Department to accept a submission filed after the relevant deadline and that, similar to Grobest, the administrative burden to review the SAQR does not out-weigh the injury inflicted upon Peak. We note that unlike in Grobest, here Peak was advised on several occasions of the Department's requirements regarding established deadlines. Moreover, the Federal Circuit has recently affirmed the Department's discretion to determine its own procedures for timely resolution of its proceedings.[62] In PSC VSMPO, the CIT had ordered the Department on remand to consider for its determination an untimely filed affidavit that the agency had originally declined to consider. The Federal Circuit reversed, and held that the CIT "improperly intruded upon the Department's power to apply its own procedures

[57] See Ukraine Hot-Rolled and accompanying IDM at Comment 5.
[58] See Pasta from Italy and accompanying IDM at 1 footnote 1.
[59] See Japan Glycine, 72 FR at 52350; see also Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 77 FR 46044, 46050 (August 2, 2012).
[60] See Administrative Review of Honey from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review, In Part, 75 FR 24880, 24881 (May 6, 2010); see also PRC Honey AR9 Final, 77 FR at 34344.
[61] See April 9 Extension Memo and Peak Supplemental Section A at 2.
[62] See PSC VSMPO, 688 F.3d at 758.

for the timely resolution of antidumping reviews."[63] The Court further explained that "{t}he role of judicial review is limited to determining whether the record is adequate to support the administrative action. A court cannot set aside application of a proper administrative procedure…"[64]

Peak argues that because the Department had not extended the deadline for the preliminary and final results, there were potentially several months remaining in the review, and it is therefore an abuse of discretion to not accept Peak's SAQR. The Federal Circuit's ruling affirms the Department's administrative procedures, specifically the Department's regulations establishing deadlines, when conducting antidumping duty cases. It is not an abuse of discretion for the Department to enforce these regulatory procedures and deadlines, particularly when a party fails to show good cause to extend a deadline.

We disagree with Peak that the rejection of its SAQR was unfair or unreasonable and that the Department should accept Peak's SAQR and resume the review. As was the case for the plaintiff in PSC VSMPO, Peak was afforded "the right to notice and a meaningful opportunity to be heard."[65] As stated above, Peak was well aware of the established deadlines in this case. The Department had advised Peak of the importance of submitting its documents in a timely manner and it was aware of the consequences of not doing so.[66] Peak was not denied the opportunity to be heard in this case and was presented opportunities to comply with the Department's regulations. Accordingly, the Department properly rejected Peak's SAQR.

**Comment 3: Peak's Separate Rate Status**

*Peak's Argument*:

- Peak should not be denied a separate rate, because the record contains evidence demonstrating it is eligible for a separate rate. Further, the Department did not explain what information is missing to determine an absence of government control.
- The Department did not distinguish the facts and holdings of Grobest from the present case to justify a departure from the Grobest precedent.

*Petitioners' Argument*:

- The Department properly found that Peak is not eligible for a separate rate because the record lacks Peak's complete Section A response.
- The Department clearly distinguished this case from the facts in Grobest.

**Department's Position:**

The Department disagrees with Peak that the evidence on the record demonstrates its eligibility for a separate rate. In the Preliminary Results, the Department stated that because we issued

[63] See id., 688 F.3d at 761.
[64] See id.
[65] See id., 688 F.3d at 761-762 (citations omitted).
[66] See April 9 Extension Memo and Peak Supplemental Section A at 2.

questions regarding Peak's separate rate status,[67] to which Peak did not timely respond, Peak did not establish its eligibility in this segment of the proceeding for a separate rate. Peak argues that the Department did not explain what information is missing from the record in order to make a determination as to the absence of both de jure and de facto government control over Peak. This is not the case. As explained in the Preliminary Results, because Peak did not timely file its SAQR, the Department did not have information on Peak's shareholders, management, accounting practices, corporate structure and affiliations. Further, the Department had also requested information regarding whether several organizations to which Peak belonged were state-sponsored, controlled Peak's business operations or coordinated Peak's export activities.[68] All this information is necessary before the Department can make a determination with respect to Peak's eligibility for a separate rate because the Department's separate rate analysis requires that the respondent demonstrate an absence of de jure and de facto governmental control over its export activities.[69] This analysis focuses on controls over the decision-making process on export-related investment, pricing, and output decisions at the individual firm level[70] and requires a thorough understanding of the company's ownership, affiliations, and structure. In short, because Peak did not respond to the Department's supplemental Section A questionnaire in a timely manner, the record lacks a complete Section A response from Peak detailing the information that the Department deems necessary to making a separate rate determination.

Contrary to Peak's contention, the Department distinguished this case from Grobest in the Preliminary Results. The Department explained that in Grobest, the CIT held that rejecting a separate rate certification ("SRC") was an abuse of discretion because, inter alia, the certification had been submitted early in the proceeding, the respondent was diligent in attempting to correct the error, and the burden on the agency would have been minimal.[71] We explained that in Grobest, the CIT noted that the facts of that case suggested that the administrative burden of reviewing the SRC rejected by the Department would not have been great because the Department had granted the respondent company separate-rate status in the preceding three administrative reviews without needing to conduct a separate-rate analysis.[72] The CIT in Grobest framed the issue as whether the interests of accuracy and fairness outweigh the Department's administrative burden and interest in finality.[73] In Grobest, the CIT found that, but for the untimeliness of its submission, the respondent would likely have received a separate rate in the segment in question, with minimal administrative burden imposed upon the Department, and, as a result of its rejected submission, was likely assigned an inaccurate and disproportionate margin.[74] However, Peak's situation is different from that of the respondent company in Grobest.

---

[67] The supplemental questionnaire to which Peak failed to respond requested explanations and clarifying information regarding its quantity and value, separate rate status, structure and affiliations, sales process, accounting and financial practices, and merchandising. See Peak Supplemental Section A at 4-6.
[68] See id. at question 4.
[69] See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China, 61 FR 19026, 19027 (April 30, 1996).
[70] See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine, 62 FR 61754, 61757 (November 19, 1997); see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 61276, 61279 (November 17, 1997).
[71] See Preliminary Results, 77 FR at 46700.
[72] See id., 77 FR at 46700, 701.
[73] See id.
[74] See id., 77 FR at 46701.

First, Peak's U.S. sales have been found to be non-bona fide in two prior reviews, and Peak's supplemental Section A questionnaire raised issues relevant to Peak's bona fide analysis.[75] This contrasts with the respondent company in Grobest, which had received separate rate status in the preceding three administrative reviews without needing to conduct a separate rate analysis.[76] Second, the bona fide analysis for Peak would have required a significant amount of time and effort to gather the necessary information, consider the facts of the record, and provide interested parties with an appropriate period for comments and rebuttal comments.[77] This contrasts with the Grobest respondent company's SRC, which would have required minimal administrative burden on the Department for evaluation.[78] Moreover, Peak's late SAQR was submitted less than four months before the Department's preliminary results, whereas in Grobest the late submission was submitted more than seven months before the preliminary results.[79] Thus, in Grobest, the Department could have more easily considered the respondent's untimely filed SRC without it being a significant drain on resources, because the respondent had repeatedly been granted a separate rate in prior segments. By contrast, in this case, the Department must undertake an extensive examination of Peak's SAQR, section C and D questionnaire responses to determine whether to find Peak's U.S. sales are bona fide.

Notwithstanding the clear distinction between this case and Grobest, the case law regarding the Department's authority to reject untimely filed submissions, as noted above in Comment 2, has developed such that the CIT's ruling in Grobest is superseded by the Federal Circuit's ruling in PSC VSMPO. In PSC VSMPO, the Federal Circuit noted that the CIT "erred when, in spite of this determination {that the information was untimely submitted}, it ordered Commerce to admit the affidavit into the record because of circumstances the court described as 'not typical.'"[80] The Federal Circuit went on to state that it viewed the CIT's decision to remand the Department's decision to reject an untimely filed document as an improper intrusion into the Department's power to apply its own procedures for the timely resolution of antidumping reviews.[81] Thus, based on the distinction between this case and Grobest, as well as subsequent support from the Federal Circuit in PSC VSMPO, it was within the Department's authority to reject Peak's untimely submissions in this review under the conditions described herein.

Accordingly, because the record lacks a complete Section A response from Peak, the Department continues to find that Peak did not establish its eligibility for a separate rate in this segment of the proceeding and we continue to find Peak to be part of the PRC-wide entity.

**Comment 4: Whether the Adverse Inference is Appropriate**

*Peaks' Argument*:

- The Department's application of AFA to Peak is improper, unfair and not in accordance with law because the Department did not demonstrate that Peak failed to cooperate to the best of its ability.

[75] See id.
[76] See id., 77 FR at 46700.
[77] See id., 77 FR at 46701.
[78] See id.
[79] See Grobest 815 F. Supp. 2d at 1365.
[80] See PSC VSMPO, 688 F.3d at 761.
[81] See id.

- The Department's adverse inference was improper in light of the precedent established by Nippon Steel.[82]

*Petitioners' Argument*:

- Consistent with the Department's longstanding practice, the Department properly relied upon adverse facts available ("AFA") for the PRC-wide entity, which includes Peak, because the PRC-wide entity withheld requested information, failed to provide the information in a timely manner, and significantly impeded this proceeding when Peak failed to timely submit its SAQR.
- Contrary to Peak's claims, the Department's application of AFA to Peak is fair, equitable, and favors timely disclosure and cooperation because Peak was well aware throughout this proceeding of the applicable deadlines and had the opportunity to present requisite information.

**Department's Position**

The Department continues to find that application of AFA is appropriate for Peak in this segment of the proceeding. In the Preliminary Results, the Department stated that the "PRC-wide entity, which includes Peak due to its failure to respond to all of the Department's questionnaires, has failed to cooperate to the best of its ability in providing the requested information. Accordingly, pursuant to sections 776(a)(2)(A), (B), and (C) and section 776(b) of the Act, we find it appropriate to apply a margin to the PRC-wide entity based entirely on the facts available, and to apply an adverse inference."[83]

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 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

[82] Peak cites Nippon Steel, 118 F. Supp. 2d at 1377.
[83] See Preliminary Results, 77 FR at 46702.

requests for information.[84] 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.[85]

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.[86] 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."[87]

We disagree with Peak that the Department did not did not explain how Peak failed to cooperate by not acting to the best of its ability. As stated above and in the Preliminary Results, Peak was fully aware of the established deadlines in this case, advised of the importance of meeting deadlines and the possible consequences should it not meet those deadlines.[88] Peak's counsel has practiced before the Department in multiple segments of this proceeding, as well as other proceedings, and Peak itself requested that the Department initiate an administrative review of this Order.[89] Further, as noted above, the Department had previously advised Peak to file any future extension requests as soon as it suspects additional time may be necessary so as to ensure that the Department is fully able to consider such requests.[90] Accordingly, because Peak was aware of its responsibilities to meet the established deadline, but nonetheless failed to submit its documents in a timely manner, the Department, consistent with its practice, determined that Peak failed to cooperate by not acting to the best of its ability to comply with a request for information.[91]

---

[84] 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").
[85] See 776(b) of the Act.
[86] See Nippon Steel Corp. v. United States, 118 F. Supp. 2d 1366, 1382 (Ct. Int'l Trade 2000) ("Nippon Steel"), aff'd Nippon Steel Corp. v. United States, 337 F.3d 1373 (Fed. Cir. 2003) (where the Federal Circuit affirmed Commerce's determination that respondent did not cooperate to the best of its abilities).
[87] 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).
[88] See Preliminary Results, 77 FR at 46099-46701, April 9 Extension Memo and Peak Supplemental Section A at 2.
[89] See Letter from Peak to the Secretary of Commerce "Honey from the People's Republic of China Administrative Review" (December 20, 2011) at 1.
[90] See April 9 Extension Memo.
[91] See Preliminary Results, 77 FR at 46702; see also, e.g., Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 69546 (December 1, 2006) and accompanying IDM at Comment 1, and Certain Lined Paper Products From the People's Republic of China: Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review, 77 FR 61390, 61392 (October 9, 2012) ("Paper Products from China").

Further, we disagree with Peak's interpretation of Nippon Steel to demonstrate that the Department failed to explain the basis for adverse inference aside from Peak's untimely submission of its SAQR. Selectively quoting Nippon Steel, Peak argues that "{more is required…before an adverse inference may be drawn"[92] and that an untimely questionnaire submission does not equal a failure to cooperate. Further, Peak argues, citing Nippon Steel, the information contained in its SAQR, though late, was nevertheless available before verification and that the accuracy of the information could have been checked, and therefore, adverse inference was improper.[93] In Nippon Steel, the CIT stated:

> At a minimum, Commerce must find that a respondent could comply, or would have had the capability of complying if it knowingly did not place itself in a condition where it could not comply. Commerce must also find either a willful decision not to comply or behavior below the standard for a reasonable respondent. Insufficient attention to statutory duties under the unfair trade laws is sufficient to warrant adverse treatment. It implies an unwillingness to comply or reckless disregard of compliance standards. Commerce must be in a position to compel meaningful attention to and compliance with its requests.[94]

Here, Peak could have complied if it had submitted its SAQR by the established deadline or made a timely extension request. The Department finds that the standard for a "reasonable respondent" includes filing requests for extension before the deadline set by the Department. Instead, by failing to submit either before the established deadline, Peak placed itself in a position in which it could not comply with the deadline. Peak's failure to submit its SAQR is "reckless disregard for compliance standards" as described in Nippon Steel.[95] Further, while Peak may have provided information in past reviews in a timely matter, Peak has failed to do so in this segment. Therefore, Peak's failure to submit its SAQR by the deadline led to the absence of record evidence to support Peak's separate rate status, impeded the Department's ability to determine whether Peak's U.S. sales were bona fide, and demonstrated Peak's failure to cooperate to the best of its ability, which warrants AFA.[96]

Further, contrary to Peak's assertions that the application of AFA to Peak is improper, unfair and not in accordance with law, the Department's application of AFA to Peak is fair, equitable and has favored disclosure and cooperation.[97] Peak's right to fairness and equitable treatment entitled it "the right to notice and a meaningful opportunity to be heard."[98] As stated above, Peak was aware throughout this review of the applicable deadlines and cannot claim to have been unaware that the Department might reject its untimely extension requests and untimely SAQR.[99] Peak had the opportunity to put forth its extension requests and SAQR, but failed to do so in a timely manner.[100] Thus, Peak was not deprived of due process or fairness.[101]

---

[92] See Nippon Steel, 118 F. Supp. 2d at 1377.
[93] See Peak's Case Brief at 19-20
[94] See Nippon Steel, 118 F. Supp. 2d at 1379 (citations omitted) (emphasis added).
[95] See Nippon Steel, 118 F. Supp. 2d at 1379.
[96] See, e.g., Paper Products from China, 77 FR at 61392.
[97] See Peak's Case Brief at 24.
[98] See PSC VSMPO, 688 F.3d at761-762, citing La Chance v. Erickson, 522 U.S. 262, 266 (1998).
[99] See PSC VSMPO, 688 F.3d at761-762.
[100] See id.

Therefore, for these final results, the Department continues to find application of AFA to the PRC-wide entity, which includes Peak, is supported by evidence on the record, the Department's practice and in accordance with section 776(b) of the Act.

**Comment 5: Whether AFA Rate is Appropriate**

*Peak's Argument:*

- The Department should not use an AFA rate calculated in the sixth administrative review of this proceeding because the there is no evidence on the record that this rate remains reliable or relevant.
- The Department is legally required to apply the most accurate rate possible.[102]

*Petitioners' Argument*:

- Consistent with its long-standing practice, the Department properly selected as the AFA rate the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated.[103]

**Department's Position:**

The Department properly selected as the AFA rate the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated. In the Preliminary Results, we selected a rate which was calculated for a respondent in the sixth administrative review as the adverse rate.[104]

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. To be considered corroborated, the Department must find the information has probative value, meaning that the information must be both reliable and relevant.[105] Secondary information is "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 {of the Act} concerning the subject merchandise."[106] Unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated margins. Thus, in an administrative review, if the

---

[101] See id.
[102] Peak cites e.g., Shakeproof Assembly Components Div. of Ill. Tool Works v. United States, 268 F.3d 1376, 1382 (Federal Circuit 2001).
[103] Petitioners cite Glycine From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 74 FR 15930 (April 8, 2009), unchanged in Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 41121 (August 14, 2009) ("China Glycine"); see also Fujian Lianfu Forestry Co. v. United States, 638 F. Supp. 2d 1325,1336 (CIT 2009) ("Fujian Lianfu").
[104] See Preliminary Results, 77 FR at 46703.
[105] See SAA at 870; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996) unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).
[106] See SAA, H.R. Doc. No. 103-316 at 870 (1994) and 19 CFR 351.308 (d).

Department chooses, as AFA, a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin.[107]

We disagree with Peak's contention that the AFA rate calculated in the sixth administrative review is unreasonable, given the fluctuations in sales prices, production and transportation costs, and market conditions since that rate was calculated and that it is unreasonable for the Department to rely on this rate without corroboration that such a rate is reliable, relevant or accurate. As stated above, the Department determined that Peak did not demonstrate its eligibility for a separate rate and is considered part of the PRC-wide entity. The Department is applying AFA to the PRC-wide entity, including Peak, because it has failed to cooperate to the best of its ability. In applying the AFA rate to the PRC-wide entity, which includes Peak, the Department corroborated the AFA rate to the extent practicable in accordance with section 776(c) of the Act, and found it to be both reliable and relevant.[108] With respect to reliability, the AFA rate used in this segment was calculated for Anhui Native Produce Import & Export Corporation ("Anhui Native"), a respondent during the sixth administrative review[109] and this calculated rate was applied to the PRC-wide entity in that review. The Department finds that this rate is reliable because it reflects the commercial reality of another respondent in the same industry. No evidence was presented in this review that called into question the reliability of the AFA rate.[110] The CIT has held that where the Department "has found the respondent part of the PRC-wide entity based on adverse inferences, Commerce need not corroborate the PRC-wide rate with respect to the information specific to that respondent because there is 'no requirement that the PRC-wide entity rate based on AFA relate specifically to the individual company.'"[111] Peak argues that the rate applied is improper because it "has nothing to do with Dongtai Peak's prices or production costs" during the current period.[112] However, the CIT has found that where a respondent is determined to be a part of the PRC-wide entity, the Department need not provide that respondent with a separate AFA rate.[113] The CIT and the Federal Circuit have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions, where this rate has been applied to an exporter in a prior segment.[114] Here, we find this rate to be relevant because it was applied to the PRC-wide entity in the sixth

---

[107] See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews, Final Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not To Revoke in Part, 69 FR 55581 (September 15, 2004), and accompanying IDM at Comment 18.

[108] See Preliminary Results, 77 FR at 46073; see also China Glycine, 74 FR at 41121 and Fujian Lianfu, 638 F. Supp. 2d at 1336 ("Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.").

[109] See Honey From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 796 (January 8, 2009) ("PRC Honey AR6").

[110] See Preliminary Results, 77 FR at 46703.

[111] See Watanabe Group v. United States, 33 Int'l Trade Rep. (BNA) 1012 (Ct. Int'l Trade Dec. 22, 2010) ("Watanabe Group") (citing Peer Bearing Co.-Changshan v. United States, 587 F. Supp. 2d 1319, 1327 (CIT 2008); Shandong Mach. Imp. & Exp. Co. v. United States, 31 Int'l Trade Rep. (BNA) 1612 (Ct. Int'l Trade 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)).

[112] See Peak's Case Brief at 23.

[113] See Watanabe Group, 33 Int'l Trade Rep. (BNA) 1012, at footnote 10.

[114] See, e.g., KYD, Inc. v United States, 607 F.3d 760, 766-767 (CAFC 2010) ("KYD"); see also NSK Ltd. v. United States, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (affirming a 73.55 percent total AFA rate, the highest available dumping margin calculated for a different respondent in the investigation).

and seventh administrative review.[115] While Peak argues that changing market conditions make the AFA rate inaccurate, it did not cite to any record evidence to support this assertion and there is no evidence on the record that supports it.

Additionally, in the Preliminary Results, the Department found this rate to be relevant because the AFA rate was assigned to the PRC-wide entity in a prior review which is based upon the calculated rate from Anhui Native's own questionnaire responses and accompanying data, and thus reflects the commercial reality of a competitor in the same industry.[116] Moreover, because the PRC-wide entity, which includes Peak, failed to cooperate to the best of its ability in this administrative review, the Department selected this AFA rate because its serves as an adequate deterrent in order to induce cooperation in the proceeding. The Federal Circuit held in KYD, that selecting the highest prior margin for an exporter and applying it to that exporter as AFA reflects "a common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the {responding party} knowing of the rule, would have produced *current* information showing the margin to be less."[117] Here, Peak did not produce current information in a timely manner, as noted above. On this basis, we find that selecting the highest calculated rate of this proceeding is sufficiently relevant to the commercial reality for the PRC-wide entity, which includes Peak. Furthermore, there is no information on the record of this review that demonstrates that this rate is uncharacteristic of the industry, or otherwise inappropriate for use as AFA. Based upon the foregoing, we determine this rate to be relevant.

Therefore, because the AFA rate is both reliable and relevant, we determine that it has probative value and is corroborated to the extent practicable, in accordance with section 776(c) of the Act. Therefore, we have assigned this rate as AFA to exports of the subject merchandise by the PRC-wide entity, which includes Peak.

[115] See Seventh Administrative Review of Honey from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind, In Part, 74 FR 68249, 68252 (December 23, 2009) ("PRC Honey AR7").
[116] See Preliminary Results, 77 FR at 46703; see also PRC Honey AR6 and PRC Honey AR7, unchanged in Administrative Review of Honey from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Intent to Rescind, In Part, 75 FR 24880 (May 6, 2010).
[117] See KYD, 607 F.3d at 766, citing Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1190 (Federal Circuit 1990).

**RECOMMENDATION**

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

AGREE_____ DISAGREE_____

_____
Paul Piquado
Assistant Secretary
for Import Administration

_____
Date