

Ad Hoc Shrimp Trade Action Committee v. United States
Court No. 10-00275 Slip Op. 13-89 (CIT July 19, 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. 10-00275, Slip Op. 13-89 (CIT July 19, 2013) (“Remand 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, 75 FR 49460 (August 13, 2010), and accompanying Issues and Decision Memorandum (“PRC Shrimp AR4 Final”). In its Remand Order, the CIT remanded to the Department this case for reconsideration pursuant to the order of the U.S. Court of Appeals for the Federal Circuit (“CAFC”) in Ad Hoc Shrimp Trade Action Committee v. United States, No. 2012-1416 (Fed. Cir. 2013) (“CAFC Remand Opinion and Order”), which granted the Department’s request for a voluntary remand in this matter to allow for reconsideration in light of information discovered in the sixth administrative review (“AR6”) of this proceeding.¹

As set forth in detail below, pursuant to the Court’s Remand Order and the CAFC Remand Opinion and Order, we have reconsidered our determination in this review, taking into account record evidence obtained over the course of AR6 of this proceeding, and determined that

¹ 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”).

Hilltop International (“Hilltop”) provided false and incomplete information regarding its affiliates in the fourth administrative review (“AR4”) of this proceeding.² 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 a dumping margin of 112.81 percent, which is the highest rate from any segment of the proceeding and the current PRC-wide rate.

B. BACKGROUND

On March 12, 2010, the Department published PRC Shrimp AR4 Prelim, wherein we preliminarily found that Hilltop met the criteria establishing eligibility for a separate rate as a result of the Department’s separate rate analysis.³ On August 19, 2011, the Department published PRC Shrimp AR4 Final wherein we assigned Hilltop a dumping margin of zero percent and continued to assign 112.81 percent to the PRC-wide entity, the same rate assigned to the entity in every segment since the investigation, which included 463 companies under review that did not establish their eligibility for separate rate.⁴

On May 24, 2013, the CAFC granted the Department’s motion for a voluntary remand of this case and remanded the case to the CIT with instructions to remand the case to the

² The period of review (“POR”) is February 1, 2008, through January 31, 2009.

³ 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, 11858-11859 (March 12, 2010) (“PRC Shrimp AR4 Prelim”).

⁴ See PRC Shrimp AR4 Final, 75 FR at 49463.

Department for reconsideration.⁵ On July 19, 2013, the CIT remanded the case to the Department consistent with the order of the CAFC.⁶

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

The Department has the inherent authority to cleanse its proceedings of potential fraud.⁷ 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.⁸ In this case, new evidence came to light during the subsequent AR6 indicating possible misrepresentations by Hilltop during AR4. Based on this newly discovered evidence, the Department finds it appropriate to reconsider the final results of AR4 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 investigation⁹ and PRC Shrimp AR1.¹⁰ In the PRC Shrimp LTFV Final, Yelin received a margin of 82.27 percent.¹¹ In PRC Shrimp AR1, which covered the POR from July 14, 2004,

⁵ See CAFC Remand Opinion and Order, No. 2012-1416 (Fed. Cir. 2013).

⁶ See Remand Order, Slip Op. 13-89 (CIT July 19, 2013).

⁷ 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)).

⁸ See id.; see, e.g., Home Prods. Int’l v. United States, 633 F.3d 1369, 1378 (Fed. Cir. 2011) (“Home Products”).

⁹ 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).

¹⁰ 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”).

¹¹ 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.

through January 31, 2006, and was published in September of 2007, Yelin received a de minimis margin.¹² 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.¹³

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,¹⁴ based on Hilltop's request for company-specific revocation pursuant to 19 CFR 351.222(b)(2).¹⁵ 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 Corporation ("Ocean Duke"), and Ocean King (Cambodia) Co., Ltd. ("Ocean King"), a Cambodian company.¹⁶

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

¹² See PRC Shrimp AR1, 72 FR at 52052.

¹³ 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").

¹⁴ 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).

¹⁵ 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").

¹⁶ See Memorandum to the File from Kabir Archuleta, International Trade Analyst, Office 9, "Placing Public Documents on the Record of the Fourth Administrative Review" (August 5, 2013) ("Public Documents to Record of AR4") "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.¹⁷ 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, which persisted throughout this POR.¹⁸ Based on the evidence, the Department also denied Hilltop's request for company-specific revocation from the Order.

On April 1, 2013, the Department submitted to the Court the PRC Shrimp AR5 Final Remand, which was also conducted based on a voluntary request for reconsideration by the Department.¹⁹ We reexamined the record of AR5, in light of the information obtained in AR6, and found that Hilltop had impeded the proceeding by providing material misrepresentations to the Department such that none of its information could be relied upon and that, consequently, Hilltop failed to demonstrate eligibility for a separate rate and was found to be part of the PRC-wide entity.²⁰ On July 23, 2013, the Court affirmed the Department's decision to disregard the totality of Hilltop's representations in that review and noted that Hilltop's misrepresentations concerned "information that is core, not tangential, to {the Department's} analysis because it goes to the heart of Hilltop's corporate ownership and control."²¹ The Court further stated that the record of AR5 contained no other reliable information to rebut the presumption of

¹⁷ See PRC Shrimp AR6 Final.

¹⁸ See Memorandum to the File from Kabir Archuleta, International Trade Analyst, Office 9, "Placing Documents on the Record of the Fourth Administrative Review" (August 5, 2013) ("BPI Documents to Record of AR4") "Hilltop's Response to June 1, 2012 Supplemental Questionnaire" ("Hilltop Seventh Supplemental Response") at 2.

¹⁹ See Final Results Of Redetermination Pursuant To Court Remand (April 1, 2013) ("PRC Shrimp AR5 Final Remand") at 38, available at <http://enforcement.trade.gov/remands/>.

²⁰ See Final Results of Redetermination Pursuant to Court Remand, Court No. 11-00335 (ARP 09-10) (Apr. 1, 2013), ECF No. 74.

²¹ See Ad Hoc Shrimp Trade Action Committee v. United States, Slip Op. 13-93 (CIT 2013) ("AR5 Remand I Opinion") at 19.

government control and, accordingly, found the Department's determination that Hilltop did not demonstrate its eligibility for a separate rate was supported by substantial evidence.²²

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, 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

²² See AR5 Remand I Opinion, Slip Op. 13-93 (CIT 2013) at 19-20.

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

²⁴ See Sentencing Report.

²⁵ See id., at 3; BPI Documents to Record of AR4 "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.

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

²⁷ See id., at 22 and Attachments 9 and 10.

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:

- “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

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

²⁹ See BPI Documents to Record of AR4 “Hilltop’s Response to CBP Import Data” at 2 n. 1; BPI Documents to Record of AR4 “Hilltop’s Reply to Petitioners’ Response to CBP Import Data” (“Hilltop CBP Data Rebuttal”) at 6.

³⁰ See Public Documents to Record of AR4 “Sixth Supplemental Questionnaire” (“Hilltop AR6 Sixth Supplemental Questionnaire”).

³¹ See BPI Documents to Record of AR4 “Hilltop’s Response to June 1, 2012 Supplemental Questionnaire” (“Hilltop AR6 Sixth Supplemental Response”).

³² See *id.*, at 12.

³³ See *id.*, at 14.

- “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 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.

³⁴ See *id.*, at 14 and Exhibit 2.

³⁵ See Public Documents to Record of AR4 “Public Registration Documents for Ocean King (Cambodia) Co., Ltd.” (“Ocean King Registration Documents”).

³⁶ See Public Documents to Record of AR4 “Seventh Supplemental Questionnaire” (“Hilltop AR6 Seventh Supplemental Questionnaire”).

³⁷ See BPI Documents to Record of AR4 “Hilltop’s Seventh Supplemental Questionnaire Response” (“Hilltop AR6 Seventh Supplemental Response”), at 2.

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

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 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

³⁹ See Hilltop CCR.

⁴⁰ See Public Documents to Record of AR4 "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 id., at Attachments 9-11.

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

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!").

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
- 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.

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.

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 AR4 “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).”

- While Hilltop had no entries of Cambodian shrimp during AR4, 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 AR4

In its initial Section A questionnaire response, Hilltop provided a list of shareholders and directors for each of its affiliates in the PRC, Taiwan and the United States.⁵⁷ Hilltop also included the shareholders and directors 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.

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 Yelin 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 questionnaire response, Hilltop provided significant details regarding its affiliations and eligibility for a separate rate in this fourth review.⁶¹ Of the 62 questions in that questionnaire, 26 questions specifically addressed the aforementioned issues of

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 Fourth Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China, Case No. A-570-893” (July 6, 2009) (“Hilltop AR4 SAQR”), at 4 and Exhibit A-2.

⁵⁸ See *id.*

⁵⁹ See Hilltop AR4 SAQR, at 20.

⁶⁰ See *id.*, at Exhibit A-2.

⁶¹ See Letter from Hilltop to the Secretary of Commerce “Hilltop International Response to Supplemental Section A” (October 19, 2009) (“Hilltop AR4 SuppA”).

concern, and many of those questions contained multiple subparts. Nowhere in its 256-page response did Hilltop identify Ocean King.⁶² To the contrary, Hilltop explicitly denied that any of its managers held any positions in any other organizations during the POR.⁶³ In response to a request for any other business licenses held by any members of Hilltop that were not previously submitted in Hilltop AR4 SAQR, Hilltop stated that “{n}one of the principles of the Chinese companies, Hilltop (HK) or the Taiwanese companies held any other business licenses during the POR other than the ones provided in {Hilltop AR4 SAQR}.”⁶⁴ These representations are directly contradicted by the discovery in AR6 that an affiliation with Ocean King existed for the entire duration of AR4. Subsequent to Hilltop’s voluntary disclosure of affiliations with certain companies located in third countries,⁶⁵ the Department inquired into its affiliations with those and additional companies, and requested information regarding the operations, history and structure of those companies.⁶⁶ Despite the clear indication that the Department found third-country affiliations relevant to its analysis, Hilltop continued to conceal its affiliation with Ocean King.

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

⁶² See *id.*

⁶³ See Hilltop AR4 SuppA, at 8 (“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.”)

⁶⁴ See *id.*, at 10.

⁶⁵ See Hilltop AR4 SAQR at 4 and Exhibit A-2.

⁶⁶ See Hilltop AR4 SuppA at 15-16.

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.”⁶⁷ 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, which existed throughout this POR, 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 review based in part on its no shipment certification, and whether we calculated an accurate margin in this segment based on Hilltop’s full universe of PRC-origin sales, which included sales of shrimp imported from Cambodia.⁶⁸ 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 this review are accurate and, thus, cannot rely on any of Hilltop’s reported sales data.

⁶⁷ 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”).

⁶⁸ See Hilltop AR6 Seventh Supplemental Response, at 2.

In order to calculate an accurate dumping margin, the Department must determine whether affiliates⁶⁹ 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.⁷⁰ 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 to AR4. As a result, the quantities and gross unit prices reported by Hilltop in AR4 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 cannot rely on any of the information contained in Hilltop's Section A response, which details its affiliations, corporate structure and ownership. Hilltop's submissions in this review were all submitted on behalf of Hilltop, its PRC-suppliers and its U.S. importer, Ocean Duke, which were collectively

⁶⁹ 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).

⁷⁰ See Hontex Enterprises v. United States, 342 F. Supp. 2d 1225, 1230-34 (CIT 2004); 19 CFR 351.401(f).

referred to as “Hilltop” in the submissions.⁷¹ While we noted in PRC Shrimp AR4 Prelim that Hilltop’s submitted information states that it is located in Hong Kong, it stated that its affiliated producers are located in the PRC.⁷² The CIT has held that Hilltop’s location in Hong Kong does not affect the potential for control through Hilltop’s disclosed and possible additional undisclosed affiliates.⁷³ As we cannot rely on any of the information provided in Hilltop’s section A questionnaire responses, we cannot determine that 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, or the PRC-wide entity, of which Hilltop is a part. 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 facts available to apply to the PRC-wide entity. Further, 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.

⁷¹ See, e.g., Hilltop AR4 SAQR at cover letter; letter from Hilltop to the Secretary of Commerce “Sections C Response for Hilltop International in the Fourth Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China, Case No. A-570-893” (July 22, 2009) (“Hilltop AR4 SCQR”); letter from Hilltop to the Secretary of Commerce “Sections D Response for Hilltop International in the Fourth Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China, Case No. A-570-893” (July 22, 2009) (“Hilltop AR4 SDQR”).

⁷² See, e.g., PRC Shrimp AR4 Prelim, 75 FR at 11856, unchanged in PRC Shrimp AR4 Final.

⁷³ See AR5 Remand I Opinion, Slip Op. 13-93 (CIT 2013) at 20 footnote 39.

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, which was calculated on potentially false data, and because Hilltop had sales of product sourced from Cambodia in this review that is of questionable origin and Hilltop has refused to provide information regarding the true origin of that product, we cannot rely upon any of Hilltop’s quantities and gross unit prices reported in AR4.

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 AR4, 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 AR4 POR. Hilltop's ultimate admission in AR6 that there was an affiliation with Ocean King throughout the entire AR4 POR, which Hilltop only disclosed once faced with conclusive evidence that undermined its assertions,⁷⁴ came approximately two years after the Department had issued its final results in the review.⁷⁵ 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 AR4. 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.⁷⁶ Accordingly, the record with respect to Hilltop contains numerous instances of material misrepresentations and missing information and cannot be verified.⁷⁷

We find the entirety of Hilltop's submissions to contain material misrepresentations and inaccuracies such that Hilltop significantly impeded this proceeding. As noted above, the Court held in its AR5 Remand I Opinion that the Department properly disregarded the totality of Hilltop's representations in AR5 as unreliable and that those misrepresentations regarding Hilltop's affiliations and corporate structure were core, not tangential, to the Department's facts available and separate rate analyses.⁷⁸ In this review, we are faced with a nearly identical fact pattern but with the added and material fact that Hilltop had sales of merchandise it sourced from Cambodian suppliers during this POR.⁷⁹ Accordingly, Hilltop's AR4 sales data is undermined

⁷⁴ See Hilltop AR6 Seventh Supplemental Response, at 2.

⁷⁵ See PRC Shrimp AR4 Final.

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

⁷⁷ 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").

⁷⁸ See AR5 Remand I Opinion, Slip Op. 13-93 (CIT 2013) at 19.

⁷⁹ See Hilltop AR6 Seventh Supplemental Response, at 2.

by record evidence suggesting that sales made during the POR may not have been produced in the country declared by Hilltop as the country of origin and, as such, the Department cannot be certain that there are not unreported sales of subject merchandise.

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 withdrawn in AR3, Hilltop's margin from AR1 was carried forward to this review. Thus, the validity of the cash deposit rate under which Hilltop entered subject merchandise during this POR 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 this review, we are unable to determine what the effects of an accurately calculated margin in AR1 would have had on the sales made during this review. 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

AR4 does not contain the information necessary to calculate an accurate margin for Hilltop, or the PRC-wide entity of which it is a part and must be filled by facts available.

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

Hilltop'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,⁸⁰ and Ocean Duke had imported vast quantities of shrimp from Ocean King.⁸¹ 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.⁸² Moreover, during AR6, To Kam Keung was taking steps to divest himself of his investment in Ocean King, evidenced by his

⁸⁰ See Ocean King Registration Documents, at Attachment 1, compare to Hilltop CBP Data Rebuttal, at Exhibit 2 and Exhibit 3.

⁸¹ See Sentencing Report, at Exhibits 10 and 11.

⁸² See Hilltop AR6 Seventh Supplemental Response, at Exhibit 1.

resignation as a board member in September 2010.⁸³ 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**). . . .”⁸⁴ The Department afforded Hilltop numerous opportunities to recall its affiliation with and investment of \$350,000 in Ocean King, both during the AR4 and AR6 proceedings,⁸⁵ 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 who signed each of Hilltop’s certifications of accuracy in this review,⁸⁶ a fact that further undermines the accuracy and reliability of every submission provided by Hilltop.

Hilltop’s activities, as documented in this proceeding, demonstrate a disturbing pattern of behavior that suggests a company undeterred by admonition.⁸⁷ 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.”⁸⁸ 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.

⁸³ See id.

⁸⁴ See Public Documents to Record of AR4 “Hilltop-Specific Issues Rebuttal Brief for Hilltop International,” at 9 (emphasis added).

⁸⁵ See, e.g., Hilltop AR4 SAQR; Hilltop AR4 SuppA; Hilltop AR6 Seventh Supplemental Response, at Exhibit 1.

⁸⁶ See, e.g., certifications accompanying Hilltop AR4 SAQR; Hilltop AR4 SuppA; Hilltop AR4 SCQR; Hilltop AR4 SDQR.

⁸⁷ See, e.g., Hilltop AR6 AFA Memorandum, at 14; Petitioner Draft Remand Comments, at 11-12.

⁸⁸ See Public Documents to Record of AR4 “Response to Petitioner’s March 12, 2012 Filing,” (“Hilltop AR6 Response to March 12 Filing”) at Attachment 2, page 75.

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.⁸⁹ As detailed on the record of AR6 and placed on the record of this review,⁹⁰ 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.⁹¹ In 2006, Lian Heng was found by the Department to be circumventing the order on fish fillets from Vietnam.⁹² We asked Hilltop to explain and provide supporting documentation for the country of origin of shrimp exported by Lian Heng.⁹³ Hilltop refused to provide the documentation.⁹⁴
- 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 2005.⁹⁵ We asked Hilltop to explain and provide supporting documentation for the country of origin of shrimp sourced from Cambodia.⁹⁶ Hilltop refused to provide the documentation.⁹⁷

⁸⁹ See Hilltop AR6 Sixth Supplemental Response; Hilltop AR6 Seventh Supplemental Response.

⁹⁰ See, e.g., Hilltop AR6 AFA Memorandum; Hilltop AR6 Sixth Supplemental Response; Hilltop AR6 Seventh Supplemental Response.

⁹¹ See Sentencing Report, at Attachment 9 and 10.

⁹² 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 Order, Partial Final Termination of Circumvention Inquiry and Final Rescission of Scope Inquiry, 71 FR 38608 (July 7, 2006).

⁹³ See Hilltop AR6 Sixth Supplemental Questionnaire, at question 8; Hilltop AR6 Seventh Supplemental Questionnaire, at question 1.

⁹⁴ See Hilltop AR6 Sixth Supplemental Response, at 19; Hilltop AR6 Seventh Supplemental Response, at 1.

⁹⁵ See Sentencing Report, at 5.

⁹⁶ See Hilltop AR6 Sixth Supplemental Questionnaire, at question 6 and 8; Hilltop AR6 Seventh Supplemental Questionnaire, at question 1.

- 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.⁹⁸ 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, the company previously determined to be the predecessor to Hilltop, a finding under reconsideration. 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.⁹⁹ We asked Hilltop to explain whether Hilltop ever had any affiliation or business dealings with this company.¹⁰⁰ 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.¹⁰¹ 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.¹⁰²
- Relationship with Truong Trieu Truong: The ICE reports referenced above state that Truong Trieu Truong is the Director of Yelin Enterprise (Vietnam).¹⁰³ 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

⁹⁷ See Hilltop AR6 Sixth Supplemental Response, at 17; Hilltop AR6 Seventh Supplemental Response, at 1.

⁹⁸ See Sentencing Report, at Attachment 24 and 26.

⁹⁹ See *id.*, at Attachment 14.

¹⁰⁰ See Hilltop AR6 Sixth Supplemental Questionnaire, at question 9; Hilltop AR6 Seventh Supplemental Questionnaire, at question 1.

¹⁰¹ See Hilltop AR6 Sixth Supplemental Response, at 20; Hilltop AR6 Seventh Supplemental Response, at 1.

¹⁰² See *id.*

¹⁰³ See Sentencing Report, at Attachment 24 and 26.

Truong Trieu Truong and whether this was the same “Truong” referenced in the Ocean King Email.¹⁰⁴ 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.¹⁰⁵ 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.¹⁰⁶

- 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, 2005.¹⁰⁷ We asked Hilltop whether any of its affiliates acted as the exporter of record for shipments sourced from Ocean King during AR1 and AR2 and to provide a listing of those sales.¹⁰⁸ Hilltop refused to provide the documentation.¹⁰⁹
- 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

¹⁰⁴ See Hilltop AR6 Sixth Supplemental Questionnaire, at question 9; Hilltop AR6 Seventh Supplemental Questionnaire, at question 1.

¹⁰⁵ See Hilltop AR6 Sixth Supplemental Response, at 20-22; Hilltop AR6 Seventh Supplemental Response, at 1.

¹⁰⁶ See *id.*

¹⁰⁷ See Sentencing Report, at Attachment 10.

¹⁰⁸ See Hilltop AR6 Sixth Supplemental Questionnaire, at question 6; Hilltop AR6 Seventh Supplemental Questionnaire, at question 1.

¹⁰⁹ See Hilltop AR6 Sixth Supplemental Response, at 16-17; Hilltop AR6 Seventh Supplemental Response, at 1.

supplier of the Cambodia Factory; and whether Yelin/Hilltop and/or its affiliates exported any scope merchandise to Cambodia during AR1 and AR2.¹¹⁰ Hilltop refused to provide a response to these questions.¹¹¹

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 approximately two years 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) 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

¹¹⁰ See Hilltop AR6 Sixth Supplemental Questionnaire.

¹¹¹ See Hilltop AR6 Sixth Supplemental Response; Hilltop AR6 Seventh Supplemental Response.

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, a period in which it has reported sales of Cambodian product, 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,¹¹² 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 ("ADs") 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 AR4. 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 timely manner, and provided information that could not be verified.

¹¹² 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.

Therefore, application of FA is warranted pursuant to sections 776(a)(2)(A),(B), (C), and (D) of the Act.

f. Denial of Hilltop's Separate Rate is Appropriate

We find that the material misrepresentations that Hilltop made on the AR4 record, coupled with the outstanding and unanswered questions described above, warrant denial of Hilltop's separate rate in AR4. The CIT agreed with the Department's analysis in the AR5 remand that Hilltop's misrepresentations were core information regarding Hilltop's affiliations that goes to the heart of the Department's separate rate analysis.¹¹³ Additionally, the CIT rejected Hilltop's arguments that Hong Kong business registration documents were sufficient evidence to demonstrate separate rate eligibility.¹¹⁴

As in AR5 and AR6, in AR4 the Department originally determined that Hilltop was part of an affiliated group of companies with companies located in the PRC,¹¹⁵ many of which are the same companies with which Hilltop was affiliated in AR5 and AR6.¹¹⁶ The CIT rejected Hilltop's argument that the Department cherry-picked what record evidence to rely upon and agreed that prior evidence of Hilltop's affiliations with PRC producers was probative. For these reasons, we find that Hilltop's material misrepresentations also affect its separate rate status for AR4. Because the information Hilltop withheld regarding its affiliation with Ocean King is material to the Department's separate rate analysis, we find that we cannot determine that Hilltop is eligible for a separate rate in AR4. Hilltop is, therefore, part of the PRC-wide entity.

¹¹³ See AR5 Remand I Opinion, Slip Op. 13-93 (CIT 2013) at 19.

¹¹⁴ See id., at 20 n39.

¹¹⁵ See PRC Shrimp AR4 Prelim, 75 FR at 11856; unchanged in PRC Shrimp AR4 Final.

¹¹⁶ Compare PRC Shrimp AR4 Prelim, 75 FR at 11856 with PRC Shrimp AR6 Prelim, 77 FR at 12803 and PRC Shrimp AR5 Prelim, 76 FR at 8339-40.

g. 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.”¹¹⁷

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.”¹¹⁸ The CAFC has held that the “best of its ability” standard “requires the respondent to do the maximum it is able to do.”¹¹⁹ The CAFC further elaborated:

While the standard does not require perfection, and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping. It assumes that importers are familiar with the rules and regulations that apply to the import activities undertaken and requires that importers, to avoid a risk of an adverse inference determination in responding to Commerce's inquiries: (a) take reasonable steps to keep and maintain full and complete records documenting the information that a reasonable importer should anticipate being called upon to produce; (b) have familiarity with all of the records it maintains in its possession, custody, or control; and (c) conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of the importers' ability to do so.¹²⁰

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 subsequent reviews. 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

¹¹⁷ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 103-316, at 870 (1994).

¹¹⁸ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

¹¹⁹ See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

¹²⁰ See *id.*

questions regarding what other information is missing that could be relevant to the Department's proceeding.¹²¹

For all of the reasons outlined above, the Department finds, pursuant to section 776(b) of the Act, the application of AFA to the PRC-wide entity is warranted as the Department has determined that the PRC-wide entity, of which Hilltop is a part, has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. The Court has found this approach with respect to Hilltop in AR5, an analysis which was based on an identical fact pattern, supported by substantial evidence.¹²² 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 affiliate¹²³ and its refusal in AR6 to provide information regarding allegations of transshipment¹²⁴ makes it impossible for the Department to be confident that its submissions do not contain additional material misrepresentations or, consequently, calculate normal value or U.S. price. Finally, Hilltop's refusal 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 AR4, and, consequently, its eligibility for a separate rate in this review.¹²⁵

¹²¹ See Hilltop AR6 Sixth Supplemental Response; Hilltop AR6 Seventh Supplemental Response.

¹²² See AR5 Remand I Opinion, Slip Op. 13-93 (CIT 2013) at 20-21.

¹²³ Compare Hilltop AR4 SAQR at 4 and Exhibit A-2 with Hilltop AR6 Seventh Supplemental Response at 2.

¹²⁴ See Hilltop AR6 Sixth Supplemental Response.

¹²⁵ See id.; Hilltop AR6 Seventh Supplemental Response.

Based on the failures enumerated above, we have determined that the PRC-wide entity, of which Hilltop is a part, 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 a dumping margin for the PRC-wide entity/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.

E. CORROBORATION OF THE PRC-WIDE RATE

1. BACKGROUND

As noted above, on July 23, 2013, the Court issued its AR5 Remand I Opinion, finding the Department's determination that Hilltop did not demonstrate its eligibility for a separate rate was supported by substantial evidence.¹²⁶ However, the Court also determined that "Commerce must either adequately corroborate the 112.81 percent PRC-wide rate and explain how its corroboration satisfies the requirements of 19 U.S.C. 1677e(c), or calculate or choose a different countrywide rate that better reflects commercial reality, as supported by substantial evidence."¹²⁷ Therefore, in considering the Court's AR5 Remand I Opinion, the Department has placed additional documentation on the record of this review concerning corroboration of the PRC-wide rate and has provided opportunities for public comment, as detailed below.

On January 27, 2004, the Department initiated the AD investigation of certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the PRC and the Socialist Republic of Vietnam.¹²⁸ On July 16, 2004, the Department published the PRC Shrimp LTFV

¹²⁶ See AR5 Remand I Opinion, Slip Op. 13-93 (CIT 2013) at 19-20.

¹²⁷ See id., at 23.

¹²⁸ See 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) ("Initiation Notice").

Prelim,¹²⁹ which was accompanied by an unpublished memorandum corroborating the rate used as the PRC-wide rate and the AFA rate.¹³⁰ On December 8, 2004, the Department published the PRC Shrimp LTFV Final and on February 1, 2005, the Department published an amended final and Order, finding individually calculated rates between de minimis and 84.93 percent and continuing to assign 112.81 percent to the PRC-wide entity. However, as noted by the Court in its AR5 Remand I Opinion, the individually calculated margins in the LTFV Investigation were subsequently reduced to 5.07, 7.20, and 8.45 percent.¹³¹

2. CORROBORATION OF THE PRC-WIDE RATE IN THE INVESTIGATION

In the Initiation Notice, the Department described how the calculation of export price (“EP”) and normal value (“NV”) was carried out in the Petition, noting that EP was based on official U.S. import statistics during the period of investigation (“POI”) and that normal value was based on the factors of production (“FOPs”) provided by several significant producers in the United States of the domestic like product.¹³² We further noted that those FOPs were valued using surrogate values from India.¹³³ The Department conducted a thorough examination of the methodology employed in the Petition, which included a discussion with the foreign market researcher contracted by Petitioner to obtain cost data for the primary input, raw warmwater shrimp, and making adjustments to Petitioner’s methodology, where appropriate.¹³⁴ Upon confirmation that the methodology employed in the Petition conformed to the Department’s rules

¹²⁹ See PRC Shrimp LTFV Prelim.

¹³⁰ See BPI Documents to Record of AR4 at Attachment II “Memorandum to the File from Joe Welton, Analyst, through James C. Doyle, Program Manager, and Edward Yang, Office Director, ‘Corroboration of the PRC-Wide Adverse Facts-Available Rate’ (July 2, 2004)” (“Corroboration Memo”).

¹³¹ See Allied Pacific Food (Dalian) Co. v. United States, 716 F. Supp. 2d 1339 (CIT 2010); Shantou Red Garden Foodstuff Co. v. United States, 880 F. Supp. 2d 1332 (CIT 2012); see also Certain Frozen Warmwater Shrimp From the People’s Republic of China: Notice of Court Decision Not in Harmony With the Final Determination and Amended Final Determination of the Antidumping Duty Investigation, 77 FR 66434 (November 5, 2012); Certain Frozen Warmwater Shrimp From the People’s Republic of China: Notice of Amended Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision, 76 FR 30100 (May 24, 2011).

¹³² See Initiation Notice, 69 FR at 3880-3881.

¹³³ See id.

¹³⁴ See id.

and regulations, this investigation was initiated with estimated recalculated dumping margins from 112.81 percent to 263.68 percent.¹³⁵

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as “[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”¹³⁶ The SAA provides further that the term “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.¹³⁷ To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics, and customs data, as well as information obtained from interested parties during that particular investigation.¹³⁸ To corroborate the margin calculations in the Petition for use as AFA for purposes of the preliminary determination in this investigation, the Department conducted a thorough examination of the evidence supporting the calculations in the Petition.

As noted above, concurrent with publication of the PRC Shrimp LTFV Prelim, the Department issued a Corroboration Memo which detailed the determination to use total AFA, pursuant to sections 776(a) and 776(b) of the Act, as the rate assigned to the PRC-wide entity because the exporters comprising the single PRC-wide entity failed to respond to the Department’s request for information and thereby failed to cooperate to the best of its ability.¹³⁹ As AFA the Department used information from the Petition because the margins derived from

¹³⁵ See *id.*, 69 FR at 3881.

¹³⁶ See Statement of Administrative Action accompanying the URAA, H.R. Rep No. 103-366 at 870 (“SAA”).

¹³⁷ See SAA at 870.

¹³⁸ See SAA at 870.

¹³⁹ See Corroboration Memo at 1.

the Petition were higher than the calculated margins for the selected respondents.¹⁴⁰ To corroborate the Petition margins, the Department compared those margins to the margins calculated for a respondent in the investigation, the Allied Pacific Group (“Allied”), noting that Allied was a significant producer and produced the merchandise under consideration using all factors of production described in the Petition and under the same production standards as the Petition.¹⁴¹ This analysis found that there was a significant percentage of Allied’s control numbers (“CONNUMs”)¹⁴² with positive margins and that a significant volume of those CONNUMs had margins which exceeded the lowest Petition margin of 112.81 percent.¹⁴³ Accordingly, the Department found that the Petition margin of 112.81 percent was relevant to this investigation and had probative value.¹⁴⁴

3. ANALYSIS OF THE RECORD

Given that the margins of the mandatory respondents we used to corroborate the Petition rate in the investigation changed following litigation, and in consideration of the Court’s AR5 Remand I Opinion, we have revisited the record of the LTFV Investigation to determine whether the margins calculated in the Petition, and vetted and revised by the Department at that time, remain relevant to the investigation and have probative value. Accordingly, we have examined the record evidence with respect to the revised margin calculations and have confirmed that although the final weighted-average margins may have been downwardly revised, significant percentages of positive, CONNUM-specific margins remain and significant volumes of

¹⁴⁰ See id.

¹⁴¹ See Corroboration Memo at 2.

¹⁴² In most investigations, administrative reviews and new shipper reviews, the subject merchandise has different CONNUMs to identify the individual models of products for matching purposes. The CONNUMs are assigned to each unique product reported in the sales response. Identical products are assigned the same CONNUM in both the comparison market sales database (or in a non-market economy context, the factors of production database) and U.S. sales database. See Antidumping Manual (October 13, 2009), at Chapter 4, page 10.

¹⁴³ See Corroboration Memo at 3.

¹⁴⁴ See id.

CONNUM-specific margins continue to be higher than the lowest Petition margin of 112.81 percent for at least one mandatory respondent and significant volumes of CONNUM-specific margins continue to be higher than the lowest Petition margin of 112.81 percent for one respondent, as detailed below.

Specifically, we have looked to the margins calculated for Shantou Red Garden Foodstuff Co. (“Red Garden”), a mandatory respondent in the LTFV Investigation and the respondent with the highest volume of sales during the POI.^{145, 146} As was the case with Allied, we note that Red Garden produced shrimp in accordance with Hazard Analysis and Critical Control Point (“HAACP”) plans, which is required in order to comply with the U.S. Food and Drug Administration’s enforcement of food safety in the U.S. food supply,¹⁴⁷ and that the Petition based its calculations assuming production under the same standards.¹⁴⁸ Additionally, we note that Red Garden used all the FOPs to produce subject merchandise during the POI which were included in the Petition, specifically: raw shrimp, tripolyphosphate, labor, electricity, water, and packing materials.¹⁴⁹ Therefore, Red Garden produced merchandise under consideration using all FOPs described in the Petition and under the same production standards as the Petition.

¹⁴⁵ See BPI Documents to Record of AR4 at Attachment II “Memorandum to Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, Group III, from Edward C. Yang, Office Director, Office 9, ‘Selection of Respondents for the Antidumping Investigation of Certain Frozen and Canned Warmwater Shrimp from the People’s Republic of China’ (February 23, 2004)” (“LTFV Respondent Selection Memo”) at Attachment II.

¹⁴⁶ We note that the Corroboration Memo states that Allied is the largest single exporter of subject merchandise from the PRC. See Corroboration Memo at 2. However, a review of the margin programs for Allied and Red Garden, as well as the LTFV Respondent Selection Memo, confirm that this does not appear to have been the case. See LTFV Respondent Selection Memo at Attachment II; BPI Documents to Record of AR4 at Attachment II “Memorandum to the File through James C. Doyle, Program Manager, China/NME Unit, from Alex Villanueva, Case Analyst, ‘Analysis for the Preliminary Determination of Certain Frozen and Canned Warmwater Shrimp from the People’s Republic of China (‘the PRC’): The Allied Pacific Group (‘Allied’)’ (July 2, 2004)” (“Allied LTFV Analysis Memo”); BPI Documents to Record of AR4 at Attachment II “Memorandum to the File through James C. Doyle, Program Manager, China/NME Unit, from Joe Welton, Case Analyst, ‘Analysis for the Preliminary Determination of Certain Frozen and Canned Warmwater Shrimp from the People’s Republic of China (‘the PRC’): Red Garden Foodstuff Co., Ltd.’ (July 2, 2004)” (“Red Garden LTFV Analysis Memo”).

¹⁴⁷ See Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products, 60 FR 65096 (December 18, 1995).

¹⁴⁸ See Corroboration Memo at 2.

¹⁴⁹ Compare Red Garden LTFV Analysis Memo at 7-8 with Initiation Notice, 69 FR at 3880.

Finally, we note that Red Garden was the largest single exporter of merchandise under consideration from the PRC, and thus is a significant exporter of merchandise subject to this investigation. Therefore, we find that Red Garden's margins are relevant for purposes of corroboration of a margin based on information from the Petition.

An analysis of Red Garden's sales data, FOP data, and calculated margins, subsequent to revisions pursuant to judicial review, reveals that more than half of the CONNUMs examined in Red Garden's margin calculation had positive margins.¹⁵⁰ Of those CONNUMs with positive margins, the Department found that the percentage with dumping margins exceeding 112.81 percent is sufficient to demonstrate the probative value of the lowest Petition margin of 112.81 percent.¹⁵¹ Furthermore, by quantity, we found that CONNUMs accounting for a significant volume of merchandise under consideration were sold at prices that resulted in margins which exceeded 112.81 percent.¹⁵² Therefore, we find that the Petition rate continues to be relevant to this investigation, even after taking into account subsequent changes to the original calculations pursuant to remand redetermination, and the rate to be corroborated for purposes of this final remand. Further, we conclude that the margin of 112.81 percent is based on information from the Petition and has probative value.

E. COMMENTS ON INFORMATION PLACED ON THE RECORD

On August 5, 2013, in conjunction with documentation from AR6 of this proceeding, the Department released documentation from the LTFV Investigation in support of the corroboration of the PRC-wide rate, as explained above.¹⁵³ Specifically, the Department released the LTFV

¹⁵⁰ See Memorandum to the File from Kabir Archuleta, Senior International Trade Analyst, Office 9, "Business Proprietary Analysis of Red Garden Foodstuff Co., Ltd., Margin Program" (September 26, 2013) ("Red Garden BPI Memo").

¹⁵¹ See Red Garden BPI Memo.

¹⁵² See *id.*

¹⁵³ See BPI Documents to Record of AR4.

Respondent Selection Memo, Red Garden LTFV Analysis Memo, Allied LTFV Analysis Memo, and the Corroboration Memo from the original investigation. The Department also released a file that was created in connection with the recent section 129 proceeding that listed every CONNUM-specific margin calculated for Red Garden.¹⁵⁴ The Red Garden Margin File was created using Red Garden's data, as submitted during the original investigation, but recalculated to reflect any changes (i.e., surrogate values) that were made pursuant to U.S. and World Trade Organization litigation and to allow offsets for non-dumped sales.¹⁵⁵

On August 9, 2013, we received comments from Hilltop and Petitioner.¹⁵⁶ In response to a position in Hilltop's Comments, on August 14, 2013, the Department released additional documentation to interested parties.¹⁵⁷ Specifically, the Department released the Red Garden 129 Analysis Memo that accompanied the recalculation of Red Garden's investigation margin from the section 129 proceeding and included the complete SAS Output that is created when a margin calculation program is executed.¹⁵⁸ The SAS Output also includes a sampling of the highest and lowest calculated margins.¹⁵⁹ On August 16, 2013, the Department received additional comments from Hilltop.¹⁶⁰

¹⁵⁴ See id., at Attachment III ("Work File 'Margin' from recalculation of the AD margin for Shantou Red Garden Foodstuff Co., Ltd. in the AD investigation of certain frozen and canned warmwater shrimp from the People's Republic of China in connection with the Department's section 129 determination implementing the findings of the World Trade Organization's panel report in United States - Anti-Dumping Measures on Certain Shrimp and Diamond Saw Blades from China (DS422), dated June 8, 2012" ("Red Garden Margin File")).

¹⁵⁵ See Memorandum to the File from Kabir Archuleta, Senior International Trade Analyst, Office 9, "Placing Section 129 Documents on the Record of the Fourth Administrative Review" (August 14, 2013) ("Additional Documents on the Record of AR4") at Attachment I "Preliminary Results Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China" ("Red Garden 129 Analysis Memo") at 1.

¹⁵⁶ See Letter to the Secretary of Commerce from Hilltop "Hilltop Comments on New Information" (August 9, 2013) ("Hilltop Comments"); Letter to the Secretary of Commerce from Petitioner "Comments on Factual Information Placed on the Record in Remand Proceeding" (August 9, 2013) ("Petitioner Comments").

¹⁵⁷ See Additional Documents on the Record of AR4.

¹⁵⁸ See Red Garden 129 Analysis Memo at Attachment 1: Margin Program – Log/Output ("SAS Output").

¹⁵⁹ See id.

¹⁶⁰ See Letter to the Secretary of Commerce from Hilltop "Hilltop Comments on Additional New Information" (August 16, 2013) ("Hilltop Additional Comments").

Petitioner notes that the statutory requirement to corroborate secondary information using, to the extent practicable, information from independent sources reasonably at the Department's disposal is more easily satisfied with respect to PRC-wide rates because there "are no questionnaire responses from the PRC itself on which to rely."¹⁶¹ Petitioner contends that the Department is afforded broad discretion in corroborating the PRC-wide rate because the CIT has recognized that "there is no requirement that the PRC-wide rate entity rate based on AFA relate specifically to the individual company."¹⁶² Moreover, Petitioner notes that the CAFC has held that previously corroborated margins enjoy a presumption of continued validity.¹⁶³ Petitioner argues that documentation placed on the record by the Department fully corroborates the 112.81 percent PRC-wide rate and notes that the CAFC has upheld AFA rates that represented only 0.04 percent of the sales database.¹⁶⁴ Thus, Petitioner contends, documentation placed on the record by the Department, using revised surrogate values after CIT remands, that demonstrates margins exceeding 112.81 percent satisfies the CIT directive to corroborate the PRC-wide rate.¹⁶⁵

Hilltop argues that the documentation placed on record by the Department impeded Hilltop's ability to comment because the margin "work file" was incomplete and lacked explanation as to how this information was used in the section 129 proceeding.¹⁶⁶ Hilltop requests that the Department release additional disclosure documentation related to the section

¹⁶¹ See Petitioner Comments at 2 n5 (citing to Shandong Machinery Import & Export Co. v. United States, 2009 Ct. Intl. Trade LEXIS 76, *16-17 (June 24, 2009)).

¹⁶² See Petitioner Comments at 2 n6 (citing to Peer Bearing Co. - Changshan v. United States, 32 CIT 1307, 1313, 587 F. Supp. 2d 1319 (2008) ("Peer Bearing").

¹⁶³ See Petitioner Comments at 2-3 n.7-8 (citing to KYD, Inc. v. United States, 607 F.3d 760, 767 (Fed. Cir. 2010) ("KYD").

¹⁶⁴ See Petitioner Comments at 3 n9 (citing to Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330, 1339 (Fed. Cir. 2002) ("Ta Chen").

¹⁶⁵ See Petitioner Comments at 3.

¹⁶⁶ See Hilltop Comments at 2.

129 proceeding calculation for Red Garden as well as the disclosure documents for the other respondents in that proceeding, Allied Pacific Group and Yelin Enterprise Co. Hong Kong.¹⁶⁷

Hilltop notes that the overall margin reflected in the Red Garden Margin File fails to corroborate the 112.81 percent AFA rate adopted by the Department.¹⁶⁸ Hilltop contends that the Department must explain how transactions from this document would produce a reliable and relevant rate for the PRC-wide entity as a whole and argues that because the transaction-specific margins for Red Garden vary greatly, data from the other respondents are necessary for comparison.¹⁶⁹

Notwithstanding these reservations, Hilltop believes that the use of any data from the section 129 proceeding would fail to corroborate the PRC-wide rate in the current proceeding because the Court directed the Department not to use outdated information to corroborate a rate for the current proceeding.¹⁷⁰ Hilltop points out that the section 129 proceeding used data from the original investigation and, thus, uses data that was already rejected by the Court¹⁷¹ and cannot be representative of sales made many years later.¹⁷²

In its comments on additional information placed on the record, Hilltop renews its request for disclosure documents related to the other respondents in the section 129 proceeding, arguing that the new information placed on the record by the Department fails to explain the wide range of transaction-specific margins calculated for Red Garden and fails to demonstrate that such a wide range of margins is typical.¹⁷³ Hilltop further argues that the Department has not demonstrated that margins from 2003 continue to be relevant and that the Department's refusal

¹⁶⁷ See *id.*, at 2-3.

¹⁶⁸ See *id.* at 3.

¹⁶⁹ See *id.* at 3-4.

¹⁷⁰ See *id.* at 4.

¹⁷¹ See *id.*

¹⁷² See *id.* at 4-5 (citing *Ferro Union, Inc. v. United States*, 23 CIT 178, 204-205 (1999)).

¹⁷³ See Hilltop Additional Comments at 2.

to place additional information on the record casts doubt on the objectivity of the Department's analysis.¹⁷⁴

F. DEPARTMENT'S POSITION

With respect to Hilltop's argument that the Department did not provide sufficient context or explanation for the Red Garden Margin File placed on the record on August 5, 2013, the Department disagrees. The index page at Attachment II of the memorandum clearly states that the last document appended was a work file from Red Garden's margin program used in the section 129 proceeding.¹⁷⁵ Given Hilltop's wealth of experience in proceedings before the Department, the mechanics of the Department's margin program calculation should not be a novel concept. Nonetheless, the Department supplemented the record with additional record evidence from the section 129 proceeding, the Red Garden 129 Analysis Memo, to demonstrate the identical correlation between the 10 highest CONNUM-specific margins and 10 lowest CONNUM-specific margins listed in the Red Garden Margin File and the actual SAS Output released in the section 129 proceeding.¹⁷⁶ A comparison of the Red Garden Margin File and the SAS Output attached to the Red Garden 129 Analysis Memo confirms not only the highest and lowest margins, but also the total quantity and total value.¹⁷⁷ Further, the SAS Output attached to the Red Garden 129 Analysis Memo contains a time and date stamp indicating when the program that calculated these results was executed.¹⁷⁸ While Hilltop notes a discrepancy between quantities listed in the LTFV Respondent Selection Memo released to interested parties¹⁷⁹ and the Red Garden Margin File,¹⁸⁰ the Department notes that the LTFV Respondent

¹⁷⁴ See id.

¹⁷⁵ See Red Garden Margin File.

¹⁷⁶ Compare Red Garden Margin File CONNUM-specific margins to SAS Output.

¹⁷⁷ See id.

¹⁷⁸ See id.

¹⁷⁹ See LTFV Respondent Selection Memo.

¹⁸⁰ See Hilltop Comments at 2.

Selection Memo is based upon responses to the Department's quantity and value questionnaire,¹⁸¹ whereas the Red Garden Margin File is based on the U.S. Sales files submitted by respondents that typically undergo multiple revisions pursuant to Department direction and supplemental questionnaires. Lastly, while Hilltop claims that it is unclear whether the quantities listed in the Red Garden Margin File are in kgs or pounds,¹⁸² we note that the Red Garden LTFV Analysis Memo, which describes the methodologies used to calculate the margins contained in the Red Garden Margin File, reflects the total quantity listed in the Red Garden Margin File in kgs and states that "{f}or all sales reported in pounds, we have converted the gross price and quantity of those sales, as well as any relevant selling expenses, to kilograms."¹⁸³ Thus, we find Hilltop's claim that the documents placed on the record by the Department are incomplete or contain discrepancies such that interested parties are impeded from properly analyzing the results, without merit.

As noted above, the Department originally selected information from the Petition as the AFA rate for this investigation because the margins derived from the Petition were higher than the calculated margins for the selected respondents.¹⁸⁴ Although Hilltop argues that the Department is attempting to cherry pick individual transactions from the Red Garden Margin File for its corroboration analysis,¹⁸⁵ Hilltop's argument is misplaced on two counts. First, the Department's normal practice in less than fair value investigations is to calculate margins using average-to-average comparisons,¹⁸⁶ meaning that, contrary to Hilltop's claim, the Department

¹⁸¹ See LTFV Respondent Selection Memo at 2 n2.

¹⁸² See Hilltop Comments at 2.

¹⁸³ See Red Garden LTFV Analysis Memo at 1.

¹⁸⁴ See Corroboration Memo at 1.

¹⁸⁵ See Hilltop Comments at 2-3.

¹⁸⁶ See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006) ("The Statement of Administrative Action accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. No. 103-316, Vol. 1 at 842-43 (1994),

selected CONNUM-specific, or model-specific, margins rather than transaction-specific margins for its corroboration analysis. CONNUM-specific margins result in calculated margins that represent the pricing behavior related to groups of sales, rather than individual sales, and, consequently, do not result from cherry picking of individual transactions. Second, Hilltop's contention that the identification of a significant number of CONNUM-specific margins exceeding the lowest Petition margin of 112.81 percent fails to corroborate that rate as a reasonable, reliable, and relevant rate for the PRC-wide entity ignores the fact that this was the same well-established methodology employed in the original investigation and many other proceedings. All weighted-average calculated margins were below the lowest Petition margin and that reality factored into the Department's decision to select information from the Petition as the AFA rate for this investigation.

As explained above, despite the reduction of calculated weighted-average margins subsequent to litigation, a significant quantity and value of CONNUM-specific margins higher than the lowest Petition margin remain for at least one respondent.¹⁸⁷ Thus, this rate is reasonable and supported by substantial evidence because it represents an actual rate at which a cooperating respondent sold the merchandise under consideration during the POI¹⁸⁸ and "does not lie outside the realm of actual selling practices."¹⁸⁹ The CAFC has affirmed the Department's use of an AFA rate that is supported not only by the evidence submitted with the petition, but also by the calculation of "high-volume transaction-specific margins for cooperative

reprinted in U.S.C.C.A.N. 3773 (SAA), and the Department's regulations state that the Department normally will use the average-to-average comparison methodology in an investigation. 19 CFR 351.414(c)(1).")

¹⁸⁷ See also Red Garden BPI Memo.

¹⁸⁸ See *Shanghai Taoen Int'l Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1347-48 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

¹⁸⁹ See *KYD*, 607 F.3d at 767.

companies which are both higher than the { } petition rate and are close to that rate.”¹⁹⁰ The CAFC has also upheld an AFA rate that was corroborated using a single transaction¹⁹¹ and an AFA rate where only 0.5 percent of the respondent’s sales were above that rate.¹⁹² Here, the Department has identified significant quantities of high CONNUM-specific margins that represent a much higher percentage of Red Garden’s sales than 0.5 percent.¹⁹³ Further, these CONNUM-specific margins provide a broad representation of selling activity by taking into account all sales of that CONNUM.

If during the POI, the cooperating respondent sold the merchandise under consideration at the rate the Department selected, the Department may reasonably determine that a non-responsive, or uncooperative, respondent could have made all of its sales at the same rate.¹⁹⁴ Thus, the Department determines that this rate continues to bear a rational relationship to the PRC-wide entity. Accordingly, we conclude that, despite a reduction in the overall weighted-average margins calculated for mandatory respondents in the original investigation, the commercial reality that a significant quantity and value of CONNUMs were sold at prices that resulted in AD margins exceeding 112.81 percent confirms the continued reliability of the 112.81 percent rate and relevance to the PRC-wide entity as a whole. Because we find that the record of this proceeding contains no other information that would call into question the reliability of that rate, and Hilltop has offered no other information that would rebut that presumption, the Department finds that this rate remains relevant to the PRC-wide entity.¹⁹⁵

¹⁹⁰ See *id.*, 607 F.3d at 766 (citing *Universal Polybag Co. v. United States*, 577 F. Supp. 2d 1284 (CIT 2008)).

¹⁹¹ See *Ta Chen*, 298 F.3d at 1339.

¹⁹² See *PAM, S.p.A. v. United States*, 582 F.3d 1336, 1340 (Fed. Cir. 2009) (“*PAM, S.p.A.*”).

¹⁹³ See Red Garden BPI Memo.

¹⁹⁴ See *High Pressure Steel Cylinders From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 76 FR 77964, 77970-71 (December 15, 2011), unchanged in *High Pressure Steel Cylinders From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 26739, 26742 (May 7, 2012).

¹⁹⁵ See, e.g., *KYD*, 607 F.3d at 767.

With respect to Hilltop’s suggestions that recalculated margins from 2003 lack relevance and are no longer probative given the “wealth of more recent margin calculations,”¹⁹⁶ we disagree. The Court has upheld the Department’s long-standing practice of calculating the PRC-wide entity rate using the highest margin calculated for any party in the investigation or in any administrative review.¹⁹⁷ The Court has also affirmed the position that the PRC-wide rate need not be corroborated with respect to each particular respondent who is found to form part of the PRC-wide entity.¹⁹⁸ The fact that AD margins have been calculated for respondents that have demonstrated their eligibility for a separate rate in certain segments of this proceeding has no bearing on the rate applied to the PRC-wide entity in this review, which includes Hilltop, because, as explained above, the rate being applied has been “corroborated according to its reliability and relevance to the countrywide entity as a whole.”¹⁹⁹ As indicated above, in the investigation, the Department relied upon our pre-initiation analysis of the adequacy and accuracy of the information in the Petition. During our pre-initiation analysis, we examined the information used as the basis of EP and NV in the Petition, and the calculations used to derive the alleged margins, and made adjustments where appropriate.²⁰⁰ Based on that information and the additional corroboration analysis here, we find that the chosen Petition rate is both reliable and relevant. Further, with regard to the relevance aspect of corroboration, the Court has held that the age of the information alone does not call into question the relevance of the chosen rate.²⁰¹ Thus, we find that this rate is an appropriate estimate of what the actual dumping margin

¹⁹⁶ See Hilltop Additional Comments at 2.

¹⁹⁷ See Peer Bearing, 587 F. Supp. 2d at 1327 (citing Sigma Corp. v. United States, 117 F.3d 1401, 1411 (Fed. Cir. 1997)).

¹⁹⁸ See AR5 Remand I Opinion at 23.

¹⁹⁹ See Peer Bearing, 587 F. Supp. 2d at 1327.

²⁰⁰ See Initiation Notice, 69 FR at 3880-81.

²⁰¹ See Peer Bearing, 587 F. Supp. 2d at 1328 (“In addition, the age of the information alone does not call into question the relevance of the chosen rate.”).

would be for an unverifiable PRC-exporter of subject merchandise and, therefore, relevant.²⁰²

We note that Hilltop's participation in this proceeding and its material misrepresentations since the first administrative review were the subject of this original remand redetermination, and, as such, Hilltop's data cannot be relied upon for any purposes.²⁰³ Further, we note that a rate twice as high as the PRC-wide rate of 112.81 percent has been applied to an individual company²⁰⁴ and the PRC-wide rate of 112.81 percent has been applied to hundreds of companies since the third administrative review of this proceeding.²⁰⁵

While Hilltop argues that the additional information placed on the record by the Department in response to Hilltop's request for additional documentation fails to explain the extremely wide range of margins calculated for Red Garden and fails to demonstrate that this range of margins is typical,²⁰⁶ Hilltop has failed to provide any indication that a wide range of margins is atypical. The only citation included in Hilltop's additional comments is to the AR5 Remand I Opinion²⁰⁷ and nothing on the record of this review suggests that a wide range of margins would somehow be unusual.

As explained above, our corroboration analysis is based upon a comparison of the highest CONNUM-specific margins, in accordance with our normal practice, and the Department does

²⁰² See id., 587 F. Supp. 2d at 1329 (“The PRC-wide entity rate is an appropriate estimate of what the actual dumping margin would be for an unverifiable Chinese exporter of {subject merchandise}.”).

²⁰³ See, e.g., AR5 Remand I Opinion at 19 (“Commerce reasonably determined to disregard the totality of Hilltop's representations in this review.”).

²⁰⁴ 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, 52052 (September 12, 2007) (applying 225.62 percent to Zhoushan Huading Seafood Co., Ltd., a rate inclusive of the PRC-wide rate and an adjustment because the Department found reimbursement of ADs).

²⁰⁵ See Third Administrative Review of Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 46565, 46568 n16 (September 10, 2009) (“{t}he PRC-wide entity includes the 464 companies”); 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, 49463 n15 (August 13, 2010) (“{t}he PRC-wide entity includes the 463 companies”); PRC Shrimp AR5 Final, 75 FR at 51942 n23 (“{t}he PRC-wide entity includes the 80 companies currently under review”).

²⁰⁶ See Hilltop Additional Comments at 2.

²⁰⁷ See id. at 2 n1.

not believe it is necessary to release all data and programs for the other respondents to the section 129 proceeding in order to corroborate the PRC-wide rate. The original corroboration of the PRC-wide rate in this investigation was conducted using CONNUM-specific data, not the final weighted-average margin or transaction-specific margins, for a sole respondent in this investigation.²⁰⁸ With respect to Hilltop's argument that the data from the other two respondents in the investigation are equally relevant to the corroboration of the PRC-wide rate, we note that Red Garden had the highest volume of sales during the POI,²⁰⁹ and it produced merchandise under consideration using all of the FOPs described in the Petition, and under the same production standards as the Petition.²¹⁰ The selection of Red Garden's data is reasonable because that data was from the investigation, in which we originally corroborated the PRC-wide rate, and incorporates the results of U.S. court litigation that is now final and complete.

G. COMMENTS ON THE DRAFT REMAND

The Department released its Draft Remand Results to interested parties on September 26, 2013.²¹¹ Petitioner and Hilltop filed comments on the Draft Remand Results on October 21, 2013.²¹²

Petitioner notes that the CIT in its AR5 Remand I Opinion found total AFA in AR5 appropriate based on a nearly identical fact pattern.²¹³ Petitioner argues that the case for total

²⁰⁸ See Corroboration Memo.

²⁰⁹ See Red Garden BPI Memo at 2; compare Red Garden LTFV Analysis Memo with Initiation Notice, 69 FR at 3880.

²¹⁰ Red Garden produced shrimp in accordance with HAACP plans, which is required in order to comply with the U.S. Food and Drug Administration's enforcement of food safety in the U.S. food supply, and the Petition was based on the same production standards. See Red Garden LTFV Analysis Memo for a list of its FOPs.

²¹¹ See Letter to All Interested Parties from Catherine Bertrand, Program Manager, Office 9 "Draft Remand Redetermination in the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China; 2/1/08 - 1/31/09" (September 26, 2013) ("Draft Remand Results").

²¹² See Letter to the Secretary of Commerce from Petitioner "Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China (2008-2009): Comments on Draft Results of Redetermination Pursuant to Court Remand" (October 21, 2013) ("Petitioner Draft Remand Comments"); Letter to the Secretary of Commerce from Hilltop "Hilltop Comments on Draft Remand Redetermination: Remand of Ad Hoc Shrimp Trade Action Committee v. United States, Court No. 10-00275, Slip Op. 13-89 (CIT July 19, 2013)" (October 21, 2013) ("Hilltop Draft Remand Comments").

AFA in this review is stronger than in AR5 because Hilltop has conceded that shrimp from Ocean King was sold during the POR and the same documents establishing material misrepresentation and likely circumvention are on both records.²¹⁴ Petitioner contends that Hilltop's objection to its treatment as part of the PRC-wide entity based on its location in Hong Kong was rejected by the CIT in AR5 because Hilltop's Hong Kong registration does not preclude the potential for government control through its disclosed, and possibly undisclosed, PRC affiliates.²¹⁵

With respect to corroboration of the PRC-wide rate, Petitioner notes that the CIT has repeatedly held that the country-wide rate need not be corroborated with respect to any individual entity and the statute expressly qualifies that the country-wide rate only need be corroborated to the extent practicable.²¹⁶ Because Hilltop was assigned the PRC-wide rate as AFA, Petitioner argues, the sales behavior of Hilltop and other respondents receiving separate rates in other segments ceases to be meaningful.²¹⁷ Petitioner notes that the CAFC has upheld rates corroborated using a single transaction that comprised 0.5 percent of a respondent's sales and the Department's corroboration analysis reveals significant sales made by the largest exporter in the investigation at prices resulting in margins exceeding the PRC-wide rate of 112.81 percent.²¹⁸ Petitioner further notes that the CAFC has recognized that the Department may presume that a rate based on a petition and corroborated during the investigation is still valid, absent any evidence that would rebut that presumption.²¹⁹ The record in this proceeding offers no evidence that 112.81 percent is not an accurate estimate of the PRC-wide entity's actual

²¹³ See Petitioner Draft Remand Comments at 2-4.

²¹⁴ See *id.* at 4-5.

²¹⁵ See *id.* at 5-6.

²¹⁶ See *id.* at 7-8.

²¹⁷ See *id.* at 8 (citing Watanabe Group, 2010 CIT LEXIS 144, at *14; Jiangsu Changbao Steel Tube Co. v. United States, 884 F. Supp. 2d 1295 (CIT 2012)).

²¹⁸ See *id.* at 8 (citing Ta Chen, 298 F.3d at 1339).

²¹⁹ See *id.* at 9 (citing KYD, 607 F.3d at 767).

rate and the Department has sufficiently considered the CIT's order to corroborate that rate in light of subsequent reductions in margins assigned during the investigation.²²⁰

Hilltop argues that the Department has failed to establish how omission of Ocean King from Hilltop's affiliation chart creates a gap of necessary information that must be filled with FA.²²¹ To the contrary, Hilltop argues, the record demonstrates that Hilltop's connection to Ocean King was not relevant to Hilltop's separate rate analysis or its AR4 margin calculation.²²² Hilltop contends that the absence of any questions regarding third-country affiliations under the "Separate Rates" section of the Section A questionnaire and in the Separate Rate Certification confirms that third-country affiliations are not pertinent to a separate rate analysis.²²³ Hilltop notes that supplemental questions posed by the Department in this review regarding Hilltop's affiliations were under the "Corporate Structure" and "Affiliations" heading of the questionnaire, not the "Separate Rates" heading, demonstrating that third-country affiliations are not relevant to the separate rate analysis.²²⁴

Hilltop argues that its questionnaire responses confirm that it only sold subject shrimp produced by its PRC producers and that none of those producers exported shrimp to other companies.²²⁵ According to Hilltop, the Department did not seek sales or origin information regarding third-country affiliates in this review.²²⁶

Hilltop argues that there is no record evidence that sales made by Ocean Duke of Ocean King product were of PRC-origin.²²⁷ Hilltop further argues that the Department has failed to explain how an insignificant volume of sales of Cambodian-origin product during the POR taints

²²⁰ See *id.* at 9.

²²¹ See Hilltop Draft Remand Comments at 8.

²²² See *id.*

²²³ See *id.* at 8-9.

²²⁴ See *id.* at 9-10.

²²⁵ See *id.* at 10.

²²⁶ See *id.*

²²⁷ See *id.*

all of Hilltop's PRC shrimp sales or supports the theory that sales of Cambodian product were necessary to maintain Hilltop's U.S. customer base.²²⁸

Hilltop states that in Butt-Weld Pipe Fittings from Taiwan and a Glycine from the PRC circumvention proceeding the Department declined to apply an adverse inference based on failures to disclose an affiliate not involved in the production or sale of subject merchandise.²²⁹ Hilltop notes that the CIT has also recognized the principle that failure to report an affiliate not involved in subject merchandise is of no consequence.²³⁰

Hilltop argues that, although the Department claims it was not able to fully examine the impact that Hilltop's affiliation with Ocean King may have had on this review, it has had ample time to consider the affiliation since Hilltop's disclosure in June 2012.²³¹ Hilltop reiterates that, if the Department believed that there was a possibility that Ocean King was involved in the production or sale of subject merchandise during this review, it could have made additional inquiries.²³²

Hilltop claims that no credible argument can be made that the affiliation with Ocean King was "core" to the AR4 AD determination and the cases in which the court has affirmed the rejections of all of a respondent's information involved false or deficient information that had a direct and material impact on the margin calculation.²³³ Hilltop argues that the cases cited by the

²²⁸ See id. at 11.

²²⁹ See id. at 12-14 (citing Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review, 70 FR 1870 (January 11, 2005), and accompanying Issues & Decision Memorandum ("Butt-weld Pipe Fittings from Taiwan") at Comment 1; Glycine From the People's Republic of China: Final Partial Affirmative Determination of Circumvention of the Antidumping Duty Order, 77 FR 73426 (December 10, 2012) and accompanying Issues and Decision Memorandum ("Glycine from the PRC") at Issue 1).

²³⁰ See id. at 14 (citing Ta Chen Stainless Steel Pipe Co. v. United States, 31 CIT 794, 821-22 (2007) ("Ta Chen 2007")).

²³¹ See id. at 14-15.

²³² See id. at 16.

²³³ See id. at 18 (citing Shanghai Taoen Int'l Trading Co., 29 CIT 189, 194 (2005) ("Shanghai Taoen"); Foshan Shunde Yongjian Housewares & Hardware Co., 2011 Ct. Intl. Trade LEXIS 123 at *11-*12; Since Hardware

Department to claim authority to cleanse proceedings of fraud involve cases where the respondent admitted to submitting falsified documents that had a direct impact on the margin calculation.²³⁴ Hilltop claims that in this instance it did not submit falsified records, merely omitted a third-country affiliate from its list of affiliates, and posits that because the courts have found that the Department has often erred in its affiliation findings, it is difficult to accept the Department's assertion that Hilltop must have realized that it was affiliated with Ocean King.²³⁵

Hilltop argues that the Department cannot discount Hilltop's separate rate eligibility because Hilltop has demonstrated that it is a wholly-foreign owned company located in a market economy.²³⁶ Hilltop points to PRC Candles AR8 Final that, it claims, demonstrates that the Department does not require Hong Kong-based exporters to demonstrate independence from government control.²³⁷

Hilltop contends that the Department acknowledged that it does not take the status of affiliated companies in the PRC under consideration for its separate rate analysis when it rescinded the review with respect to Hilltop's affiliated producers and refused to collapse Hilltop with its PRC producers.²³⁸ Hilltop argues that this is consistent with the Department's policy that the separate rate inquiry focuses on the exporter, not the producer, and that the Department's refusal to consider its documentation confirming Hilltop's location in Hong Kong violates the requirement that the Department consider information that is timely, can be verified, is complete, was provided to the party's best ability and can be used without undue difficulty.²³⁹

(Guangzhou) Co. v. United States, 2010 Ct. Intl. Trade LEXIS 119 at *10; Qingdao Taifa Group Co. v. United States, 637 F. Supp. 2d 1231, 1235 (CIT 2009)).

²³⁴ See id.

²³⁵ See id. at 18-19.

²³⁶ See id. at 20.

²³⁷ See id. at 21-22 (citing Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China, 72 FR 52355 (September 13, 2007) ("PRC Candles AR8 Final")).

²³⁸ See id. at 23.

²³⁹ See id. at 24 (citing the requirements enumerated in 19 U.S.C. 1677m(e)).

Hilltop claims that the Draft Remand Results assume transshipment of PRC-origin shrimp has occurred without a formal inquiry or finding of transshipment and that those conclusions are based on conjecture and speculation.²⁴⁰ Hilltop argues that, absent concrete evidence, the Department should remove from its analysis any insinuation that total AFA is justified as a result of transshipment.²⁴¹

Hilltop notes that the Department has repeatedly stated that an administrative review is not the forum to address circumvention claims and that it is not the proper agency to address transshipment claims, a view that has been upheld by the CIT.²⁴² Notwithstanding that point, Hilltop argues that the Department's assumptions regarding transshipment are speculative, unsupported by the record, and were not deemed sufficient to consider by the sentencing court given that the government declined to bring any charges based on those claims.²⁴³

Hilltop claims that the Cambodian production quantities relied upon by the Department to reach the conclusion that Ocean King transshipped shrimp offer no information as to how the data was collected nor how they are reliable.²⁴⁴ Further, Hilltop argues that the Department ignores record evidence that Ocean Duke's entries were accompanied by official export documents stamped by Cambodian officials.²⁴⁵ Hilltop claims that the Department's repeated reference to the 6.8 million kg of shrimp imported by Ocean Duke from Cambodia between May 2004 and July 2005 ignores the fact that Ocean King was not established until July 2005 and, therefore, cannot those entries cannot be attributed to Ocean King.²⁴⁶ Hilltop notes that email correspondence relied upon by the Department only references Vietnam and fails to establish a

²⁴⁰ See *id.* at 25.

²⁴¹ See *id.*

²⁴² See *id.* at 26-28 (citing *Globe Metallurgical Inc. v. United States*, 722 F. Supp. 2d 1372 (CIT 2010)).

²⁴³ See *id.* at 28-31.

²⁴⁴ See *id.* at 31-32.

²⁴⁵ See *id.* at 32.

²⁴⁶ See *id.* at 32.

prima facie case for transshipment, particularly PRC-origin shrimp.²⁴⁷ Hilltop contends that, even if evidence supported a finding of transshipment in AR1 and AR2, there is no lawful basis to alter Hilltop's AR4 margin as a consequence and the Department's theory that potentially flawed cash deposit rates adversely affected Hilltop's data in this review is without merit.²⁴⁸

With respect to the 112.81 percent rate assigned to the PRC-wide entity, Hilltop claims that the Department has failed to explain how information from the investigation remains a relevant and probative form of corroboration.²⁴⁹ Hilltop argues that the courts have held that historical data is appropriate for corroboration when no subsequent information calls into question the reliability of the rate and where the record demonstrates that alternative rates may be appropriate the burden of corroboration is greater.²⁵⁰ Here, Hilltop argues, no respondent has ever received a margin in any segment of this case that exceeded 10 percent, demonstrating that this rate does not reflect commercial reality for the industry.²⁵¹ Hilltop contends that the CIT in its AR5 Remand I Opinion rejected corroboration of the PRC-wide rate using the analysis conducted in the investigation because the 90.05 percent rate assigned to Allied Pacific was reduced to 5.07 percent and the Department has failed to explain how a limited selection of Red Garden's outdated data can reflect commercial reality for the entire PRC shrimp industry.²⁵²

Hilltop notes that although the Department stated that it relied on CONNUM-specific margins for corroboration, the Department refused Hilltop's request for all transaction-specific data for Red Garden and the other respondents so it is impossible to determine how many

²⁴⁷ See id. at 33.

²⁴⁸ See id. at 33-36.

²⁴⁹ See id. at 38.

²⁵⁰ See id. (citing Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1190 (Fed. Cir. 1990); Shanghai Taoen, 29 C.I.T. at 198).

²⁵¹ See id.

²⁵² See id. at 38-39.

transactions these margins comprise or compare this data to sales data from other respondents.²⁵³ Although the Department claims that CONNUM-specific margins provide a broad representation of selling activity, this reasoning leads to the conclusion that all of Red Garden’s sales data would be even more reliable and representative of selling activity.²⁵⁴ The Department’s refusal to use a fully calculated margin for corroboration or to consider the entire history of lower margins in this case supports the view that the Department is cherry picking data from an outdated time period.²⁵⁵ The Department’s references to prior cases where the Courts have permitted corroboration based on a small percentage of sales does not permit such limited data in every case, as evidenced in Dongguan Sunrise.²⁵⁶

H. 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, 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. Although Hilltop claims that its failure to disclose its affiliation with Ocean King is irrelevant to our separate rates analysis based on the fact that questions regarding third country affiliations in the original questionnaire and supplemental questionnaires are located under the headings for “Corporate Structure and Affiliations” rather than the section pertaining wholly to separate rates, the location of the questions alone do not

²⁵³ See id. at 39.

²⁵⁴ See id.

²⁵⁵ See id. at 40.

²⁵⁶ See id. (citing Dongguan Sunrise Furniture Co., Ltd. v. United States, 904 F. Supp. 2d 1359 (CIT 2013) (“Dongguan Sunrise”)).

impart relevancy to a single aspect of our analysis or limit the applicability of the information. Importantly, the Court in its AR5 Remand I Opinion agreed with our position that information related to corporate structure is “core, not tangential, to {our} analysis because it goes to the heart of Hilltop’s corporate ownership and control.”²⁵⁷ The Court further held that the “conclusion that Hilltop’s representations regarding its corporate structure, affiliations, and government control are not reliably accurate and complete” as a result of its misrepresentations “is reasonable.”²⁵⁸ Moreover, Hilltop’s contention that the location of certain questions in the Department’s questionnaires is the sole determining factor to its relevance is absurd. For example, this argument would lead to the conclusion that the quantity and value information submitted by parties in Section A of the questionnaire has no relevance to its U.S. sales because it is not submitted as part of Section C, which details the selling behavior of respondents. Such a conclusion is incorrect.

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 that create a gap that can be filled with FA. Rather, we have provided a detailed explanation above 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.

As detailed above, the Department afforded Hilltop numerous opportunities in this fourth review to submit accurate and complete information regarding Hilltop’s affiliations. Yet Hilltop

²⁵⁷ See AR5 Remand I Opinion at 19.

²⁵⁸ See id. at 20.

continued to represent the facts inaccurately,²⁵⁹ as it has done throughout this proceeding,²⁶⁰ thereby impugning the overall credibility of information supplied by Hilltop officials. Although Ocean Duke may have had a small volume of sales of Cambodian shrimp during this POR, it imported massive amounts of shrimp from Cambodia in the periods corresponding to AR1 and AR2, as explained above and further analyzed below, while it was subject to a high cash deposit rate from the LTFV Investigation, thereby likely maintaining its customer base until securing a more favorable margin.

Hilltop's reliance on Butt-Weld Pipe Fittings from Taiwan and Glycine from the PRC to support its claim that the Department has declined to apply an adverse inference based on failures to disclose an affiliate not involved in the production or sale of subject merchandise is inapposite to the facts in this case.²⁶¹ 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."²⁶² Here, Hilltop was not only uncooperative in disclosing the relationship with Ocean King, it did not reveal that a relationship existed until nearly two years after the publication of the Department's final results in this review²⁶³ and only when faced with incontrovertible evidence.²⁶⁴ 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

²⁵⁹ See, e.g., Hilltop AR4 SAQR; Hilltop AR4 SuppA.

²⁶⁰ 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.

²⁶¹ See Hilltop Draft Remand Comments 12-15.

²⁶² See Butt-Weld Pipe Fittings from Taiwan at Comment 3.

²⁶³ See Hilltop AR6 Seventh Supplemental Response at 2 dated June 27, 2012; compared to PRC Shrimp AR4 Final dated August 13, 2010.

²⁶⁴ See Ocean King Registration Documents.

the proceeding. Although Hilltop characterizes the Department's decision in Glycine from the PRC as one where the Department "refused to apply AFA to the respondents AICO and Salvi because these affiliated companies were not relevant to the proceeding,"²⁶⁵ Hilltop's reading of the decision is in error. In fact, the Department did apply AFA to at least one of the Indian respondents,²⁶⁶ and both Indian respondents were found to be circumventing the Order.²⁶⁷ Although Hilltop argues that the Department in this case explained that it could not deem the affiliates of the aforementioned respondents to be covered by the circumvention finding,²⁶⁸ the Department expressly noted that this "determination is unambiguous in applying to any PRC-origin glycine processed by AICO or Salvi, the named companies upon which this anticircumvention proceeding was initiated, whether or not we name any affiliated exporters."²⁶⁹ Thus, any affiliates of the respondents to this inquiry were, in effect, covered by the finding.

Hilltop's reference to Ta Chen 2007 is similarly misplaced. First, Ta Chen 2007 is the litigation resulting from the decision in Butt-Weld Pipe Fittings from Taiwan, which, as discussed above, is quite dissimilar to the circumstances in this review. Second, one of the focal points in Ta Chen 2007 was whether the Department's view that Ta Chen's submitted affiliation data was sufficient and satisfactory such that only partial AFA was warranted was appropriate.²⁷⁰ A substantial portion of the Court's decision in Ta Chen 2007 is devoted to an analysis of the

²⁶⁵ See Hilltop Draft Remand Comments at 13.

²⁶⁶ See Glycine From the People's Republic of China: Preliminary Partial Affirmative Determination of Circumvention of the Antidumping Duty Order and Initiation of Scope Inquiry, 77 FR 21532, 21534 (April 10, 2012) ("Glycine from the PRC Prelim") ("Consequently, because AICO has not fully complied with the Department's request for information, we find that it failed to cooperate to the best of its ability, and, therefore, that an adverse inference is warranted pursuant to section 776(b) of the Act."; unchanged in Glycine from the PRC).

²⁶⁷ See Glycine from the PRC Prelim ("We preliminarily determine that glycine processed by Salvi Chemical Industries Limited (Salvi) and AICO Laboratories India Ltd. (AICO) and exported to the United States from India is circumventing the AD order on glycine from the People's Republic of China (China), as provided in section 781(b) of the Tariff Act of 1930, as amended (the Act)."); unchanged in Glycine from the PRC.

²⁶⁸ See Hilltop Draft Remand Comments at 13.

²⁶⁹ See Glycine from the PRC at Comment 1.

²⁷⁰ See Ta Chen 2007, 31 CIT at 806.

nature of affiliation and the legal requirements for such a finding.²⁷¹ Here, Hilltop's participation in this proceeding has been neither sufficient nor satisfactory and there is no question as to whether Hilltop is affiliated with Ocean King within the statutory definition, as Hilltop itself has conceded.²⁷² Lastly, the Court in Ta Chen 2007 held that a finding on remand of affiliation would have would have been futile because all parties were in agreement that the entities allegedly affiliated with Ta Chen were not involved with the subject merchandise.²⁷³ Here, as a result of Hilltop's refusal to provide any substantive response or documentation rebutting the allegations, we are not able to conclude whether, and to what extent, the Ocean King affiliation had an impact on the production or sale of subject merchandise, nor are we able to conclude that the record is complete with respect to Hilltop's full universe of affiliated companies.

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. Hilltop's argument that the Department has had substantial time to analyze the effects of that affiliation²⁷⁴ 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 AR6.²⁷⁵ The mere fact that Hilltop eventually conceded in AR6 that an affiliation existed with Ocean King when faced with incontrovertible evidence²⁷⁶ does not remedy the fact that Hilltop withheld information requested by the Department, which

²⁷¹ See id., 31 CIT at 816-822.

²⁷² See Hilltop AR Seventh Supplemental Response at 2 ("Hilltop acknowledges that the chart previously provided in the March 12, 2012, supplemental response was in error and we wish to amend the previous response to reflect 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.").

²⁷³ See Ta Chen 2007, 31 CIT at 821-822.

²⁷⁴ See Hilltop Draft Remand Comments at 15.

²⁷⁵ See Hilltop AR6 Sixth Supplemental Response; Hilltop AR6 Seventh Supplemental Response.

²⁷⁶ See Ocean King Cambodia Registration Documents; Hilltop Seventh Supplemental Response at 2.

is itself a basis for the application of FA.²⁷⁷ Further, Hilltop has been afforded numerous opportunities in this segment and others to present information rebutting Petitioner’s transshipment allegations and the evidence supporting those allegations. Hilltop notes that when it eventually conceded to an affiliation with Ocean King in its AR6 Seventh Supplemental Response it “provided *over 90 pages* of documentation regarding Ocean King including its corporate registration documents, articles of association and a complete list of all shareholders and a history of all share transfers.”²⁷⁸ The Department notes that Hilltop apparently had the means to procure this substantial amount of documentation regarding its affiliation with Ocean King in just eight days,²⁷⁹ and only when it was clear that the record offered no room for further denial. However, in this review, the Department allowed a period for submission of new information in response to the AR6 disclosures being placed on the record prior to the release of the Draft Remand Results²⁸⁰ and Hilltop declined to offer any documentation rebutting Petitioner’s allegations or the Department’s conclusions in AR6. Thus, Hilltop’s contention that the Department “could have made additional inquiries to confirm that Ocean King had no involvement” in the production or sale of subject merchandise during AR4²⁸¹ is unpersuasive given Hilltop’s own refusal to provide any response to the allegations prior to the draft remand.

²⁷⁷ 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) (“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.”).

²⁷⁸ See Hilltop Draft Remand Comments at 15.

²⁷⁹ See Hilltop AR6 Seventh Supplemental Questionnaire and Ocean King Cambodia Registration Documents dated June 19, 2012; compared to Hilltop AR6 Seventh Supplemental Response dated June 27, 2012.

²⁸⁰ See Memorandum to the File from Kabir Archuleta, Senior International Trade Analyst, Office 9 “Placing Documents on the Record of the Fourth Administrative Review” (August 5, 2013) (“Parties that wish to comment on, or provide additional documentation related to, the attached documents must do so by **Friday, August 9, 2013.**”)

²⁸¹ See Hilltop Draft Remand Comments at 16.

Hilltop's arguments that the Department cannot reject all of a respondent's information for deficiencies that do not undermine the reported data²⁸² 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 cooperate and its repeated material misrepresentations. Although Hilltop argues that the cases cited in the Draft Remand Results for the Department's authority to cleanse its proceedings of potential fraud involved instances where the respondent admitted to submitting falsified documents that had a direct impact on the margin calculation, the fact that Hilltop has not admitted to willful deception does not negate the fact that it submitted material misrepresentations and refused to cooperate. In order to apply an adverse inference the Department must either find a willful decision not to comply with a request or behavior below the standard for a reasonable respondent.²⁸³ Here, the record demonstrates that Hilltop willfully decided not to comply with a request for information regarding its prior affiliations with certain people and entities that are referenced in the Sentencing Report²⁸⁴ and that it provided misleading or inaccurate information regarding its affiliation with Ocean King in this review, demonstrating behavior below the standard for a reasonable respondent. Although a finding of willful deception is not necessary for our determination, Hilltop has yet to offer a substantive explanation for its failure to report its affiliation with Ocean King. Indeed, Hilltop in this review claims that it "simply omitted a third country affiliate from its list of affiliates" and suggests that if the "court has found that {the Department} itself has often erred in its affiliation findings, it is difficult to accept {the Department's} assertion that Hilltop must have realized that it was affiliated with Ocean King for purposes of this proceeding."²⁸⁵ This suggestion that

²⁸² See *id.* at 18.

²⁸³ See *China Steel Corp. v. United States*, 27 CIT 715, 735 (CIT 2003).

²⁸⁴ See Hilltop AR6 Sixth Supplemental Response; Hilltop AR6 Seventh Supplemental Response.

²⁸⁵ See Hilltop Draft Remand Comments at 18-19.

Hilltop was unaware that its relationship with Ocean King qualified as an affiliation fails in light of its ultimate acknowledgement in AR6 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.”²⁸⁶

Although Hilltop claims that it is a Hong Kong-based exporter and therefore placement in the PRC-wide Entity is inappropriate,²⁸⁷ the undisclosed affiliation and unreliability of information on the record prevent us from determining with certainty the ownership and/or control of Hilltop. Hilltop’s reference to PRC Candles AR8 Final to support the claim that the Department’s practice is to disregard the “independence from government control” analysis where the respondent is located in a market economy, even where other information on the record has been disregarded through an adverse inference,²⁸⁸ is unpersuasive. First, the respondent in PRC Candles AR8 Final was not affiliated with its PRC-supplier,²⁸⁹ whereas the Department agreed with Hilltop in this review that Hilltop was affiliated with its PRC suppliers.²⁹⁰ Second, the respondent in PRC Candles AR8 Final was assigned total AFA because its questionnaire responses were so deficient that the Department could not calculate a margin, not because it submitted misrepresentations in its responses.²⁹¹ The respondent itself reported that it was unable to provide the requested data because its unaffiliated supplier was uncooperative but the Department found that the respondent neither demonstrated the “steps it undertook to gather the information, nor demonstrated its supplier’s unwillingness to provide the

²⁸⁶ See Hilltop AR6 Seventh Supplemental Response at 2.

²⁸⁷ See Hilltop Draft Remand Comments at 20-24.

²⁸⁸ See *id.* at 21-22.

²⁸⁹ See Petroleum Wax Candles from the People’s Republic of China: Preliminary Results and Partial Rescission of the Eighth Administrative Review, 72 FR 26595 (May 10, 2007) (“PRC Candles AR8 Prelim”); unchanged in PRC Candles AR8 Final.

²⁹⁰ See PRC Shrimp AR4 Prelim, 75 FR at 11856 (“we agree that they are affiliated with Hilltop pursuant to section 771(33) of the Act”).

²⁹¹ See *id.*; unchanged in PRC Candles AR8 Final.

information, nor suggested alternative or substitutable information for use in place of the missing FOP data.”²⁹² While the respondent in that case was faulted for submitting insufficient data, the Department did not find that it submitted false or misleading information that called into question the reliability of its other submissions. Here, in contrast, because of the lack of reliable information relating to affiliation and Hilltop’s previously granted separate rate, we cannot conclude that Hilltop’s submission stating that it is located in Hong Kong alone confirms that it is not controlled by the PRC government. Hilltop’s failure to disclose its affiliation with Ocean King, 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.

Although Hilltop claims that the Draft Remand Results assume that transshipment of subject merchandise has occurred without a formal finding and that those conclusions are based on conjecture and speculation, we disagree.²⁹³ The above analysis is fully qualified with the acknowledgement that we do not have a complete and accurate record with regard to Hilltop’s Cambodian activities, despite our many attempts to solicit answers from Hilltop to the many outstanding questions that exist on the record, which are detailed above. Further, Hilltop’s contention that the Department has acknowledged that the only omission from Hilltop’s reported data in AR4 was its affiliation with Ocean King,²⁹⁴ ignores the outstanding questions that Hilltop has yet to address and the Department has yet resolve (as fully discussed above). Rather, the affiliation with Ocean King is the only misrepresentation submitted by Hilltop that the Department was able to irrefutably contradict.

²⁹² See *id.*

²⁹³ See Hilltop Draft Remand Comments at 25.

²⁹⁴ See *id.* at 25.

While Hilltop has repeatedly stated in this proceeding that the plea agreement entered into by Ocean Duke officials and the U.S. Government immunized all individuals and entities from any criminal conduct with respect to any allegations previously made concerning shrimp,²⁹⁵ the Department disagrees that particular evidence may have no implication on these AD proceedings. Absent any evidence to the contrary, failure to charge or prosecute in a separate criminal proceeding does not mean that we cannot independently examine public evidence presented on the record of this case and reach our own conclusion regarding the information as it relates to an AD proceeding.

Although Hilltop argues that the conclusions reached by the Department regarding transshipment in the Draft Remand Results are speculative and unsupported by record evidence,²⁹⁶ Hilltop has not provided any new analysis that undermines the Department's findings and submits no evidence that was not addressed already 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.²⁹⁷ While Hilltop argues that the allegations have no merit because the government chose not to bring any charges on transshipment,²⁹⁸ Petitioner points to record evidence supporting a procedural issue claimed by the government that prevented such charges.²⁹⁹ That aside, we note that the Department has independently evaluated the information on the record in the context of the AD law and finds that it is relevant to the AD process, regardless of its treatment in a

²⁹⁵ See id. at 30 (citing Hilltop AR6 Response to March 12 Filing at 2-10 and Attachment 2).

²⁹⁶ See id. at 29-33.

²⁹⁷ See PRC Shrimp AR6 Final, and accompanying Issues and Decision Memorandum at Comment 1.

²⁹⁸ See Hilltop Draft Remand Comments at 30-31.

²⁹⁹ See Public Documents to Record of AR4 "Rebuttal Brief Related to Hilltop International's U.S. Sales and Revocation Request" ("Petitioner AR6 Rebuttal Brief"), at 16-17.

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.³⁰⁰ While Hilltop points to export documents stamped by Cambodian officials declaring the products as Cambodian country-of-origin,³⁰¹ 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.³⁰²

Hilltop claimed in AR6 and in this review that the Department has completely discounted³⁰³ 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.”³⁰⁴ While Hilltop in AR6 characterized this statement as “clearly exculpatory information,”³⁰⁵ we did not find that it approaches a level sufficient to disregard the other record evidence. Hilltop’s argument assumes that any subject merchandise transhipped through Cambodia must have been smuggled through the border but neglects the very real possibility that shrimp could have been legitimately imported from the PRC or Vietnam and then repackaged by the Cambodian affiliate, as the record suggests.³⁰⁶ 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 may not have produced all of the shrimp imported as Cambodian country-of-origin by Ocean Duke.

³⁰⁰ See Petitioner AR6 Rebuttal Brief at 17.

³⁰¹ See Hilltop Draft Remand Comments at 32.

³⁰² See Sentencing Report, at Attachment 18; Petitioner AR6 Rebuttal Brief, at 17.

³⁰³ See Hilltop Draft Remand Comments at 32.

³⁰⁴ See Public Documents to Record of AR4 “Hilltop-Specific Issues Rebuttal Brief for Hilltop International” (“Hilltop AR6 Rebuttal Brief”), at 32-33.

³⁰⁵ See *id.* at 33.

³⁰⁶ See Sentencing Report at Attachment 14.

Hilltop argues that Cambodian production data contained in Attachment 17 of the Sentencing Report does not support the claimed production of 185,000 kgs in 2004 and 2005 because there is no information explaining how this data is collected or what steps were taken to ensure its accuracy.³⁰⁷ This argument fails on multiple levels. First, we note that the Sentencing Report contains two sources for Cambodian shrimp production data, not just the single source with which Hilltop takes issue. 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 kgs of farmed shrimp.³⁰⁸ The second source cited, identified by Hilltop in its Draft Remand Comments, 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 kgs.³⁰⁹ While Hilltop attempts to impugn the reliability of one of the aforementioned sources, Hilltop has not addressed the United Nations data 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 **36 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 errors in data collection.

With respect to Hilltop's argument that the time frame cited by the Department from the Sentencing Report for Ocean Duke's entry of 6.8 million kgs of shrimp from Cambodia (May 2004-July 2005) predates the establishment of Ocean King in July 2005, Hilltop is correct. The

³⁰⁷ See Hilltop Draft Remand Comments 31-32.

³⁰⁸ See Sentencing Report at 22 and Attachment 17 (385,808 lb. x .453592=175,000).

³⁰⁹ See *id.* at 22-23 and Attachment 18.

Department duplicated the data presented in the Sentencing Report for illustrative purposes, but Hilltop's argument overlooks the fact that the Department also examined the underlying data and found that Ocean Duke had 143 entries from Ocean King from October 20, 2005, through December 23, 2005.³¹⁰ A cursory review of the import data reveals that over a **seven-day period** from October 20, 2005, through October 27, 2005, Ocean Duke had 16 entries totaling **292,450 kgs of shrimp** from Ocean King declared as Cambodian country-of-origin,³¹¹ exceeding the United Nations' reported production of Cambodia for the entirety of the years 2004 and 2005 by more than two-thirds. Each of those 16 entries was reported containing 18 to 19 thousand kgs of shrimp.³¹² Assuming a volume of 18,000 kgs and extending that volume across the 143 entries Ocean Duke sourced from Ocean King over a two-month period results in an estimated volume of 2,574,00 kgs. Ocean Duke continued to make entries of shrimp sourced from Ocean King into the POR covering AR2,³¹³ beginning in February 2006. 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 shrimp entered by Ocean Duke during this time frame, and declared and certified as Cambodian country-of-origin by a known affiliate of Hilltop, was extremely unlikely to have been of Cambodian origin.

Similarly, Hilltop's claim that the Department's interpretation of internal emails is presumptive³¹⁴ is unsupported by any explanation from Hilltop or alternative interpretation of this evidence. Notably, while claiming that the Department has failed to consider alternate interpretations of these emails, Hilltop has failed to offer any alternative explanation sufficient for a reasonable mind to accept. The emails in question document Ocean Duke's involvement in

³¹⁰ See *id.* at Attachment 10.

³¹¹ See *id.*

³¹² See *id.*

³¹³ See *id.* at Attachment 11.

³¹⁴ See Hilltop Draft Remand Comments at 33.

shipping containers of shrimp from Vietnam, which was also subject to an AD order,³¹⁵ and printing new master cartons indicating that the product was of Cambodian origin.³¹⁶ 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.³¹⁷ 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.

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

³¹⁵ 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).

³¹⁶ See Sentencing Report at Attachment 14.

³¹⁷ See Ocean King Email.

referenced in the Sentencing Report, and its activities prior to AR4, raises questions regarding what other information is missing that could be relevant to the Department's proceeding.

Further, Hilltop's claim that failure to charge or prosecute in a 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.

With regard to Hilltop's argument that cash deposit rates are of no consequence to the AD margin analysis,³¹⁸ 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.³¹⁹ 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 AR6³²⁰ and was reasonably on notice that similar consequences may result in the Department's reconsideration of its findings in this redetermination. The AR4 record also reflects that Hilltop was notified of the

³¹⁸ See Hilltop Draft Remand Comments at 33-36.

³¹⁹ See Hilltop AR6 Sixth Supplemental Response; Hilltop AR6 Seventh Supplemental Response.

³²⁰ 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.").

potential consequences of failing to provide accurate and complete information to the Department.³²¹ 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.

We disagree with Hilltop's argument that information from the investigation is not relevant or probative in this proceeding. As explained above, the Petition rate continues to have probative value (*i.e.*, relevance and reliability) based upon a comparison of CONNUM-specific margins calculated for the mandatory respondent in the investigation with the largest volume of U.S. sales and the rates calculated, and vetted by the Department, in the Petition. Although Hilltop argues that the Court rejected the 112.81 percent rate as not reflecting commercial reality,³²² we note that the Court did not conclude that this rate does not reflect commercial reality. Rather, the Court stated that the "comparison margin" from the investigation was shown not to reflect commercial reality because it was subsequently reduced.³²³ Specifically, the Court stated that "this rate was corroborated by comparison with the rate determined for the largest exporting respondent, which was 90.05 percent."³²⁴

We note that in PRC Shrimp AR5 Final Remand, the Department stated that "the PRC-wide entity rate was fully corroborated during the investigation . . . {and} is based on rates

³²¹ See, *e.g.*, Letter to Hilltop from Catherine Bertrand, Program Manager, Office 9, regarding extension of the deadline to submit Section A response (June 18, 2009); Letter to Hilltop from Catherine Bertrand, Program Manager, Office 9, regarding extension of the deadline to submit Sections C and D response (June 29, 2009) ("If you fail to provide the information requested accurately 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.").

³²² See Hilltop Draft Remand Comments at 37-38.

³²³ See AR5 Remand I Opinion at 25-26.

³²⁴ See *id.* at 24.

alleged in the petition that were fully vetted during the pre-initiation phase of this investigation.”³²⁵ This analysis was based on public information available to the Department at the time,³²⁶ but the details of the Department’s corroboration analysis were contained in the proprietary Corroboration Memo. A review of the Corroboration Memo, which is now on the record of this review, reveals that the comparison rate used to corroborate the PRC-wide rate in the investigation was not the weighted-average margin of 90.05 percent assigned to Allied but the CONNUM-specific margins calculated for Allied underlying the 90.05 percent weighted-average margin. The original analysis found that there was a significant percentage of Allied’s CONNUMs with positive margins and that a significant volume of those CONNUMs had margins which exceeded the lowest Petition margin of 112.81 percent.³²⁷ Indeed, the fact that a significant percentage of CONNUMs and significant volume of sales that resulted in margins in excess of the PRC-wide rate of 112.81 percent indicates that this rate is not an attempt to “overreach reality in seeking to maximize deterrence.”³²⁸ Rather, the rate corroborated in these final results is an “appropriate estimate of what the actual dumping margin would be for an unverifiable Chinese exporter.”³²⁹ Accordingly, our revisited corroboration analysis follows the same procedure carried out during the investigation, in accordance with Department practice, and leads to the conclusion that our original corroboration analysis, revised to consider the results of subsequent litigation, continues to satisfy the requirements of section 776(c) of the Act and the guidance provided by the SAA.³³⁰

³²⁵ See PRC Shrimp AR5 Final Remand at 38.

³²⁶ See PRC Shrimp LTFV Prelim, 69 FR at 3880-3881; unchanged in PRC Shrimp LTFV Final.

³²⁷ See Corroboration Memo at 3.

³²⁸ See, e.g., F.Lii de Cecco di Filippo Fara S. Martino S.p.A. v. United States, 216 F.3d 1027, 1032 (Fed. Cir. 2000).

³²⁹ See Peer Bearing, 587 F. Supp. 2d at 1315.

³³⁰ See SAA at 870.

To be clear, the Court in AR5 Remand Opinion I did not invalidate the corroboration analysis conducted in the investigation. The Court rejected the use of 90.05 percent, which was subsequently reduced, as the comparison rate for corroboration of the Petition rate. We now know that rate was not a factor in the Department’s corroboration analysis. Nor did the Court invalidate the 112.81 percent rate assigned to the PRC-wide entity in every segment of this proceeding. The Court stated that the Department “must either adequately corroborate the 112.81 percent rate and explain how its corroboration satisfies the requirements of 19 U.S.C. 1677e(c), or else calculate or choose a different countrywide rate that better reflects commercial reality.”³³¹ As explained above, these final results of redetermination adequately corroborate the PRC-wide rate such that the statutory requirements and existing court precedent is satisfied.³³²

Although Hilltop contends that the Department has not explained how information from the investigation remains a relevant and probative form of corroboration,³³³ the Court has upheld the Department’s long-standing practice of calculating the PRC-wide entity rate using the highest margin calculated for any party in the investigation or in any administrative review.³³⁴ As explained above, the fact that lower margins have been calculated for respondents that have qualified for a separate rate in other segments of this proceeding does not necessarily undermine the reasonableness of the rate applied to the PRC-wide entity in this review.

Although Hilltop argues that because the Department refused to supplement the record of this review with all transaction-specific data for Red Garden and the other respondents in the section 129 proceeding there is no way to confirm how many transactions comprise each margin

³³¹ See AR5 Remand I Opinion at 26.

³³² See Ta Chen, 298 F.3d at 1339; PAM, S.p.A., 582 F.3d at 1340.

³³³ See Hilltop Draft Remand Comments at 38.

³³⁴ See Peer Bearing, 587 F. Supp. 2d at 1327 (citing Sigma Corp. v. United States, 117 F.3d 1401, 1411 (Fed. Cir. 1997)).

or to compare this data to data from the other respondents,³³⁵ Hilltop has not explained why this information is necessary to corroborate the PRC-wide rate. The Red Garden BPI Memo released with the Draft Remand Results explains that Red Garden was the respondent with the highest volume of sales during the LTFV Investigation and details the number of CONNUMs it sold at rates resulting in margins higher than 112.81 percent and the significant volume of Red Garden's sales that those CONNUMs comprised.³³⁶

With respect to Hilltop's argument that the Department's claim that CONNUM-specific margins provide a broad representation of selling activity leads to the conclusion that all of Red Garden's sales data would be even more reliable and representative of selling activity, the Department disagrees.³³⁷ The Department's position that CONNUM-specific margins provide a broad representation of selling activity is based on the fact that these margins result in margins that represent the pricing behavior related to groups of sales, rather than individual sales, and, consequently, do not result from cherry picking of individual transactions. The Department does not agree with Hilltop that this reasoning leads to the conclusion that all of Red Garden's sales data would be even more reliable³³⁸ because that would result in a PRC-wide rate wholly-based on rates individually calculated for respondents receiving a separate rate. Hilltop's suggestion that the Department should use a fully calculated margin as corroboration for the PRC-wide³³⁹ rate in this review would do nothing to ensure that a party "does not obtain a more favorable result by failing to cooperate than if it had cooperated fully,"³⁴⁰ and could lead to an unreasonable result.

³³⁵ See Hilltop Draft Remand Comments at 39.

³³⁶ See Red Garden BPI Memo at 3.

³³⁷ See Hilltop Draft Remand Comments at 39.

³³⁸ See *id.*

³³⁹ See *id.* at 40.

³⁴⁰ See SAA at 890. See also Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil, 69 FR 76910 (December 23, 2004); See also D&L Supply Co. v. United States,

Although Hilltop points to Dongguan Sunrise to rebut cases cited by the Department where a much more limited selection of data was used to corroborate the PRC-wide rate, the comparison is misplaced.³⁴¹ In Dongguan Sunrise, the respondent had been assigned a partial AFA rate and the Court noted that the AFA rate must not be aberrant or punitive, and it should bear a rational relationship to respondent's commercial reality.³⁴² Here, Hilltop has been found to be part of the PRC-wide entity ineligible for a rate of its own. In such cases, “there is no requirement that the PRC-wide entity rate based on AFA relate specifically to the individual company.”³⁴³ Further, the partial AFA rate rejected by the Court in Dongguan Sunrise was based on an impermissibly small percentages of sales, some of which were selected based on one or two transactions and some were based on a percentage of sales smaller than the percentages accepted in Ta Chen and PAM, S.p.A.³⁴⁴ In contrast, the Red Garden BPI Memo and our corroboration analysis detailed above demonstrate that the lowest Petition margin of 112.81 percent rate selected as the PRC-wide rate and corroborated using actual sales data for the respondent with the largest volume of U.S. Sales during the LTFV Investigation is properly corroborated using a large number of broadly representative CONNUM-specific margins and sufficiently supported by a significant volume of sales.

I. CONCLUSION

In accordance with the Court’s Remand Order and the CAFC Remand Opinion and Order, and in consideration of the Court’s AR5 Remand I Opinion, we have reconsidered our final results in AR4 of this proceeding in light of the discovery of additional evidence that suggested our original determination may have been based on false or incomplete information.

113 F. Supp. 3d 1220, 1223 (Fed. Cir. 1997).

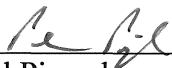
³⁴¹ See Hilltop Draft Remand Comments at 40.

³⁴² See Dongguan Sunrise, 904 F. Supp. 2d 1359, 1363 (CIT 2013) (citing KYD, 607 F.3d at 767-68).

³⁴³ See Peer Bearing, 587 F. Supp. 2d at 1313.

³⁴⁴ See Dongguan Sunrise, 904 F. Supp. 2d at 1363.

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. Finally, in consideration of the Court's AR5 Remand I Opinion, we have reevaluated the only rate that has ever been assigned to the PRC-wide entity in this proceeding in light of litigation following the less than fair value investigation. We find that the Petition rate of 112.81 percent continues to be reliable and have probative value. Therefore, for these final results of redetermination pursuant to 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.



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

4 NOVEMBER 2013
Date