

Ad Hoc Shrimp Trade Action Committee v. United States
Court No. 11-00335 Slip Op. 12-145 (CIT November 30, 2012) and
Slip Op 13-4 (CIT January 9, 2013)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

A. SUMMARY

The Department of Commerce (“Department”) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“CIT” or the “Court”) in Ad Hoc Shrimp Trade Action Committee v. United States, Court No. 11-00335, Slip Op. 12-145 (CIT November 30, 2012) (“Remand Opinion and Order”) and the expanded scope of the remand order as granted in Ad Hoc Shrimp Trade Action Committee v. United States, Court No. 11-00335, Slip Op. 13-4 (CIT January 9, 2013) (“Expanded Scope Opinion and Order”). These final remand results concern the Administrative Review of Certain Frozen Warmwater Shrimp From the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 51940 (August 19, 2011), and accompanying Issues and Decision Memorandum (“PRC Shrimp AR5 Final”). In its Remand Opinion and Order, the CIT determined that “Commerce shall reconsider its primary surrogate country selection and either provide additional explanation, based on a reasonable reading of the record, or make an alternative primary surrogate selection that is supported by the record.”¹ In its Expanded Scope Opinion and Order, the CIT determined to “permit the agency to consider new evidence concerning the question of whether Hilltop International provided false or incomplete information regarding its affiliates in the course of the fifth administrative review (“AR5”) of this antidumping duty (“AD”) order.”²

¹ See Remand Opinion and Order, at 23.

² See Expanded Scope Opinion and Order, at 9.

As set forth in detail below, pursuant to the Court’s Remand Opinion and Order and Expanded Scope Opinion and Order, we have reconsidered our determination, taking into account record evidence obtained over the course of the subsequent sixth administrative review (“AR6”)³ of this proceeding, and determined that Hilltop International (“Hilltop”) provided false and incomplete information regarding its affiliates in AR5 of this proceeding. Because we cannot determine whether any other misrepresentations exist on the record with regard to Hilltop’s full universe of affiliates, corporate structure and sales process, or whether other information may be missing from the record, we are unable to rely upon any of Hilltop’s submissions in this segment. Accordingly, Hilltop has failed to rebut the presumption that it is part of the People’s Republic of China (“PRC”)-wide entity. Because the PRC-wide entity, which includes Hilltop, failed to cooperate by acting to the best of its ability, we are applying total adverse facts available (“AFA”) to the PRC-wide entity in these final results of redetermination. We are applying as AFA, an AD margin of 112.81 percent, which is the highest rate from any segment of the proceeding and the current PRC-wide rate. Further, because we have found Hilltop to be part of the PRC-wide entity, which is receiving total AFA, there are no calculated margins for this period of review (“POR”) and it is unnecessary to select a surrogate country in which to value a respondent’s factors of production (“FOP”). As such, the issue previously remanded in the Court’s Remand Opinion and Order regarding our primary surrogate country selection (and thereby the issues of the labor wage rate and North Korean import data) is rendered moot by the absence of any calculated rates based on surrogate values in this review.

³ See Administrative Review of Certain Frozen Warmwater Shrimp From the People’s Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 77 FR 53856 (September 4, 2012), and accompanying Issues and Decision Memorandum (“PRC Shrimp AR6 Final”).

B. BACKGROUND

On February 14, 2011, the Department published its preliminary results of this review, wherein we preliminarily found Hilltop, the sole mandatory respondent, to be affiliated with two PRC producers, three Taiwanese resellers and one U.S. importer, Ocean Duke Corporation (“Ocean Duke”).⁴ Further, the Department preliminarily found, based on a detailed affiliation analysis and the resultant determination that a significant potential for manipulation of price or production existed, that Hilltop and its three Taiwanese affiliated resellers should be treated as a single entity.⁵

On August 19, 2011, the Department published PRC Shrimp AR5 Final wherein we finalized Hilltop’s affiliation and single entity determination and assigned Hilltop an AD margin of 0.04 percent (de minimis).⁶ Further, the Department assigned Regal Integrated Marine Resources Co., Ltd. (“Regal”), the only separate-rate applicant in this review, its most recently calculated rate from a previous administrative review (“AR”), which was zero percent.⁷

On November 30, 2012, the CIT remanded to the Department its surrogate country decision (and deferred judgment on the issues of labor wage rate and North Korean import data) in PRC Shrimp AR5 Final.⁸ On December 6, 2012, the Department filed a motion to expand the scope of the remand in order to consider new information obtained in AR6 suggesting that Hilltop submitted false information regarding its affiliates in AR5.⁹ On January 9, 2013, the CIT granted our motion to expand the scope of the remand.¹⁰

⁴ See Certain Frozen Warmwater Shrimp From the People’s Republic of China: Preliminary Results and Preliminary Partial Rescission of Fifth Antidumping Duty Administrative Review, 76 FR 8338, 8339-8340 (February 14, 2011) (“PRC Shrimp AR5 Prelim”).

⁵ See id.

⁶ See PRC Shrimp AR5 Final, 76 FR at 51941-51942.

⁷ See PRC Shrimp AR5 Final, 76 FR at 51942.

⁸ See Remand Opinion and Order.

⁹ See Defendant’s Motion to Expand Scope of Remand, Ct. No. 11-335 (December 6, 2012).

¹⁰ See Expanded Scope Opinion and Order.

C. THE DEPARTMENT'S AUTHORITY TO RECONSIDER THE FINAL RESULTS

The Department has the inherent authority to cleanse its proceedings of potential fraud.¹¹ Where new evidence indicating possible fraud or misrepresentation comes to light after the completion of a proceeding, the Department may consider whether that information affected its determination.¹² In this case, new evidence came to light during the subsequent AR6 indicating possible misrepresentations by Hilltop during AR5. Based on this newly discovered evidence, the Department finds it appropriate to reconsider the final results of AR5 to determine whether and to what extent this evidence affects its findings.

D. FINAL RESULTS OF REDETERMINATION

1. INTRODUCTION

Yelin Enterprise Co. Hong Kong ("Yelin") was a mandatory respondent in the PRC shrimp investigation¹³ and PRC Shrimp AR1.¹⁴ In the PRC Shrimp LTFV Final, Yelin received a margin of 82.27 percent.¹⁵ In PRC Shrimp AR1, which covered the POR from July 14, 2004, through January 31, 2006, and was published in September of 2007, Yelin received a de minimis

¹¹ See Tokyo Kikai Seisakusho Ltd. v. United States, 529 F.3d 1352, 1360-61 (Fed. Cir. 2008) ("TKS") (citing Elkem Metals, Inc. v. United States, 193 F. Supp. 2d 1314, 1321 (CIT 2002)).

¹² See id.; see, e.g., Home Prods. Int'l v. United States, 633 F.3d 1369, 1378 (Fed. Cir. 2011) ("Home Products").

¹³ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China, 69 FR 70997 (December 8, 2004) ("PRC Shrimp LTFV Final or "LTFV Investigation"); see also Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China, 70 FR 5149 (February 1, 2005).

¹⁴ See Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 52049 (September 12, 2007) ("PRC Shrimp AR1").

¹⁵ We note that while Yelin's LTFV Investigation margin was revised on May 24, 2011, pursuant to court decision, the preliminary rate of 98.34 percent and the final rate of 82.27 percent were in effect at the time of Yelin's entries during the first administrative review ("AR1") POR. See Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China, 69 FR 42654 (July 16, 2004) ("PRC Shrimp LTFV Prelim"), unchanged in PRC Shrimp LTFV Final.

margin.¹⁶ On June 18, 2007, the Department published the final results of a changed circumstance review and found Hilltop to be the successor-in-interest to Yelin.¹⁷

On March 2, 2012, the Department published the AR6 Preliminary Results, wherein we calculated a zero percent margin for Hilltop and preliminarily stated our intent to revoke Hilltop from the Order,¹⁸ based on Hilltop's request for company-specific revocation pursuant to 19 CFR 351.222(b)(2).¹⁹ The Department also preliminarily granted Hilltop's request for company-specific revocation, covering the period for the fourth AR ("AR4"), AR5, and AR6. Subsequent to the AR6 Preliminary Results, on March 12, 2012, the Ad Hoc Shrimp Trade Action Committee ("Petitioner") submitted information concerning recent convictions of entities/persons affiliated with Hilltop and allegations of a transshipment scheme of shrimp through the Kingdom of Cambodia ("Cambodia") in AR1 and the second AR ("AR2") of this proceeding, involving Hilltop, Hilltop's U.S. affiliate Ocean Duke, and Ocean King (Cambodia) Co., Ltd. ("Ocean King"), a Cambodian company.²⁰

On September 4, 2012, the Department published the PRC Shrimp AR6 Final, wherein we determined that the entirety of Hilltop's submissions was unusable and, therefore, Hilltop

¹⁶ See PRC Shrimp AR1, 72 FR at 52052.

¹⁷ See Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results of Changed Circumstances Review, 72 FR 33447 (June 18, 2007) ("Hilltop CCR"). We note that the final results of this changed circumstances review is currently being reconsidered in light of the AR6 findings. See Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Preliminary Reconsideration of Changed Circumstances Review, 78 FR 13324 (February 27, 2013), and accompanying Preliminary Reconsideration Memorandum ("Hilltop CCR Preliminary Reconsideration").

¹⁸ See Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision, 76 FR 23277 (April 26, 2011).

¹⁹ See Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results, Partial Rescission, Extension of Time Limits for the Final Results, and Intent To Revoke, in Part, of the Sixth Antidumping Duty Administrative Review, 77 FR 12801, 12804 (March 2, 2012) ("AR6 Preliminary Results").

²⁰ See Memorandum to the File from Kabir Archuleta, International Trade Analyst, Office 9, "Placing Public Documents on the Record of the Fifth Administrative Review" (February 14, 2013) ("Public Documents to Record of AR5") "Certain Frozen Warmwater Shrimp from China: Comments On the Department's Preliminary Determination to Grant Hilltops's Request for Company-Specific Revocation Pursuant to 19 CFR 351.222(b)(2) and Comments in Anticipation of Hilltop's Forthcoming Verification" (March 12, 2012) ("Petitioner's March 12 Submission").

was not eligible for a separate rate and would be considered part of the PRC-wide entity.²¹ This determination was based on the finding that Hilltop had a Cambodian affiliate, Ocean King, from AR1 through most of AR6, which Hilltop repeatedly failed to disclose to the Department. The Department determined that Hilltop impeded AR6 by concealing and repeatedly denying the existence of any affiliation with Ocean King, and only when irrefutable evidence of the affiliation was placed on the record did Hilltop acknowledge the five-year affiliation.²² Based on the evidence, the Department also denied Hilltop's request for company-specific revocation from the Order.

2. ANALYSIS OF EVIDENCE ON THE RECORD

a. AR6 Allegations and Hilltop's Response

As noted above, Petitioner's March 12 Submission contained allegations of a transshipment scheme of shrimp in AR1 and AR2 of this Order, involving Yelin, Ocean Duke, and Ocean King, a Cambodian company. These allegations were largely based on documentation released in conjunction with a federal investigation of Duke Lin, president and part owner of Ocean Duke,²³ which was conducted over a five-year period and involved multiple federal agencies and resulted in a plea agreement on charges of mislabeling fish fillets.²⁴ The documentation included internal emails dated in 2004 and 2005 between Duke Lin and To Kam Keung (a.k.a. Peter To), Hilltop's General Manager and part owner,²⁵ indicating that the companies were in the process of establishing a Cambodian affiliate to be named Ocean King,

²¹ See PRC Shrimp AR6 Final.

²² See Memorandum to the File from Kabir Archuleta, International Trade Analyst, Office 9, "Placing Documents on the Record of the Fifth Administrative Review" (February 14, 2013) ("BPI Documents to Record of AR5") "Hilltop's Response to June 1, 2012 Supplemental Questionnaire" ("Hilltop Seventh Supplemental Response") at 2.

²³ See Petitioner's March 12 Submission, at Exhibit 1 ("Sentencing Report") at 2.

²⁴ See Sentencing Report.

²⁵ See Sentencing Report, at 3; BPI Documents to Record of AR5 "Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Application of Adverse Facts Available to Hilltop International" ("Hilltop AR6 AFA Memorandum"), at 4.

that they had shipped containers of shrimp from the Socialist Republic of Vietnam (“Vietnam”) to Cambodia for repackaging and relabeling, and that they were to ensure there was no paper trail between the Cambodian factory’s supplier and Hilltop.²⁶ The documentation also included import data showing that between May 2004 and July 2005 Ocean Duke imported over 15 million pounds of shrimp from Cambodia, including significant quantities from Ocean King.²⁷ However, official government production data indicated that Cambodia produced less than 400 thousand pounds of shrimp during all of 2004 and 2005.²⁸

In its comments regarding U.S. Customs and Border Protection (“CBP”) import data released by the Department in AR6, Hilltop stated in two submissions that it was not affiliated with Ocean King and that “neither the company, nor its owners or officers, invested any funds in Ocean King.”²⁹

On June 1, 2012, in an attempt to discern the reliability of the allegations being made against Hilltop and to provide Hilltop an opportunity to demonstrate the inaccuracy of the allegations, the Department issued a detailed supplemental questionnaire requesting further explanation of the record evidence.³⁰ On June 15, 2012, Hilltop submitted a partial response in which it declined to provide responses to the majority of the requested information related to prior reviews.³¹ Additionally, in its partial response, Hilltop stated the following:

²⁶ See Sentencing Report, at Attachments 19, 14 and 20, respectively.

²⁷ See Sentencing Report, at 22 and Attachments 9 and 10.

²⁸ See Sentencing Report, at 22-23 and Attachments 17 and 18.

²⁹ See BPI Documents to Record of AR5 “Hilltop’s Response to CBP Import Data” at 2 n. 1; BPI Documents to Record of AR5 “Hilltop’s Reply to Petitioners’ Response to CBP Import Data” (“Hilltop CBP Data Rebuttal”) at 6.

³⁰ See Public Documents to Record of AR5 “Sixth Supplemental Questionnaire” (“Hilltop AR6 Sixth Supplemental Questionnaire”).

³¹ See BPI Documents to Record of AR5 “Hilltop’s Response to June 1, 2012 Supplemental Questionnaire” (“Hilltop AR6 Sixth Supplemental Response”).

- “During the period from February 1, 2008 through January 31, 2011, Hilltop and/or Ocean Duke, and/or any individuals affiliated with Hilltop and/or Ocean Duke, had no Cambodian affiliate or Cambodian affiliates.”³²
- “Ocean Duke and/or Yelin/Hilltop had no affiliation or business dealings with Ocean King (Cambodia) on or after February 1, 2008.”³³
- “Exhibit Two contains a chart showing all companies and/or entities in which Duke Lin and Peter To owned shares and/or held management positions, from February 1, 2008 to the present.” The chart at Exhibit 2 did not list Ocean King.³⁴

On July 19, 2012, the Department released public registration documents for Ocean King that identified To Kam Keung, Hilltop’s general manager and part owner, as a board member and 35 percent shareholder beginning in July 2005 and ending in September 2010.³⁵ We also sent Hilltop a supplemental questionnaire requesting again that Hilltop provide information regarding its affiliations and commercial behavior, as well as information regarding its prior statements that it was not affiliated with Ocean King.³⁶ Hilltop continued to refuse to provide the requested information regarding its activities prior to the AR4 – AR6 revocation period, but conceded that an affiliation existed with Ocean King through September 2010.³⁷ During AR6, Hilltop was notified on at least four occasions that the Department would use facts otherwise available (“FA”), and may be required to use an adverse inference in conducting its analysis, if

³² See *id.*, at 12.

³³ See *id.*, at 14.

³⁴ See *id.*, at 14 and Exhibit 2.

³⁵ See Public Documents to Record of AR5 “Public Registration Documents for Ocean King (Cambodia) Co., Ltd.” (“Ocean King Registration Documents”).

³⁶ See Public Documents to Record of AR5 “Seventh Supplemental Questionnaire” (“Hilltop AR6 Seventh Supplemental Questionnaire”).

³⁷ See BPI Documents to Record of AR5 “Hilltop’s Seventh Supplemental Questionnaire Response” (“Hilltop AR6 Seventh Supplemental Response”), at 2.

Hilltop failed to provide the requested information.³⁸ Hilltop's refusal to provide information requested by the Department regarding the allegations raised by Petitioner limited the Department's ability to investigate the relevant evidence as it pertained to AR6 and Hilltop's request for revocation.

b. Summary of AR6 Findings

Hilltop's pattern of trade over the life of this Order based on the AR6 record evidence indicates the following:

- In 2007, Hilltop was found to be the successor-in-interest to Yelin in a changed circumstances review³⁹ that is now under reconsideration.⁴⁰ Yelin received a preliminary rate of 98.34 percent in the PRC Shrimp LTFV Prelim⁴¹ in July 2004 and Ocean Duke's imports from the PRC subsequently plummeted.⁴²
- At the same time that Ocean Duke's imports from the PRC were reduced to virtually zero, Ocean Duke's imports from Cambodia skyrocketed.⁴³
- Concurrent with the above-referenced shift in Ocean Duke's supply chain between 2004 and 2005, Yelin, in consultation with Ocean Duke, established a shrimp processing plant in Cambodia, discussed sending Vietnamese products⁴⁴ to Cambodia for processing and

³⁸ See Hilltop AR6 AFA Memorandum; Hilltop AR6 Sixth Supplemental Questionnaire, at 2-3; Hilltop AR6 Seventh Supplemental Questionnaire, at 2-3.

³⁹ See Hilltop CCR.

⁴⁰ See Public Documents to Record of AR5 "Certain Frozen Warmwater Shrimp from the People's Republic of China: Reopening the Record of Changed Circumstance Review ("CCR"); see also Hilltop CCR Preliminary Reconsideration.

⁴¹ See PRC Shrimp LTFV Prelim.

⁴² See Sentencing Report, at Attachments 9-10.

⁴³ See Sentencing Report, at Attachments 9-11.

⁴⁴ During this period, Vietnamese shrimp were also subject to AD proceedings.

repackaging,⁴⁵ and intentionally obscured the invoicing chain, possibly so as to mask the source of the shrimp.⁴⁶ Record evidence also confirms that Hilltop and Ocean Duke concealed the Ocean King affiliation from the Department beginning at AR1 verification, completely in AR5, and up through eight months of AR6.⁴⁷

- Between May 2004 and July 2005 Ocean Duke imported more than 6.8 million kilograms (“kg”) of shrimp with a declared country-of-origin Cambodia, a period during which Cambodia only produced 185,000 kgs of shrimp.⁴⁸ The true country-of-origin of these imports is necessarily in question and internal communications suggest at least some imports came from Vietnam.⁴⁹
- Yelin certified to having no shipments from the PRC in PRC Shrimp AR2,⁵⁰ a period in which it continued to receive imports from Cambodia.⁵¹

⁴⁵ See Sentencing Report, at Attachment 19 (“Ocean King Email”) (Wherein To Kam Keung wrote to Duke Lin: “I have discussed with Truong to get some good shrimp suppliers {fr}om Vietnam and send some raw material through the border in order to let the factory have something to do {af}ter grand open in July”); Sentencing Report, at Attachment 14 (In an email dated May 13, 2004, from a Yelin email address, the sender stated that they “are shipping some containers of {shrimp} from VN to Cambodia for repacking. really want to reuse all white cartons of Vietnam and stick MC labels in Cambodia...” On May 14, 2004, Roger Lin replied, with a cc to Duke Lin, “Please do NOT let them do this. They must print new master cartons for Cambodia origin products. Do NOT allow them to sticker over Product of Vietnam cartons. Thanks”).

⁴⁶ See Sentencing Report, at Attachment 20 (Wherein Duke Lin wrote to To Kam Keung “Cambodia Factory need set up PO to their Supplier also direct wire to their supplier, Yelin HK cannot have any Involve or any paper related!”).

⁴⁷ Compare Hilltop CBP Data Rebuttal, at Exhibit 2 page 4 and Exhibit 3 page 3; Hilltop AR6 Sixth Supplemental Response, at 12-14 and Exhibit 2; with Hilltop AR6 Seventh Supplemental Response, at 1.

⁴⁸ See Sentencing Report, at 5 and Attachment 18 (15 million pounds (“lbs”) x .453592).

⁴⁹ See Ocean King Email (Wherein To Kam Keung wrote to Duke Lin: “I have discussed with Truong to get some good shrimp suppliers {fr}om Vietnam and send some raw material through the border in order to let the factory have something to do {af}ter grand open in July”); Sentencing Report, at Attachment 14 (In an email dated May 13, 2004, from a Yelin email address, the sender stated that they “are shipping some containers of {shrimp} from VN to Cambodia for repacking. really want to reuse all white cartons of Vietnam and stick MC labels in Cambodia...” On May 14, 2004, Roger Lin replied, with a cc to Duke Lin, “Please do NOT let them do this. They must print new master cartons for Cambodia origin products. Do NOT allow them to sticker over Product of Vietnam cartons. Thanks”).

⁵⁰ See Certain Frozen Warmwater Shrimp from the People’s Republic of China: Rescission of the Second Administrative Review, 72 FR 61858 (November 1, 2007) (“PRC Shrimp AR2”).

⁵¹ See Sentencing Report, at Attachment 11.

- The de minimis margin calculated for Yelin in AR1, which published on September 12, 2007,⁵² and was a margin based on a period in which its PRC imports were severely curtailed,⁵³ had a significant effect on Yelin’s and Hilltop’s imports from the PRC.⁵⁴
- Because Hilltop’s request for review was withdrawn, its sales in the third AR (“AR3”) were not reviewed and the cash deposit rate established in AR1 was carried forward into AR4, the first period under consideration for revocation.
- While Hilltop had no entries of Cambodian shrimp during AR5, we note that Hilltop has indicated that it continued to sell shrimp from Cambodia into AR4.⁵⁵ This suggests that the massive amounts of shrimp it imported from Cambodia through May 2006⁵⁶ were sufficient to sustain its sales, and its customer base, through the 18-month period of AR1, the 12-month period of AR2, and the 12-month period of AR3.

c. Hilltop’s Representations Regarding Affiliations in AR5

In its initial Section A questionnaire response, Hilltop provided a list of shareholders and directors for each of its affiliates in the PRC, the United States and Taiwan.⁵⁷ Hilltop also included the shareholders of all extended affiliates, including third-country affiliates not involved in the processing or resale of subject merchandise.⁵⁸ Ocean King was not included in this list.

⁵² See Certain Frozen Warmwater Shrimp from the People’s Republic of China: Notice of Final Results and Rescission, In Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 52049 (September 12, 2007).

⁵³ See Sentencing Report, at Attachments 9-11.

⁵⁴ See Hilltop AR6 AFA Memorandum, at 9-10; and BPI Documents to Record of AR5 “Customs Data of U.S. Imports of Certain Frozen Warmwater Shrimp from the PRC for the Period 2/1/07 – 1/31/08” (July 6, 2012”).

⁵⁵ See Hilltop AR6 Seventh Supplemental Response, at 2.

⁵⁶ See Sentencing Report, at Attachment 11.

⁵⁷ See Letter from Hilltop to the Secretary of Commerce “Section A Response for Hilltop International in the Fifth Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China, Case No. A-570-893” (June 16, 2010) (“Hilltop AR5 SAQR”), at 4 and Exhibit A-2.

⁵⁸ See *id.*

In response to a request for a list of all third parties in which Hilltop or its owners, either collectively or individually, own five percent or more in stock,⁵⁹ Hilltop referred to the list of shareholders for all affiliated companies noted above and stated that “{n}one of the Hilltop Group companies or their individual owners own 5 percent or more in stock in any third parties.” Hilltop again failed to report its affiliation with Ocean King.⁶⁰

In a Supplemental Section A and C questionnaire, the Department noted that Hilltop’s initial Section A response listed certain third-country affiliates not involved in the processing or resale of subject merchandise but did not include a company that was reported as an affiliated company at the AR1 verification of Yelin. Hilltop responded that the company was inadvertently omitted from the affiliation chart in its initial Section A Response and submitted a revised affiliation chart.⁶¹

In a Supplemental Section A questionnaire response, Hilltop provided significant details regarding its affiliations and eligibility for a separate rate in this fifth review.⁶² Indeed, in anticipation of the affiliation analysis to be conducted prior to the issuance of the PRC Shrimp AR5 Prelim, the Department asked Hilltop a number of detailed questions regarding Hilltop’s suppliers, corporate structure, affiliations and separate-rate eligibility.⁶³ Of the 41 questions in that questionnaire, 28 questions specifically addressed the aforementioned issues of concern, and many of those questions contained multiple subparts. Nowhere in its 108-page response did

⁵⁹ See Hilltop AR5 SAQR, at 22.

⁶⁰ See Hilltop AR5 SAQR, at Exhibit A-2.

⁶¹ See Letter from Hilltop to the Secretary of Commerce “Hilltop’s Third Supplemental Section A and C Response in the Fifth Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China, Case No. A-570-893” (October 27, 2010) (“Hilltop AR5 SuppAC”), at 1 and Exhibit S3-1.

⁶² See Letter from Hilltop to the Secretary of Commerce “Hilltop’s Supplemental Section A Questionnaire Response in the Fifth Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China, Case No. A-570-893” (July 30, 2010) (“Hilltop AR5 SuppA”).

⁶³ See *id.*

Hilltop identify Ocean King.⁶⁴ To the contrary, Hilltop flatly denied that any of its managers held any positions in any other organizations during the POR,⁶⁵ a statement that is directly contradicted by the discovery that an affiliation with Ocean King existed for the entire duration of AR5.

d. Impact of Hilltop's Failure to Report its Affiliation with Ocean King

Because Hilltop concealed its relationship with Ocean King since its inception in 2005, the Department was not able to fully examine the impact this relationship may have had on the sale and production of subject merchandise, the implications it may have held for Hilltop's supply chain and movement of goods, or whether there were any additional undisclosed affiliations in this review and prior reviews, as the evidence suggests. The Department recently stated that "in order for the Department to use information in an AD/{countervailing duty} CVD proceeding, it needs to be verifiable, and information that contains a material misrepresentation or omission would not be verifiable."⁶⁶ Accordingly, the record with respect to Hilltop contains numerous instances of material misrepresentations and missing information and cannot be verified.

Further, because Hilltop failed to disclose its ownership of Ocean King during AR5, the Department was prevented by Hilltop from being able to fully investigate Hilltop's entries from Cambodia dating back to AR1 and AR2. As a result, we are unable to determine whether Hilltop had unreported entries that would have impacted the determined de minimis cash deposit rate, whether it actually had any entries of PRC-origin shrimp during AR2 in which we rescinded the

⁶⁴ See *id.*

⁶⁵ See Hilltop AR5 SuppA, at 6 ("Please state whether any of the {individuals who currently manage your company} held positions with any other firm, government entity, or industry organization and, if so, the position and the firm, government entity, or industry organization at which it was held." Hilltop responded that "{n}one of the {individuals who currently manage Hilltop} held positions with any other firm, government entity, or industry organization during the POR.")

⁶⁶ See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule, 76 FR 7491, 7496 (February 10, 2012) ("Certification Interim Final Rule").

review based in part on its no shipment certification, and whether we calculated an accurate margin in AR4 based on Hilltop's full universe of PRC-origin sales, which included sales of shrimp imported from Cambodia. In light of potential flaws in Hilltop's AR1 cash deposit rate, its AR2 certification of no shipments, and the questionable accuracy of its AR4 margin, we cannot determine that the quantities and gross unit prices reported by Hilltop in subsequent reviews, including AR5, are accurate and, thus, cannot rely on any of Hilltop's reported sales data.

In order to calculate an accurate dumping margin, the Department must determine whether affiliates⁶⁷ are involved in the sale or production of subject merchandise and whether a significant potential for manipulation of price, production, or export decisions exists such that collapsing the companies would be appropriate. This information is essential to the Department's determination of what sales and production information must be reported and whether to treat the respondent and its affiliate(s) as a single entity for purposes of the AD proceeding.⁶⁸ As noted above, Hilltop's failure to disclose its relationship with Ocean King resulted in a potentially inaccurate cash deposit rate in AR1 that persisted through subsequent reviews and provided the basis for Hilltop to enter merchandise free of ADs and thereby maintain its customer base through AR4 and AR5. As a result, the quantities and gross unit prices reported by Hilltop in AR5 are potentially distorted to the extent that they cannot be used for any purposes. Further, as discussed in more detail below, because Hilltop repeatedly made material misrepresentations and refused to provide information regarding its affiliations, we

⁶⁷ The statute defines affiliates as those that are in a "control" relationship with each other. The statutory definition of affiliates includes, among others, "(A) members of a family, including brothers,... (E) any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or share of any organization and such organization; and (F) two or more persons directly or indirectly controlling, or controlled by, or under common control with, any person." Section 771(33) of the Tariff Act of 1930, as amended ("the Act"); see also 19 CFR 351.102(b).

⁶⁸ See Hontex Enterprises v. United States, 342 F. Supp. 2d 1225, 1230-34 (CIT 2004); 19 CFR 351.401(f).

cannot rely on any of the information contained in Hilltop's Section A response, which details its affiliations, corporate structure and ownership. As noted above, in PRC Shrimp AR5 Final, we found Hilltop to be part of a single entity, which included affiliates in a third country that had extensive production facilities in the PRC.⁶⁹ While we noted that Hilltop's submitted information states that it is located in Hong Kong, it stated that its affiliated producers are located in the PRC. As we cannot rely on any of the information provided in Hilltop's section A questionnaire responses, we cannot determine Hilltop has met the criteria for a separate rate. Therefore, we are not granting a separate rate to Hilltop and, we find Hilltop to be part of the PRC-wide entity.

The Department finds that the information to construct an accurate and otherwise reliable margin is not available on the record with respect to Hilltop. Because the Department finds that necessary information is not on the record, and that Hilltop withheld information that has been requested, failed to submit information in a timely manner, significantly impeded this proceeding, and provided information that could not be verified, pursuant to sections 776(a)(1) and (2)(A), (B), (C) and (D) of the Act, the Department is using the FA. Further, we find that Hilltop's separate-rate information is no longer usable and Hilltop has failed to demonstrate its eligibility for a separate rate. Because the Department finds that the PRC-wide entity, which includes Hilltop, has failed to cooperate to the best of its ability by withholding necessary information, pursuant to section 776(b) of the Act, the Department has determined to use an adverse inference when applying FA in this review. Accordingly, we are applying total AFA to the PRC-wide entity, which includes Hilltop, in these final results.

⁶⁹ See PRC Shrimp AR5 Prelim, unchanged in PRC Shrimp AR5 Final.

e. Facts Otherwise Available

Section 776(a)(1) of the Act provides that the Department shall apply “facts otherwise available” if necessary information is not on the record. Because Hilltop submitted material misrepresentations with regard to its affiliations, and certified to the accuracy of such false information, we find that we cannot rely on any of the information submitted by Hilltop in this review. Consequently, we cannot rely on any of the information contained in Hilltop’s Section A response, which details its affiliations, corporate structure and ownership and, thus, are unable to reach a determination as to Hilltop’s eligibility for a rate separate from the PRC-wide entity. Notwithstanding that determination, we also find that Hilltop’s sales data are fatally undermined by the facts noted above. Specifically, because Hilltop benefitted from a zero cash deposit rate in AR1 and AR4, which were calculated on potentially false data and provided the basis for Hilltop to enter merchandise free of ADs throughout AR5 and thereby maintain its customer base, we cannot rely upon any of its quantities and gross unit prices reported in AR5.

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

We find that Hilltop withheld accurate information regarding its affiliation with Ocean King in AR5, and repeatedly withheld information regarding alleged transshipment activities and affiliations with other third parties that was requested by the Department in AR6, such that significant inaccuracies exist regarding Hilltop’s selling activities and affiliations during the AR5

POR. Hilltop's ultimate admission in AR6 that there was an affiliation with Ocean King throughout the entire AR5 POR, which Hilltop only disclosed once faced with conclusive evidence,⁷⁰ came 313 days after the Department had issued its final results in the review⁷¹ and 300 days after the complaint in this litigation was filed.⁷² Thus, Hilltop's admission to the Department came too late for the Department and interested parties to fully examine the impact this relationship may have had on the sale and production of subject merchandise in this AR5 and prior reviews. As noted above, in order for the Department to use information in an AD or CVD proceeding, it needs to be verifiable, and information that contains a material misrepresentation or omission would not be verifiable.⁷³ Accordingly, the record with respect to Hilltop contains numerous instances of material misrepresentations and missing information and cannot be verified.⁷⁴

We find the entirety of Hilltop's submissions to contain material misrepresentations and inaccuracies such that Hilltop significantly impeded this proceeding. The record indicates that Hilltop's failure to disclose its Cambodian affiliate in AR1 allowed it to ship massive amounts of shrimp, which record evidence demonstrates was highly unlikely to be of Cambodian origin, to the United States while avoiding the Department's scrutiny and ADs. This enabled Hilltop to maintain its U.S. customer base until the final results of AR1 were published, when it received a de minimis margin based on relatively few entries and was able to resume its shipments from the PRC with a zero cash deposit rate. Because Hilltop claimed to have no shipments in AR2, while products of suspect origin continued to be entered from Cambodia, and its request for review was

⁷⁰ See Hilltop AR6 Seventh Supplemental Response, at 2.

⁷¹ See PRC Shrimp AR5 Final.

⁷² See Ad Hoc Shrimp Trade Action Committee v. United States, Court No. 11-00335 (filed September 1, 2011).

⁷³ See Certification Interim Final Rule, 76 FR at 7496.

⁷⁴ See, e.g., Certain Lined Paper Products From the People's Republic of China: Notice of Final Results of the Antidumping Duty Administrative Review and Partial Rescission, 76 FR 23288 (April 26, 2011) and accompanying Issues and Decision Memorandum at Comment 2, affirmed in The Watanabe Group v. United States, 2010 CIT LEXIS 144, Slip. Op. 2010-139 (2010) ("Watanabe Group").

withdrawn in AR3, Hilltop's margin from AR1 was carried forward to AR4. Thus, the validity of the cash deposit rate under which Hilltop entered subject merchandise during the period on which its AR5 margin calculation was based⁷⁵ is called into question by the evidence on the record, the allegations that Hilltop refused to address and the certification of material misrepresentations submitted on the record. Because Hilltop refused to disclose its Cambodian affiliate in AR1 and beyond, and Hilltop continued to make sales of shrimp imported through Cambodia into AR4, we are unable to determine what the effects of an accurately calculated margin in AR1 would have had on the sales made during subsequent periods, including AR5. However, we find the record evidence sufficient to suggest that it would have been unlikely for Hilltop to make sales in the quantities and at the prices it was able to subsequent to AR1 had those sales been subjected to a higher cash deposit rate. Thus, we find that the reported quantities and gross unit prices for Hilltop's sales made during this review are rendered suspect, and the record of AR5 does not contain the information necessary to calculate an accurate margin for Hilltop and must be filled by FA.

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

Companion section 782(c)(2) of the Act similarly provides that the Department shall consider the

⁷⁵ Hilltop's AR1 zero percent cash deposit rate was in effect until it was followed by the zero percent cash deposit rate resulting from AR4, which became effective as of the publication date of the AR4 final results on August 13, 2010. This means that Hilltop's cash deposit for more than six months of the AR5 POR was based on the AR1 zero rate. See Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 49460 (August 13, 2010).

ability of the party submitting the information and shall provide such interested party assistance that is practicable.

Hilltop's failure to disclose its relationship with Ocean King was not a mere oversight or result of inaccurate record keeping and surely demonstrates that it impeded the proceeding by not disclosing the affiliation. During the AR1 verification, To Kam Keung had been a board member of Ocean King for one and a half years,⁷⁶ and Ocean Duke had imported vast quantities of shrimp from Ocean King.⁷⁷ Ocean King's documents of incorporation state that board members shall meet on a yearly basis indicating that, presuming the vast sales of shrimp sourced from Ocean King were insufficient, To Kam Keung would reasonably have been reminded of his substantial investment in the company on a yearly basis.⁷⁸ Moreover, during AR6, To Kam Keung was taking steps to divest himself of his investment in Ocean King, evidenced by his resignation as a board member in September 2010.⁷⁹ The record does not contain any reasonable explanation as to how To Kam Keung overlooked this material change in the affiliation structure of his own company. In fact, Hilltop's most substantive remarks regarding this oversight are relegated to examples of possible reasons: "Mr. To Kam Keung's prior statements on affiliation may have been in error (e.g., due to his lack of operational involvement with Ocean King **or for whatever reason**). . . ."⁸⁰ The Department afforded Hilltop numerous opportunities to recall its affiliation with and investment of \$350,000 in Ocean King, both during the AR5 and AR6 proceedings,⁸¹ but Hilltop instead continued to deny any involvement or investment in Ocean King until faced with undeniable evidence. Further, we note that To Kam Keung is the official

⁷⁶ See Ocean King Registration Documents, at Attachment 1, compare to Hilltop CBP Data Rebuttal, at Exhibit 2 and Exhibit 3.

⁷⁷ See Sentencing Report, at Exhibits 10 and 11.

⁷⁸ See Hilltop AR6 Seventh Supplemental Response, at Exhibit 1.

⁷⁹ See id.

⁸⁰ See Public Documents to Record of AR5 "Hilltop-Specific Issues Rebuttal Brief for Hilltop International," at 9 (emphasis added).

⁸¹ See Hilltop AR6 Seventh Supplemental Response, at Exhibit 1.

who signed each of Hilltop's certifications of accuracy in this review,⁸² a fact that further undermines the accuracy and reliability of every submission provided by Hilltop.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Because the fact that an affiliation existed between Hilltop and Ocean King throughout this POR was not revealed until 313 days after the publication of the Department's final results in this review, the Department was precluded from determining to what extent Hilltop's responses failed to comply with our requests for information and requesting further information in the form of supplemental questionnaires. Moreover, Hilltop never disclosed to the Department, until faced with evidence to the contrary during AR6, that it was affiliated with Ocean King, thereby suggesting that it never intended to disclose the relationship.

Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if (1)

⁸² See, e.g., certifications accompanying Hilltop AR5 SAQR; Hilltop AR5 SuppA; Hilltop AR5 SuppAC; Letter from Hilltop to the Secretary of Commerce "Section C Supplemental Questionnaire Response in the Fifth Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China, Case No. A-570-893" (August 25, 2010); Letter from Hilltop to the Secretary of Commerce "Hilltop's Second Supplemental Questionnaire Response in the Fifth Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China, Case No. A-570-893" (October 18, 2010); Letter from Hilltop to the Secretary of Commerce "Hilltop's Fourth Supplemental Response in the Fifth Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China, Case No. A-570-893" (November 17, 2010); Letter from Hilltop to the Secretary of Commerce "Hilltop's Fifth Supplemental Questionnaire Response in the Fifth Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China, Case No. A-570-893" (November 26, 2010).

the information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot be used, (4) the interested party demonstrated that it acted to the best of its ability in providing the information, and (5) the information can be used without undue difficulties. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties. Hilltop submitted information that cannot be verified and numerous submissions that now suffer the deficiencies of containing inaccurate or incomplete information. Further, Hilltop submitted unverifiable, incomplete information and did not demonstrate that it acted to the best of its ability to provide requested information. Most importantly, Hilltop's failure to disclose its relationship with Ocean King, dating all the way back to AR1, resulted in a potentially inaccurate cash deposit rate that persisted through to this POR and, consequently, distorted the sales and quantity data on the record such that it cannot be used.

Accordingly, we have determined that the record evidence that reflects Hilltop's affiliation with Ocean King, and its potential affiliations with additional entities/persons,⁸³ presents a high likelihood that Ocean Duke was allowed to evade paying the correct cash deposits and potentially evade paying the correct amount of antidumping duties required under section 731 of the Act. The failure to disclose necessary information during this review and AR6 regarding the affiliation with Ocean King undermines the credibility and reliability of Hilltop's data overall for AR5. Such actions undermine the integrity of the AD AR process and impede our ability to complete the AR, pursuant to section 751 of the Act. Further, by failing to disclose its relationship with Ocean King, Hilltop withheld information, failed to provide information in a

⁸³ See Hilltop AR6 Sixth Supplemental Questionnaire at questions 5d, 5e, and 9a-c (requesting information regarding Hilltop's affiliations with entities/persons noted in internal communications included in the Sentencing Report). Hilltop refused to respond to these questions in Hilltop AR6 Sixth Supplemental Response and Hilltop AR6 Seventh Supplemental Response.

timely manner, and provided information that could not be verified. Therefore, application of FA is warranted pursuant to sections 776(a)(2)(A),(B), (C), and (D) of the Act.

Because we determine that the entirety of Hilltop's information is unusable, including its separate-rate information, we find that Hilltop has failed to rebut the presumption that it is part of the PRC-wide entity. Finally, because the PRC-wide entity, which includes Hilltop, failed to cooperate to the best of its ability by withholding necessary information, application of AFA, pursuant to section 776(b) of the Act, is also warranted.

f. Use of Adverse Inferences

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the FA when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁸⁴

Furthermore, "affirmative evidence of bad faith, or willfulness, on the part of a respondent is not required before the Department may make an adverse inference."⁸⁵ The U.S. Court of Appeals for the Federal Circuit ("CAFC") has held that the "best of its ability" standard "requires the respondent to do the maximum it is able to do."⁸⁶ The CAFC further elaborated:

While the standard does not require perfection, and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping. It assumes that importers are familiar with the rules and regulations that apply to the import activities undertaken and requires that importers, to avoid a risk of an adverse inference determination in responding to Commerce's inquiries: (a) take reasonable steps to keep and maintain full and complete records documenting the information that a reasonable importer should anticipate being called upon to produce; (b) have familiarity with all of the

⁸⁴ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 103-316, at 870 (1994).

⁸⁵ See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997).

⁸⁶ See Nippon Steel Corporation v. United States, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

records it maintains in its possession, custody, or control; and (c) conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of the importers' ability to do so.⁸⁷

The record of this review clearly demonstrates that Hilltop provided misleading or inaccurate information regarding its affiliation with Ocean King in this review, prior reviews, and a subsequent review. Further, Hilltop's refusal to provide any explanation regarding its prior affiliations with certain people and entities that are referenced in the Sentencing Report raises questions regarding what other information is missing that could be relevant to the Department's proceeding.

For all of the reasons outlined above, the Department finds, pursuant to section 776(b) of the Act, the application of AFA is warranted as the Department has determined that Hilltop has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. Moreover, because the Department is unable to rely upon any of Hilltop's submitted information, we are unable to determine its eligibility for a separate rate and, thus, properly find it to be part of the PRC-wide entity. Accordingly, we are applying total AFA to the PRC-wide entity, which includes Hilltop, in these final results.

The application of AFA is necessary in this case because Hilltop has provided material misrepresentations and withheld information to the extent that the Department cannot rely upon any of Hilltop's submitted information to calculate an accurate dumping margin or to adequately determine Hilltop's ownership. Hilltop's failure to report at least one undisclosed affiliate and its refusal in AR6 to provide information regarding allegations of transshipment makes it impossible for the Department to be confident that its submissions do not contain additional material misrepresentations or, consequently, calculate normal value or U.S. price. Finally,

⁸⁷ See *id.*

Hilltop's refusal in AR6 to disclose its full universe of affiliated companies and provide information regarding its affiliations with other persons/entities calls into question Hilltop's ownership structure as reported in AR5, and, consequently, its eligibility for a separate rate in this review.

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

Section 776(c) of the Act requires that where the Department relies on secondary information, the Department must corroborate, to the extent practicable, a figure which it applies as AFA. To be considered corroborated, information must be found to be both reliable and relevant. In this review, we are applying as AFA the highest rate from any segment of this proceeding, which is the rate currently applicable to all exporters subject to the PRC-wide rate. We note that entries have been made in recent reviews under this rate.⁸⁸ The AFA rate in the current review (i.e., the PRC-wide rate of 112.81 percent) represents a rate calculated in the petition in the LTFV Investigation which was

⁸⁸ See Fourth Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results, Preliminary Partial Rescission of Antidumping Duty Administrative Review and Intent Not To Revoke, In Part, 75 FR 11855, 11859 (March 12, 2010) ("Therefore, the Department preliminarily determines that there were exports of merchandise under review from PRC exporters that did not demonstrate their eligibility for separate rate status."); unchanged in Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 49460 (August 13, 2010).

subjected to Department analysis.⁸⁹ Furthermore, the calculation of this margin was subject to comment from interested parties in the proceeding after this margin was selected in calculating the rate for the PRC-wide entity in PRC Shrimp LTFV Prelim.⁹⁰ This has been the rate applicable to the PRC-wide entity since the investigation. As there is no information on the record of this review that demonstrates that this rate is not appropriate for use as AFA, we determine that this rate continues to have relevance.⁹¹

3. EFFECTS OF OUR FINDING ON THE ORIGINAL REMAND ORDER

In the Remand Order and Opinion, the Court directed the Department to reconsider our primary surrogate country selection in this review and either provide additional explanation, based on a reasonable reading of the record, or make an alternative primary surrogate selection that is supported by the record. In the Court's Expanded Scope Opinion and Order, the Court acknowledged the Department's position that "the newly discovered information has the potential to undermine the accuracy of Commerce's calculations" for AR5.⁹² After considering the evidence detailed above that was uncovered in AR6 and determining that Hilltop is part of the PRC-wide entity, the record of this review does not reflect any calculated margins for any respondents. Hilltop is part of the PRC-wide entity and the sole remaining separate-rate respondent, Regal, was assigned its own calculated margin from a prior review. Consequently, after taking into account the language in the Court's Remand Order and Opinion and the

⁸⁹ See PRC Shrimp LTFV Prelim; unchanged in LTFV Investigation.

⁹⁰ See PRC Shrimp LTFV Prelim, 69 FR at 42662.

⁹¹ We note that where a respondent is found to be part of the country-wide entity whose rate is based on adverse inference, Commerce need not corroborate the country-wide rate with respect to that particular respondent. See Watanabe Group, quoting Peer Bearing Co.-Changshan v. United States, 587 F. Supp. 2d 1319, 1327 (CIT 2008) ("Peer Bearing"); Shandong Mach. Imp. & Exp. Co. v. United States, Slip Op. 09-64, 2009 CIT LEXIS 76, 2009 WL 2017042, at *8 (CIT June 24, 2009) ("Shandong Mach.") ("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."). Therefore, we corroborated the PRC-wide entity rate as required to find that it continues to be reliable and relevant.

⁹² See Expanded Scope Opinion and Order, at 6.

Expanded Scope Opinion and Order, the Department finds it unnecessary to conduct a surrogate country analysis or select surrogate values by which to value a cooperative respondent's FOPs, as our final results are no longer based on surrogate values.

E. COMMENTS FROM INTERESTED PARTIES

The Department released its Draft Remand Results to parties and placed additional evidence on the record of this proceeding on February 15, 2013.⁹³ On February 19, 2013, Hilltop requested an additional two days to submit comments on the new information placed on the record by the Department and an additional three weeks to file comments on the Draft Remand Results released by the Department.⁹⁴ On February 19, 2013, the Department granted Hilltop's request for an extension of the deadline to file comments on new factual information, in full, and granted a four-day partial extension of Hilltop's request for an extension of the deadline to file comments on the Draft Remand Results released by the Department.⁹⁵ Although Hilltop did not submit comments on new factual information despite its request for an extension, Petitioner filed comments on new factual information on February 22, 2013.⁹⁶ Petitioner and Hilltop filed comments on the Draft Remand Results on March 1, 2013.⁹⁷

⁹³ See Letter to All Interested Parties from Catherine Bertrand, Program Manager, Office 9, "Draft Remand Determination in the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China; 2/1/09--1/31/10" (February 15, 2013) ("Draft Remand Results"); Memorandum to the File from Kabir Archuletta, International Trade Analyst, Office 9, "Placing Documents on the Record of the Fifth Administrative Review" (February 14, 2013); Memorandum to the File from Kabir Archuletta, International Trade Analyst, Office 9, "Placing Public Documents on the Record of the Fifth Administrative Review" (February 14, 2013).

⁹⁴ See Letter to the Secretary of Commerce from Hilltop "Hilltop Extension Request for New Information and Draft Remand Comments in the Remand of the Fifth Administrative Review of Certain Frozen Warmwater from the People's Republic of China (2/1/09 - 1/31/10)" (February 19, 2013).

⁹⁵ See Memorandum to the File from Kabir Archuletta, International Trade Analyst, Office 9, "Extension of Draft Remand Comment Periods" (February 19, 2013).

⁹⁶ See Letter to the Secretary of Commerce from Petitioner "Certain Frozen Warmwater Shrimp from the People's Republic of China: Comments on Factual Information in Remand Proceeding" (February 22, 2013).

⁹⁷ See Letter to the Secretary of Commerce from Petitioner "Comments on Draft Results of Redetermination Pursuant to Court Remand" (March 1, 2013) ("Petitioner Draft Remand Comments"); Letter to the Secretary of Commerce from Hilltop "Hilltop Comments on Draft Remand Redetermination" (March 1, 2013) ("Hilltop Draft Remand Comments").

Petitioner agrees with the Department's application of FA with an adverse inference in its Draft Remand Results because Hilltop, by failing to disclose its affiliation with Ocean King, withheld information requested by the Department, failed to provide information by the deadlines, significantly impeded this proceeding, provided information that cannot be verified and failed to cooperate by not acting to the best of its ability to comply with a request for information. In its comments, Petitioner noted the similarities between the fact pattern evident in this review and the fact pattern in Changbao Steel,⁹⁸ where the CIT recently upheld the Department's decision to find a respondent who had submitted material misrepresentations ineligible for a separate rate and, thus, part of the PRC-wide entity and subject to the AFA rate for that proceeding.

Hilltop argues that its AR6 acknowledgment that an affiliation existed with Ocean King during AR5 has been placed on the record of AR5 and Hilltop's initial failure to report that affiliation is insufficient grounds to conclude that Hilltop is part of the PRC-wide entity. Further, Hilltop notes that the Department's claim that Hilltop's disclosure of the affiliation with Ocean King came too late for the Department and interested parties to fully examine the impact of this relationship is no longer valid because Hilltop disclosed the affiliation in June 2012, long before the issuance of the Draft Remand Results. Hilltop states that its omission of Ocean King from its affiliation chart cannot be equated with the instances of material fraud in TKS and Home Products cited by the Department in its request to expand the scope of this remand. Notwithstanding those deficiencies, the Department's AR6 application of AFA is challenged at the CIT and, thus, does not lend any credibility to its decision to apply AFA in AR5.

⁹⁸ Jiangsu Changbao Steel Tube Co. v. United States, 2012 CIT LEXIS 159 (November 14, 2012) ("Changbao Steel").

Hilltop claims that while the Department stated in its Draft Remand Results that information submitted by Hilltop in AR5 cannot be verified, that statement is unsupported by the record because the Department refused to verify Hilltop in AR5 and such a refusal cannot lead to the finding that the information is unverifiable. Hilltop notes that the Department has acknowledged that there were no entries of shrimp from Cambodia during AR5 and the record shows that no Hilltop company made sales of Cambodia-origin shrimp in AR5. Hilltop argues that Department precedent establishes that no adverse inference is warranted when an undisclosed affiliate is not involved in the sale or production of subject merchandise, and the Department has refused to apply total AFA even when an undisclosed affiliate was involved in the sale or production of subject merchandise.

Hilltop argues that the application of AFA is limited to information missing from the record and the record shows that Hilltop was granted separate-rate status because it is a Hong Kong based exporter, a fact that is unaffected by any omission of Hilltop's affiliation with Ocean King. Hilltop submits that the courts have repeatedly found that the Department cannot reject all of a respondent's information for deficiencies that do not undermine the reported data and legislative history confirms that Congress only granted the authority to apply an adverse inference when necessary information is missing from the record.

Hilltop argues that in the Draft Remand Results the Department arbitrarily determines which facts are reliable and unreliable by claiming all of Hilltop's information is unreliable while justifying its decision to include Hilltop in the PRC-wide entity because Hilltop's affiliated producers are located in the PRC. Further, Hilltop argues that it is unlawful for the Department to apply a more punitive adverse inference based on the view that Hilltop acted willfully in failing to disclose its affiliation with Ocean King. Rather, the sole issue before the Department is

whether there is a gap in the information submitted by Hilltop and whether the Department can apply an adverse inference when filling that gap.

Hilltop states that, even if it were proper to find Hilltop to be part of the PRC-wide entity, the 112.81 percent rate applied to Hilltop is commercially unreasonable because the Department failed to corroborate that rate, it was determined using surrogate values the Department has since rejected, and the highest margin assigned to any respondent in this proceeding is 9.08 percent. Hilltop claims that the Department failed to explain how the PRC-wide entity failed to cooperate or what information requested from the PRC-wide entity is missing from the record that would justify application of the 112.81 percent to the PRC-wide entity as an adverse inference.

Hilltop submits that the Department cites to no credible record evidence to support the theory that the cash deposit rates assigned in AR1-AR4 were calculated based on potentially false data. Hilltop argues that each AR is a separate proceeding that stands on its own record and that the Department has failed to cite to a single case that supports the theory that an allegedly distorted deposit rate in a prior review justifies the rejection of Hilltop's sales and FOP data in AR5. Hilltop contends that the theory that Hilltop's cash deposit rates were improper is based on the presumption that Hilltop transshipped subject merchandise through Cambodia, a conclusion that is unsupported by any credible record evidence. Hilltop argues that this theory is largely based on the Department's highly speculative interpretation of two emails, emails that do not remotely constitute substantial evidence of a transshipment scheme and that were considered to lack any merit by the judge in the criminal proceeding. Hilltop also argues that the Cambodian production data relied upon by the Department in support of its transshipment presumption is not an official production statistic, but merely an estimate. Further, Hilltop notes that the Department has specifically declined to investigate allegations of transshipment through

Cambodia. Lastly, Hilltop claims that the Draft Remand Results present a misleading view of the history of the criminal investigation into Ocean Duke and fail to note evidence that undermines the Department's findings.

F. DEPARTMENT'S POSITION

As detailed above, because the disclosure of Hilltop's affiliation with Ocean King in AR6 reveals that substantial portions of Hilltop's Section A response contain material misrepresentations with regard to Hilltop's corporate structure and affiliations, Hilltop's entire Section A response, which details its eligibility for a separate rate and was submitted in lieu of a separate-rate application,⁹⁹ is now fatally undermined and unusable for any purposes. Hilltop's failure to disclose the affiliation goes to the heart of its Section A questionnaire response and the information that the Department relies on to make separate-rate status determinations. Thus, Hilltop's suggestion that its acknowledgement of the affiliation and the Department's placement of that disclosure on the record of this review¹⁰⁰ somehow affects the weight that the Department may assign to the information missing from the record is misplaced. As detailed above, the Department afforded Hilltop numerous opportunities in this fifth review, via detailed supplemental questionnaires, to submit accurate and complete information regarding Hilltop's affiliations. Yet Hilltop continued to represent the facts inaccurately,¹⁰¹ as it has done throughout this proceeding,¹⁰² thereby impugning the overall credibility of information supplied by Hilltop officials. Thus, while Hilltop claims that there are no valid parallels between this case and TKS and Home Products, the obvious parallel is that these cases involve respondents that misrepresented the facts before the Department during the course of the proceedings at issue and

⁹⁹ See Hilltop AR5 SAQR.

¹⁰⁰ See Hilltop Draft Remand Comments, at 2.

¹⁰¹ See, e.g., Hilltop AR5 SAQR; Hilltop AR5 SuppA; Hilltop AR5 SuppAC.

¹⁰² See, e.g., Hilltop CBP Data Rebuttal at Exhibit 2 and Exhibit 3; Hilltop CCR Preliminary Reconsideration; Hilltop AR6 AFA Memorandum; PRC Shrimp AR6 Final at Comment 1.

later-discovered evidence indicates that prior reviews or proceedings were tainted by inaccurate submissions.

The length of time that has transpired since Hilltop's ultimate admission that it was affiliated with Ocean King does not negate the fact that Hilltop submitted material misrepresentations in this review and Hilltop's argument that the Department has had substantial time to analyze the effects of that affiliation¹⁰³ is unpersuasive in light of Hilltop's outright refusal to cooperate with the Department's requests for information regarding Hilltop's affiliations and prior selling activities in AR6.¹⁰⁴ The mere fact that Hilltop eventually conceded in AR6 that an affiliation existed with Ocean King when faced with incontrovertible evidence¹⁰⁵ does not remedy the fact that Hilltop withheld information requested by the Department, which is itself a basis for the application of FA.¹⁰⁶ The same holds true for the record of AR5, which reflects the Department's numerous questions regarding affiliates and Hilltop's repeated failure to disclose its affiliation with Ocean King, even as it corrected information regarding other affiliations during the review. Further, the fact that Hilltop has contested the Department's findings in AR6 at the CIT does not mean that the Department may not employ a similar analysis in this review.

Hilltop contests the Department's claim that Hilltop's submitted information is unverifiable, and argues the Department's claim is without merit because it was the Department's decision to forego verification in this review.¹⁰⁷ This characterization is a

¹⁰³ See Hilltop Draft Remand Comments at 3.

¹⁰⁴ See Hilltop AR6 Sixth Supplemental Response; Hilltop AR6 Seventh Supplemental Response.

¹⁰⁵ See Ocean King Cambodia Registration Documents; Hilltop Seventh Supplemental Response at 2.

¹⁰⁶ See 19 USC 1677e(a)(2)(B); see also Yantai Xinke Steel Structure Co. v. United States, 2012 CIT LEXIS 96, *32-33 (CIT 2012) ("Yantai Xinke") ("The mere fact that Jiulong eventually provided Commerce with information that was responsive to earlier requests does not render Commerce's conclusion that this information was withheld unreasonable. Indeed, the untimely provision of requested information is, itself, a basis for the application of facts available").

¹⁰⁷ See Hilltop Draft Remand Comments, at 3.

misinterpretation of what information can be considered “verifiable.” The Department has stated that “in order for the Department to use information in an AD/CVD proceeding, it needs to be verifiable, and information that contains a material misrepresentation or omission would not be verifiable.”¹⁰⁸ The record of this review contains several known instances of material misrepresentation and omission, detailed above, which represents incomplete information that cannot be verified for the simple reason that those misrepresentations are factually incorrect, not because Hilltop’s responses were not subjected to an on-site verification by Department officials.

With regard to Hilltop’s argument that there were no entries of shrimp from Cambodia and no Hilltop company made sales of Cambodia-origin shrimp in AR5,¹⁰⁹ the Department notes that the Draft Remand Results detailed the effects that Hilltop’s entries of shrimp from Cambodia may have had on Hilltop’s AR1 cash deposit rate and how that rate may have enabled Hilltop to secure subsequent zero percent margins, including in this review. We further note that the AR6 documentation reveals the extent of the Department’s inquiries into the origin of the shrimp entered by Ocean Duke as Cambodian country-of-origin, a line of inquiry that Hilltop impeded by refusing to provide any substantive response.¹¹⁰ Based on the record as a whole, we determine that Hilltop has failed to present any evidence or argument that explains its failure to disclose its dealings with Ocean King or its trading activity with persons/entities involved in its Cambodian enterprise. Hilltop was apprised of the potential consequences of non-cooperation on numerous occasions in AR6¹¹¹ and was reasonably on notice that similar consequences may

¹⁰⁸ See Certification Interim Final Rule, 76 FR at 7496.

¹⁰⁹ See Hilltop Draft Remand Comments, at 3.

¹¹⁰ See Hilltop AR6 Sixth Supplemental Response; Hilltop AR6 Seventh Supplemental Response.

¹¹¹ See, e.g., Hilltop AR6 Sixth Supplemental Questionnaire, at 1; Hilltop AR6 Seventh Supplemental Questionnaire, at 1 (“If you fail to provide accurately the information requested within the time provided, the Department may be required to base its findings in this administrative review on the facts available. If you fail to cooperate with the Department by not acting to the best of your ability to comply with a request for information, the Department also may be required to use an adverse inference in conducting its analysis. Upon receipt of a response

result in the Department’s reconsideration of its findings in this redetermination. The AR5 record also reflects that Hilltop was notified of the potential consequences of failing to provide accurate and complete information to the Department.¹¹² Thus, absent any exculpatory information from Hilltop or Ocean Duke, the evidence suggests that Ocean Duke’s entries from Cambodia were not likely to actually have been of Cambodian country-of-origin and, consequently, Hilltop’s margin assigned in this review may have been the result of an inaccurate cash deposit rate in effect when goods entered during this POR.

Hilltop’s reliance on Butt Weld Pipe Fittings from Taiwan¹¹³ and Ferro Union¹¹⁴ to support its claim that the courts have rejected the Department’s decisions to apply an adverse inference in instances where an undisclosed affiliate is both involved, and not involved, in the sale or production of subject merchandise¹¹⁵ is misplaced. In Butt-Weld Pipe Fittings from Taiwan, the Department declined to apply total AFA to the respondent that was less than forthcoming regarding its affiliations because the Department was able to sufficiently analyze the respondent’s affiliations for the preliminary results and because the Department did not agree with the petitioner’s position that the respondent was “totally untimely and uncooperative.”¹¹⁶ Here, Hilltop was not only uncooperative in disclosing the relationship with Ocean King, it did not reveal that a relationship existed until 313 days after the publication of the Department’s

that is incomplete or deficient to the extent the Department considers it non-responsive, the Department will not issue additional supplemental questionnaires, but will use facts available.”).

¹¹² See, e.g., Letter from Catherine Bertrand, Program Manager, Office 9, to Hilltop “Section A Supplemental Questionnaire” (July 1, 2010), at 1; Letter from Catherine Bertrand, Program Manager, Office 9, to Hilltop “Supplemental Section C Questionnaire” (July 30, 2010), at 1-2 (“If you fail to provide accurately the information requested within the time provided, the Department may be required to base its findings on the facts available...If you fail to cooperate with the Department by not acting to the best of your ability to comply with a request for information, the Department may use information that is adverse to your interest in conducting its analysis.”).

¹¹³ See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan, 70 FR 1870 (January 11, 2005), and accompanying Issues and Decision Memorandum at Comment 1 (“Butt-Weld Pipe Fittings from Taiwan”).

¹¹⁴ See Ferro Union, Inc. v. United States, 44 F. Supp. 2d 1310, 1331 (CIT 1999) (“Ferro Union”).

¹¹⁵ See Hilltop Draft Remand Comments, at 3-4.

¹¹⁶ See Butt-Weld Pipe Fittings from Taiwan, and accompanying Issues and Decision Memorandum at Comment 3.

final results in this review¹¹⁷ and only when faced with incontrovertible evidence.¹¹⁸ Further, Hilltop obstructed the Department's efforts to obtain relevant information regarding serious allegations despite the Department's repeated requests and explanation that this information was relevant to the proceeding. Ferro Union involved confusion over the definition of the newly adopted affiliation regulations, and the court held that the Department had not fully explained its expectations as to what it considered an affiliation under the new regulations, and therefore, it could not have expected the respondent to disclose the affiliation at issue. The court explained: "Commerce did not provide Saha Thai with sufficient guidance for Saha Thai to know it had to provide information on companies owned by the nephews of one of its directors."¹¹⁹ The court held that until the affiliation was clear, it could not reach the question of whether AFA was warranted. Here, Hilltop has been well aware of the Department's regulations and practice regarding affiliations throughout the proceeding and was the subject of a thorough affiliation analysis in AR5.¹²⁰ Indeed, Hilltop continually disclosed its affiliates in other third countries. Moreover, unlike in Ferro Union, there is no issue here as to whether an affiliated relationship exists between Hilltop and Ocean King, as Hilltop admits that "an affiliation within the statutory definition of 19 U.S.C. § 1677(33) existed between the Hilltop Group and Ocean King until September 28, 2010."¹²¹

Hilltop's argument that the courts have repeatedly found that the Department cannot reject all of a respondent's information for deficiencies that do not undermine the reported data neglects the Department's explanation that the completeness and credibility of Hilltop's submissions, including its separate-rate documentation, are rendered suspect by its failure to

¹¹⁷ See Hilltop AR6 Seventh Supplemental Response, at 2; compared to PRC Shrimp AR5 Final.

¹¹⁸ See Ocean King Registration Documents.

¹¹⁹ See Ferro Union, 44 F. Supp. 2d at 1335.

¹²⁰ See PRC Shrimp AR5 Final, 76 FR at 51941-51942.

¹²¹ See Hilltop AR6 Seventh Supplemental Response at 2.

cooperate and its repeated material misrepresentations. The court cases cited by Hilltop to support its position that the information missing from the record must be necessary to the calculation of the margin before the use of FA or an adverse inference¹²² do not apply to the circumstances in this review, in which all of Hilltop's submitted information is unusable. In Gerber, the Department's decision to apply AFA did not involve information that was wholly concealed from the Department's examination and the Department was able to resolve any inaccuracies at verification.¹²³ While the Department has verified Yelin, a company the Department previously found to be Hilltop's predecessor-in-interest,¹²⁴ Hilltop itself has never been verified and its separate-rate documentation has never been subject to an on-site inspection by Department personnel. The respondent in Yantai Xinke was also verified and the Department did not find any discrepancies in its questionnaire responses concerning its separate-rate status.¹²⁵ Here, Hilltop's eligibility for a separate rate in every review has been determined through an analysis of its responses to the initial Section A and subsequent supplemental questionnaires. Similarly, Zhejiang Dunan¹²⁶ involved a respondent whose information had been subjected to verification and the record contained usable information such that the Department was able to substitute AFA for the missing data and continue to rely on the remaining verified data. Although Hilltop also cites to Krupp Thyssen in support of its argument that the

¹²² See Hilltop Draft Remand Comments at 4-5.

¹²³ See Gerber Food (Yunnan) Co. Ltd v. United States, 387 F. Supp. 2d 1270, 1282 (CIT 2005) ("Gerber") ("At verification, however, other than the record evidence regarding the export agency agreement, Commerce found few discrepancies with the information that Gerber and Green Fresh provided, and Commerce resolved any inaccuracies found during verification.").

¹²⁴ As noted above, the Department has recently published a preliminary reconsideration of our determination that Hilltop is the successor-in-interest to Yelin. See Hilltop CCR Preliminary Reconsideration.

¹²⁵ See Yantai Xinke, 2012 CIT LEXIS 96, *46 ("Because Commerce has made no finding that Jiulong's questionnaire responses concerning its separate rate status were deficient in any respect, the Department's conclusion that the company was part of the PRC-wide entity is unsupported by substantial evidence."); see also Since Hardware Co. Ltd. v. United States, 2010 CIT LEXIS 119, Slip Op. 10-108 (CIT 2010) (where the Department made no specific finding as to whether the inaccurately reported information regarding prices and country of origin related to respondent's eligibility for separate-rate status).

¹²⁶ See Zhejiang Dunan Hetian Metal Co. v. United States, 652 F.3d 1333 (Fed. Cir. 2011) ("Zhejiang Dunan").

Department cannot reject all of a respondent's information on the basis of deficiencies that do not undermine the reliability of all reported data, we note that not only was the respondent in question verified,¹²⁷ but the Department's decision on remand to continue to reject the reported data based on deficiencies in the respondent's further manufacturing field¹²⁸ was ultimately sustained by the CIT.¹²⁹ The Department in these remand results is not rejecting all of Hilltop's reported information based on deficiencies localized to a single portion of the record. Rather, we have provided a detailed explanation, supra, as to why Hilltop's reported information is unusable overall based on the known deficiencies in its Section A responses, concerns regarding the accuracy of the cash deposit rate assigned throughout this proceeding, and the questionable degree of reliability that we can assign to information provided by Hilltop officials.

Although Hilltop claims that it is a Hong Kong-based exporter and therefore placement in the PRC-wide Entity is inappropriate,¹³⁰ the undisclosed affiliation and unreliability of information on the record prevent us from determining with certainty the ownership and/or control of Hilltop. Because of the lack of reliable information relating to affiliation and Hilltop's previously granted separate rate, we cannot conclude that its purported location indicates that it is not controlled by the PRC government. With regard to Hilltop's contention that the Department has decided to pick and choose which facts it deems reliable,¹³¹ we disagree. Hilltop's failure to disclose this affiliation, which lasted over the course of five years, including this entire POR, calls into question the separate-rate information contained in its questionnaire responses, such that we are not able to make findings regarding ownership and control of Hilltop.

¹²⁷ See Krupp Thyssen Nirosta v. United States, 24 CIT 666, 667 (2000) ("Krupp Thyssen").

¹²⁸ See Results of Redetermination Pursuant to Court Remand Stainless Steel Sheet and Strip in Coils from Germany (October 30, 2000) at 2.D. ("Because the Department has demonstrated that the U.S. Reseller's sales database was fatally effected by the errors in the sales and further manufacturing cost database, it is not possible for the Department to fill gaps and use any of the U.S. Reseller's submitted data.").

¹²⁹ See Krupp Thyssen Nirosta v. United States, 25 CIT 1198 (2001).

¹³⁰ See Hilltop Draft Remand Comments, at 4-5.

¹³¹ See Hilltop Draft Remand Comments, at 5-6.

Even though Hilltop's submissions state that it is located in Hong Kong, we find that the record does contain reliable information upon which we can rely to find that Hilltop is solely based in a market economy such that there is no PRC state control.

Contrary to Hilltop's assertions, the Department is not applying a more punitive rate based on the assumption that Hilltop acted willfully in failing to disclose its affiliation with Ocean King, though Hilltop's failure to provide any rational explanation for this oversight may appear to support that assumption. In fact, the only mention of "intent" in the Department's Draft Remand Results appears in connection with Hilltop's apparent masking of the invoice chain between Hilltop and the Cambodian supplier¹³² and the Department specifically noted the fact that "affirmative evidence of bad faith, or willfulness, on the part of a respondent is not required before the Department may make an adverse inference."¹³³ The Department's statement in both the PRC Shrimp AR6 Final and in its Draft Remand Results that Hilltop's failure to report its affiliation with Ocean King was "not a mere oversight or result of inaccurate record keeping" was based on Hilltop's failure to provide any explanation other than that Hilltop's "statements on affiliation may have been in error" and supplying vague examples of possible reasons.¹³⁴ The rate being applied to Hilltop, as part of the PRC-wide entity, is the proper rate for companies that have failed to qualify for a separate rate, in this case based on fatal deficiencies in Hilltop's Section A responses and the overall unreliability of Hilltop's reported data. With regard to Hilltop's claims that the PRC-wide rate has not been corroborated and is not commercially reasonable, the Department disagrees. We continue to find that the PRC-wide

¹³² See Sentencing Report, at Attachment 20 (Wherein Duke Lin wrote to To Kam Keung "Cambodia Factory need set up PO to their Supplier also direct wire to their supplier, Yelin HK cannot have any Involve or any paper related!").

¹³³ See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997).

¹³⁴ See Public Documents to Record of AR5 "Hilltop-Specific Issues Rebuttal Brief for Hilltop International," at 9 (emphasis added).

entity rate is corroborated, relevant, and reliable. We reiterate that case law clarifies that the PRC-wide entity rate need not be corroborated with respect to a respondent that is found to have not rebutted the presumption of state control.¹³⁵ Further, we note that the PRC-wide entity rate was fully corroborated during the investigation and has been continually applied to the PRC entity in subsequent reviews.¹³⁶ The PRC-wide rate is based on rates alleged in the petition that were fully vetted during the pre-initiation phase of this investigation. Specifically, the Department examined the official U.S. import statistics, net of international freight, insurance and import charges, used by Petitioner to determine export price and made adjustments to Petitioner's calculation of normal value to ensure the probative value of the margins alleged in the Petition.¹³⁷ With respect to Hilltop's argument that the PRC-wide rate was based on surrogate values that the Department has since rejected and that the court has found improper,¹³⁸ we note that India was selected as the appropriate surrogate country in the investigation because India was at a level of economic development comparable to that of the PRC, Indian manufacturers produced comparable merchandise and were significant producers of merchandise under consideration, and India provided the best opportunity to use appropriate, publicly available data to value the FOPs.¹³⁹ The aforementioned factors remain accurate for the period in which the LTFV Investigation was conducted regardless of the Department's subsequent change in its surrogate country selection. Further, the PRC-wide rate is based on margins calculated in the Petition, and vetted by the Department, that used information obtained by an

¹³⁵ See, e.g., Changbao Steel, 2012 CIT LEXIS 159, *40.

¹³⁶ See Notice of Initiation of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp From Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam, 69 FR 3876 (January 27, 2004) ("PRC Shrimp LTFV Initiation"); PRC Shrimp LTFV Prelim, unchanged in PRC Shrimp LTFV Final; PRC Shrimp AR1; PRC Shrimp AR5 Final; PRC Shrimp AR6 Final. We note that this PRC-wide entity rate is the only other rate available on the record of this review.

¹³⁷ See PRC Shrimp LTFV Initiation, 69 FR at 3880-3881.

¹³⁸ See Hilltop Draft Remand Comments, at 7.

¹³⁹ See PRC Shrimp LTFV Final, 69 FR at 71001.

independent market researcher to value the primary input, raw warmwater shrimp,¹⁴⁰ and not the surrogate value rejected by the courts in Allied Pacific II.¹⁴¹ Similarly, the surrogate value for labor used in the Petition was not the wage rate at issue in Allied Pacific II.¹⁴²

While Hilltop argues that the Department has not explained how the PRC-wide entity failed to cooperate,¹⁴³ we note that in the PRC Shrimp AR5 Prelim the Department determined that there were exports of merchandise under review from 80 PRC exporters that did not demonstrate their eligibility for separate-rate status and were, thus, considered part of the PRC-wide entity.¹⁴⁴ Those respondents treated as part of the PRC-wide entity were assigned the only rate ever determined for the PRC-wide entity in this proceeding, which was a rate based on AFA.¹⁴⁵ Thus, we determined and continue to find that the PRC-wide entity, which now also includes Hilltop, failed to cooperate to the best of its ability because constituent components of the PRC-wide entity withheld information requested by the Department, did not provide information in a timely manner, impeded this proceeding and provided information that could not be verified. As noted by Petitioner,¹⁴⁶ in Changbao Steel,¹⁴⁷ the CIT has upheld the Department's decision to apply the PRC-wide rate to a respondent found to have submitted material misrepresentations and for whom that rate had not been individually corroborated. We stated in our Draft Remand Results that the 112.81-percent rate was subject to comment from interested parties during the original investigation and noted that where a respondent is found to

¹⁴⁰ See PRC Shrimp LTFV Initiation, 69 FR at 3880.

¹⁴¹ See Allied Pac. Food (Dalian) Co. v. United States, 32 CIT 1328 (2008) ("Allied Pacific II").

¹⁴² See PRC Shrimp LTFV Initiation, 69 FR at 3880 (noting a labor rate of \$0.83/hour), compared to Allied Pacific II, 32 CIT 1328, 1331 (2008) (noting the revision of the labor rate from \$ 0.93 to \$ 0.85 per hour).

¹⁴³ See Hilltop Draft Remand Comments, at 7-8.

¹⁴⁴ See PRC Shrimp AR5 Prelim, 76 FR at 8341; unchanged in PRC Shrimp AR5 Final.

¹⁴⁵ See PRC Shrimp LTFV Prelim.

¹⁴⁶ See Petitioner Draft Remand Comments, at 12-19.

¹⁴⁷ See Changbao Steel, 2012 CIT Trade LEXIS 159, *40 ("...the court has accepted, as a logical consequence of the presumption {of government control}, Commerce's application of a countrywide rate to a respondent for whom that rate had not been individually corroborated. Simply put, 'Commerce's permissible determination that {a respondent} is part of the PRC-wide entity means that inquiring into {that respondent}'s separate sales behavior ceases to be meaningful.'").

be part of the country-wide entity whose rate is based on adverse inference, the CIT has held that the Department need not corroborate the country-wide rate with respect to that particular respondent.¹⁴⁸

Although Hilltop claims that the Draft Remand Results present a misleading view of the history of the criminal investigation into Ocean Duke and fails to note evidence that undermines the Department's findings,¹⁴⁹ Hilltop did not provide a single citation supporting its claim that evidence exists on the record that undermines the Department's findings and submits no evidence that was not addressed by the Department in AR6. In the PRC Shrimp AR6 Final, the Department addressed Hilltop's arguments as to why the U.S. Department of Justice did not prosecute any transshipment allegations and why the sentencing Court refused to consider allegations of transshipment in the sentencing phase, at length.¹⁵⁰ While Hilltop claimed in AR6 and in this review¹⁵¹ that the flaw in the government's allegations against Ocean Duke regarding transshipment through Cambodia was a remark made in an interview with a Cambodian official noting that "{Cambodian} border enforcement is very strong and {the official} does not think that they could bring in shrimp without being caught."¹⁵² While Hilltop in AR6 characterized this statement as "clearly exculpatory information"¹⁵³ we did not find that it approaches a level sufficient to disregard the other record evidence. Hilltop's argument assumes that any subject merchandise transshipped through Cambodia must have been smuggled through the border but neglects the very real possibility that shrimp could have been legitimately imported from the

¹⁴⁸ See Watanabe Group, quoting Peer Bearing, 587 F. Supp. 2d at 1327; Shandong Mach., Slip Op. 09-64, 2009 CIT Trade LEXIS 76, 2009 WL 2017042, at *8 ("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.").

¹⁴⁹ See Hilltop Draft Remand Comments, at 9-10.

¹⁵⁰ See PRC Shrimp AR6 Final, at Comment 1.

¹⁵¹ See Hilltop Draft Remand Comments, at 14.

¹⁵² See Public Documents to Record of AR5 "Hilltop-Specific Issues Rebuttal Brief for Hilltop International" ("Hilltop AR6 Rebuttal Brief"), at 32-33.

¹⁵³ See Hilltop AR6 Rebuttal Brief, at 33.

PRC or Vietnam and then repackaged by the Cambodian affiliate, as the record suggests.¹⁵⁴ Hilltop has chosen not to provide any information regarding its activities prior to AR4 and, absent any contradictory information, the evidence weighs in favor of the conclusion that Cambodia did not produce all of the shrimp imported as Cambodian country-of-origin by Ocean Duke. While Hilltop also argues that the allegations have no merit because the government chose not to bring any charges on transshipment,¹⁵⁵ Petitioner points to record evidence supporting a procedural issue claimed by the government that prevented such charges.¹⁵⁶ We note that the Department has independently evaluated the information on the record in the context of the AD law and statute and finds that it is relevant to the AD process, regardless of its treatment in a separate criminal proceeding. Petitioner also submitted information indicating that Duke Lin's defense never provided any evidence to the government indicating that the shrimp was farmed in Cambodia, as declared.¹⁵⁷ While Duke Lin's defense produced export documents stamped by Cambodian officials declaring the products as Cambodian country-of-origin, record evidence indicates that Cambodian officials rely on information provided by the exporter and do not have any information as to where the shrimp was harvested when export documents are approved.¹⁵⁸

Contrary to Hilltop's characterization that the judge in the criminal proceeding against Duke Lin found all transshipment evidence to "lack any merit"¹⁵⁹ and that the evidence was "completely deficient,"¹⁶⁰ Hilltop has failed to produce evidence that suggests such a definitive

¹⁵⁴ See Sentencing Report, at Attachment 14.

¹⁵⁵ See, e.g., Public Documents to Record of AR5 "Hilltop-Specific Issues Administrative Case Brief for Hilltop International," at 7-8; Hilltop AR6 Rebuttal Brief, at 33-36.

¹⁵⁶ See Public Documents to Record of AR5 "Rebuttal Brief Related to Hilltop International's U.S. Sales and Revocation Request" ("Petitioner AR6 Rebuttal Brief"), at 16-17.

¹⁵⁷ See Petitioner AR6 Rebuttal Brief, at 17.

¹⁵⁸ See Sentencing Report, at Attachment 18; Petitioner AR6 Rebuttal Brief, at 17.

¹⁵⁹ See Hilltop Draft Remand Comments, at 9.

¹⁶⁰ See Hilltop Draft Remand Comments, at 14.

position taken by the court. Rather, Hilltop points to the judge's critical comments to the prosecutor regarding the government's decision not to bring any charges on the transshipment evidence while attempting to use such evidence to influence the sentencing terms.¹⁶¹

Similarly, Hilltop's claim that the Department's interpretation of internal emails is highly speculative¹⁶² is completely unsupported by any explanation from Hilltop or alternative interpretation of this evidence. The emails in question document Ocean Duke's involvement in shipping containers of shrimp from Vietnam, which was also subject to an AD order,¹⁶³ and printing new master cartons indicating that the product was of Cambodian origin.¹⁶⁴ Another email documents Hilltop's and Ocean Duke's plans to establish a shrimp processing plant in Cambodia and sending shrimp supplies from Vietnam for processing.¹⁶⁵ The latter email is the evidence that prompted the Department in AR6 to inquire into the nature of Hilltop's affiliation and corporate structure, a line of inquiry that, despite Hilltop's vigorous and repeated denial of any misrepresentation, revealed the disclosure that Hilltop had not been entirely truthful with the Department over the course of this proceeding. These facts are well documented on the record of this proceeding and are not contested by Hilltop. Nevertheless, Hilltop continues to take the position that the Department's interpretation of these emails is highly speculative and reliance on this evidence is unfounded. In light of Hilltop's record of failing to provide accurate information to the Department and refusal to provide any alternative explanation of its activities documented in these internal emails, the Department is inclined to accept this evidence at face value which indicates that Hilltop and Ocean Duke were engaged in transshipping shrimp through Cambodia.

¹⁶¹ See Hilltop Draft Remand Comments, at 15-16.

¹⁶² See Hilltop Draft Remand Comments, at 9.

¹⁶³ See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam, 70 FR 5152 (February 1, 2005).

¹⁶⁴ See Sentencing Report, at Attachment 14.

¹⁶⁵ See Ocean King Email.

While Hilltop argues that the Department's presumption that shrimp were transshipped through Cambodia is unreasonably based on the comparison of Ocean Duke shrimp exports from Cambodia to a production figure that was merely an estimate rather than an official production statistic,¹⁶⁶ we note that the Sentencing Report contains two sources for Cambodian shrimp production data. The Sentencing Report states between May 2004 and July 2005, Ocean Duke imported over 6.8 million kg of shrimp with a declared country of origin of Cambodia.¹⁶⁷ The first data source cited in the Sentencing Report is the United Nations official yearbook statistics that shows that Cambodia produced in all of 2004 and 2005 approximately 175,000 kg of farmed shrimp.¹⁶⁸ The second source cited is an interview with Dr. Nao Thuok, the Director General of the Cambodian Fisheries Administration, which was submitted on the record and supplemented with a signed and dated letter on letterhead from the Cambodian Fisheries Administration that listed Cambodia's "Official production statistics for aquaculture" in 2004 and 2005 as 185,000 kg.¹⁶⁹ Thus, Hilltop's claim that either of these production figures represent "estimates" does not impeach the credibility of these sources and Hilltop has not provided any alternative to demonstrate more reliable production statistics for Cambodia in 2004 and 2005. The record contains no reasonable explanation, and Hilltop has not attempted to offer any such explanation, as to how Ocean Duke was able to source more than 6.8 million kg, or more than **3600 times** the official production, of shrimp from Cambodia. We note that the difference between these figures is so incredible that the discrepancy cannot be explained away by Hilltop's argument they are merely an "estimate." Thus, the only conclusion that the Department is able to reach, absent any viable, alternative explanation or factual information from Hilltop, is that the vast majority of

¹⁶⁶ See Hilltop Draft Remand Comments, at 9-10.

¹⁶⁷ See Sentencing Report, at 22.

¹⁶⁸ See *id.*, at 22 and Attachment 17 (385,808 lb. x .453592=175,000).

¹⁶⁹ See *id.*, at 22-23 and Attachment 18.

shrimp entered by Ocean Duke during this time frame was unlikely to have been of Cambodian origin and, accordingly, that the cash deposit rates assigned during this time period may not have been accurate.

Hilltop's activities, as documented in this proceeding, demonstrate a disturbing pattern of behavior that suggests a company undeterred by admonition.¹⁷⁰ On February 13, 2012, during the sentencing phase of Duke Lin's criminal proceeding, Duke Lin thanked the judge for a probationary sentence, to which the judge replied "Don't thank me. Because if you so much as sniff the wrong way, you will be in jail."¹⁷¹ Despite that stern warning, Hilltop and Ocean Duke continued to certify demonstrably false statements made to the Department that there was no affiliation with Ocean King, notwithstanding the highly suggestive evidence to the contrary. The Department further notes that Hilltop has refused to provide substantial information requested by the Department on other matters of direct relevance to Hilltop's participation in this proceeding.¹⁷² As detailed on the record of AR6 and placed on the record of this review,¹⁷³ the following questions remain unresolved as a result of Hilltop's refusal to cooperate:

- Hilltop's relationship with Lian Heng Investment Co., Ltd. ("Lian Heng"): The sentencing report shows significant quantities of shrimp imported from Cambodia by Ocean Duke in 2004 and early 2005 which were produced by Lian Heng.¹⁷⁴ In 2006, Lian Heng was found by the Department to be circumventing the order on fish fillets from Vietnam.¹⁷⁵ We asked Hilltop to explain and provide supporting documentation for

¹⁷⁰ See, e.g., Hilltop AR6 AFA Memorandum, at 14; Petitioner Draft Remand Comments, at 11-12.

¹⁷¹ See Public Documents to Record of AR5 "Response to Petitioner's March 12, 2012 Filing," at Attachment 2, page 75.

¹⁷² See Hilltop AR6 Sixth Supplemental Response; Hilltop AR6 Seventh Supplemental Response.

¹⁷³ See, e.g., Hilltop AR6 AFA Memorandum; Hilltop AR6 Sixth Supplemental Response; Hilltop AR6 Seventh Supplemental Response.

¹⁷⁴ See Sentencing Report, at Attachment 9 and 10.

¹⁷⁵ See Circumvention and Scope Inquiries on the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Partial Affirmative Final Determination of Circumvention of the Antidumping Duty

the country of origin of shrimp exported by Lian Heng.¹⁷⁶ Hilltop refused to provide the documentation.¹⁷⁷

- Country of Origin of shrimp from Cambodia: The Sentencing Report states that Ocean Duke imported over 15 million pounds of shrimp from Cambodia between May 2004 and July 2005 but Cambodian government data indicates that the country only produced an estimated 385,000 pounds of aquacultured shrimp in all of 2004 and 2005.¹⁷⁸ We asked Hilltop to explain and provide supporting documentation for the country of origin of shrimp sourced from Cambodia.¹⁷⁹ Hilltop refused to provide the documentation.¹⁸⁰
- Relationship with Yelin Enterprise (Vietnam): Two U.S. Immigration and Customs Enforcement (“ICE”) documents included in the Sentencing Report provided details of an investigation into Yelin Enterprise (Vietnam) as to whether it was transshipping seafood products.¹⁸¹ Hilltop has not declared an affiliate by the name of Yelin Enterprise (Vietnam) but the name bears a very close resemblance to Yelin Enterprise Co., Ltd., Hilltop’s Taiwanese affiliate, and Yelin Enterprise Co. Hong Kong, Hilltop’s predecessor in interest. Further, email communication suggesting that Ocean Duke was transshipping Vietnamese shrimp through Cambodia listed an email address that appears to have come from Yelin Enterprise (Vietnam): yelin_vn@hcm.vnn.vn.¹⁸² We asked Hilltop to explain whether Hilltop ever had any affiliation or business dealings with this

Order, Partial Final Termination of Circumvention Inquiry and Final Rescission of Scope Inquiry, 71 FR 38608 (July 7, 2006).

¹⁷⁶ See Hilltop AR6 Sixth Supplemental Questionnaire, at question 8; Hilltop AR6 Seventh Supplemental Questionnaire, at question 1.

¹⁷⁷ See Hilltop AR6 Sixth Supplemental Response, at 19; Hilltop AR6 Seventh Supplemental Response, at 1.

¹⁷⁸ See Sentencing Report, at 5.

¹⁷⁹ See Hilltop AR6 Sixth Supplemental Questionnaire, at question 6 and 8; Hilltop AR6 Seventh Supplemental Questionnaire, at question 1.

¹⁸⁰ See Hilltop AR6 Sixth Supplemental Response, at 17; Hilltop AR6 Seventh Supplemental Response, at 1.

¹⁸¹ See Sentencing Report, at Attachment 24 and 26.

¹⁸² See Sentencing Report, at Attachment 14.

company.¹⁸³ Hilltop provided a partial response indicating that after February 1, 2008, it had no affiliation or business dealings with Yelin Enterprise (Vietnam) but refused to provide any information prior to that date.¹⁸⁴ We note that this is the same response in which Hilltop denied any involvement with Ocean King and refused to provide any information regarding its purchases from that company.¹⁸⁵

- Relationship with Truong Trieu Truong: The ICE reports referenced above state that Truong Trieu Truong is the Director of Yelin Enterprise (Vietnam).¹⁸⁶ The Ocean King Email between To Kam Keung and Duke Lin reference a person by the name of “Truong.” We asked Hilltop whether it ever had any affiliation or business dealings with Truong Trieu Truong and whether this was the same “Truong” referenced in the Ocean King Email.¹⁸⁷ Hilltop provided a partial response indicating that after February 1, 2008, it had no affiliation or business dealings with Truong Trieu Truong but refused to provide any information prior to that date.¹⁸⁸ Again, we note that this is the same response in which Hilltop denied any involvement with Ocean King and refused to provide any information regarding its purchases from that company.¹⁸⁹
- Discrepancies between Import Data in Sentencing Report and CBP Data: Import data included in the Sentencing Report show 143 entries from Ocean King to Ocean Duke from October 20, 2005, through December 23, 2005.¹⁹⁰ We asked Hilltop whether any of its affiliates acted as the exporter of record for shipments sourced from Ocean King

¹⁸³ See Hilltop AR6 Sixth Supplemental Questionnaire, at question 9; Hilltop AR6 Seventh Supplemental Questionnaire, at question 1.

¹⁸⁴ See Hilltop AR6 Sixth Supplemental Response, at 20; Hilltop AR6 Seventh Supplemental Response, at 1.

¹⁸⁵ See *id.*

¹⁸⁶ See Sentencing Report, at Attachment 24 and 26.

¹⁸⁷ See Hilltop AR6 Sixth Supplemental Questionnaire, at question 9; Hilltop AR6 Seventh Supplemental Questionnaire, at question 1.

¹⁸⁸ See Hilltop AR6 Sixth Supplemental Response, at 20-22; Hilltop AR6 Seventh Supplemental Response, at 1.

¹⁸⁹ See *id.*

¹⁹⁰ See Sentencing Report, at Attachment 10.

during AR1 and AR2 and to provide a listing of those sales.¹⁹¹ Hilltop refused to provide the documentation.¹⁹²

- Additional Information Hilltop Refused to Address: In addition to the issues referenced above, the Department also asked Hilltop for information regarding a number of issues noted in the documentation accompanying the Sentencing Report, specifically: a description of the relationship between Hilltop and Mr. Kang Yu Meng in AR1 and AR2, identified as “the Cambodia Packer” in the Ocean King Email, how Yelin/Hilltop came to enter into a business relationship with him, and an explanation of his current relationship with Hilltop or its affiliated entities; an explanation as to why Duke Lin instructed Peter To that Yelin HK cannot have any involvement or paper connection, apparently to the supplier of the Cambodia Factory; and whether Yelin/Hilltop and/or its affiliates exported any scope merchandise to Cambodia during AR1 and AR2.¹⁹³ Hilltop refused to provide a response to these questions.¹⁹⁴

For the foregoing reasons, Hilltop’s argument that the government’s allegations were based on sheer speculation does not convince the Department that they are unfounded in light of the record evidence and Hilltop’s refusal to provide any exonerating evidence. If these allegations are based on sheer speculation, as Hilltop repeatedly claims, it would have been in Hilltop’s interest to respond to the Department’s repeated requests for information rather than argue that the information is irrelevant to the Department’s analysis. Indeed, Hilltop’s refusal to provide any explanation regarding its prior affiliations with certain people and entities that are referenced in the Sentencing Report, and its activities prior to AR4, raises questions regarding

¹⁹¹ See Hilltop AR6 Sixth Supplemental Questionnaire, at question 6; Hilltop AR6 Seventh Supplemental Questionnaire, at question 1.

¹⁹² See Hilltop AR6 Sixth Supplemental Response, at 16-17; Hilltop AR6 Seventh Supplemental Response, at 1.

¹⁹³ See Hilltop AR6 Sixth Supplemental Questionnaire.

¹⁹⁴ See Hilltop AR6 Sixth Supplemental Response; Hilltop AR6 Seventh Supplemental Response.

what other information is missing that could be relevant to the Department's proceeding. Further, Hilltop's claim that failure to charge or prosecute in a separate criminal proceeding does not mean that we cannot independently examine evidence presented on the record of this case and thereby reach our own conclusion regarding the information as it relates to our process and the AD law.

While the Department has not initiated any formal proceedings into transshipment of shrimp through Cambodia, Hilltop's claim that the Department has refused to investigate allegations of transshipment through Cambodia is not supported by the record of this proceeding. In AR6 the Department dedicated significant time and resources investigating the allegations of transshipment through Cambodia by requesting data from CBP and issuing multiple questionnaires to Hilltop.¹⁹⁵ In response to the Department's multiple attempts to discern the reliability of the allegations raised in the Sentencing Report, Hilltop has consistently refused to provide any information regarding its activities prior to AR4,¹⁹⁶ notwithstanding the Department's reminders to Hilltop that the consequence of noncompliance would be AFA.¹⁹⁷

G. CONCLUSION

In accordance with the Court's Expanded Scope Opinion and Order, we have reconsidered our final results in AR5 of this proceeding in light of the discovery of additional evidence that suggested our original determination may have been based on false or incomplete

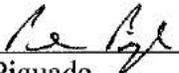
¹⁹⁵ See BPI Documents to Record of AR5 "MTF - Customs Data of U.S. Imports of Certain Frozen Warmwater Shrimp from Cambodia"; Hilltop AR6 Sixth Supplemental Questionnaire; Hilltop AR6 Seventh Supplemental Questionnaire.

¹⁹⁶ See Hilltop AR6 Sixth Supplemental Response; Hilltop AR6 Seventh Supplemental Response.

¹⁹⁷ See, e.g., Hilltop AR6 Sixth Supplemental Questionnaire, at 1; Hilltop AR6 Seventh Supplemental Questionnaire, at 1 ("If you fail to provide accurately the information requested within the time provided, the Department may be required to base its findings in this administrative review on the facts available. If you fail to cooperate with the Department by not acting to the best of your ability to comply with a request for information, the Department also may be required to use an adverse inference in conducting its analysis. Upon receipt of a response that is incomplete or deficient to the extent the Department considers it non-responsive, the Department will not issue additional supplemental questionnaires, but will use facts available.").

information. Accordingly, we have reexamined the record in conjunction with documentation obtained over the course of AR6 and determined that Hilltop submitted false and misleading information on the record of this review. As a result, we find that we are unable to rely upon any of Hilltop's submitted information in this review, including its separate-rate information, and find it part of the PRC-wide entity. Further, we find that the PRC-wide entity has failed to cooperate to the best of its ability and we have thus applied total AFA to the PRC-wide entity, which includes Hilltop. Therefore, for these final results of redetermination pursuant to court remand, we are applying 112.81 percent – the highest rate for any segment of this proceeding – as total AFA to the PRC-wide entity, which includes Hilltop.

Accordingly, as the final results of this review are no longer based on surrogate values, it is unnecessary to revisit our surrogate country selection decision (and deferred issues of the labor wage rate and North Korean import data), which has been rendered moot by the absence of any calculated margins.



Paul Piquado
Assistant Secretary
for Import Administration

1 APRIL 2013

Date