

RESPONSE TO COURT REMAND

Jiangsu Hilong International Trading Co., Ltd., v. United States

Court No. 02-00311 (CIT June 26, 2002)

SUMMARY

On June 26, 2002, the United States Court of International Trade (CIT) issued an order in Jiangsu Hilong International Trading Co., Ltd. v. United States, Court No. 02-00311, remanding the case to the Department of Commerce (the Department) and requesting that the Department provide the CIT with certain information regarding the cash deposit rate applicable to Jiangsu Hilong International Trading Company, Ltd. (Jiangsu)¹ as determined in Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002) (99/00 Final Results). On July 22, 2002, the CIT issued another order requesting that the Department, in its response to the CIT's June 26, 2002 remand, either admit that Jiangsu's entries are subject to a 2.75 percent deposit rate or to seek the CIT's approval for the imposition of a different rate based on the Department's record for the previous administrative review period. In accordance with the Court's instructions, we have: (1) explained the grounds upon which the Department determined a 2.75 percent rate for Huaiyin 5 for the review period prior to the one at issue in this court case; (2) calculated a dumping margin

¹ In its order, the CIT refers to "Huaiyin Foreign Trade Corporation (5)" (Huaiyin 5) as "Jiangsu." Huaiyin 5 changed its name to Jiangsu subsequent to the September 1, 1999 to August 31, 2000 period of review (the 99/00 POR), on January 10, 2001. See 99/00 Final Results, 67 FR at 19547 and accompanying Decision Memorandum at Comment 20.

for Huaiyin 5 (aka Jiangsu) that would have been applied had Huaiyin 5 and Ningbo Nanlian not been treated as a single entity for the review period prior to the one at issue in this court case; and (3) explained the Department's legal and factual reasoning in determining a rate of 91.5 percent for Huaiyin 5 (aka Jiangsu) pursuant to the CIT's June 4, 2000 order. In accordance with the CIT's July 22, 2002 order, we have demonstrated to this Court that the Department's record for the previous administrative review period, during which Jiangsu actually performed, supports a finding that Jiangsu's performance (without accounting for the record associated with Ningbo Nanlian Frozen Foods Company, Ltd. (Ningbo Nanlian)) would have resulted in a rate of 62.77 percent.

BACKGROUND

On August 1, 1997, the Department published its Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat from the People's Republic of China (LTFV Final), in which it determined that Jiangsu—which at the time was representing itself as Huaiyin Foreign Trade Corporation (HFTC)—was eligible for a separate rate² of 91.50 percent. 62 FR 41347. On May 24, 1999, the Department published its Freshwater Crawfish Tail Meat from the People's Republic of China; Final Results of New Shipper Review, in which it determined that the rate applicable to Ningbo Nanlian, a new shipper, was a separate rate of 0.00

² In nonmarket economy (NME) countries, to receive a separate rate, exporters must demonstrate that they meet the requirements for receiving a rate that is separate from the nonmarket country-wide rate. The test requires that the exporter demonstrate that its export activities, on both a de jure and de facto basis, are not subject to government control. Those exporters who do not pass this test receive the NME country-wide dumping margin.

percent. 64 FR 27961.

On April 19, 2000, the Department published its Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Administrative Antidumping Duty and New Shipper Reviews, and Final Rescission of New Shipper Review (97/98 Final Results), in which it determined that Jiangsu—which at that time was known as Huaiyin Foreign Trade Corporation (5)³—and Ningbo Nanlian should be treated as a single entity, issuing both companies a combined, adverse facts available rate, which was the PRC-wide rate of 201.63 percent. 65 FR 20948. In determining this rate, the Department used adverse facts available due to Huaiyin 5's refusal to allow the Department to conduct on-site verification. Id. The Department's determination to treat these companies as a single entity is currently in litigation. See Hontex Enterprises, Inc., d/b/a Louisiana Packing Company v. United States, Court No. 00-0520223.

On April 24, 2001, the Department published its Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review (98/99 Final Results), in which it again determined that Jiangsu—at this time, still known as Huaiyin Foreign Trade Corporation (5)—and Ningbo Nanlian should be treated as a single entity, issuing a combined, single rate for both companies of 2.75 percent. 66 FR 20634.

On April 22, 2002, the Department published its 99/00 Final Results, in which it again found that Ningbo Nanlian and Jiangsu—during the review period, still known as Huaiyin Foreign

³ Huaiyin 5 is one of several PRC crawfish exporters which identified themselves as HFTC. HFTC is in fact a separate company which does not export crawfish. Huaiyin 5 identified itself as HFTC until it dropped out of the first administrative review. See 97/98 Final Results.

Trade Corporation (5)– were a single entity. Consequently, the Department issued a combined, single rate of 62.51 percent to both respondents, which resulted in a per kilogram rate of []. This margin was based on sales made by Ningbo Nanlian since Jiangsu had no exports to the United States during the period of review.

On May 16, 2002, the CIT issued a temporary restraining order, enjoining the Department from the imposition of the cash deposit rate as determined in the 99/00 Final Results.

On June 4, 2002, the CIT issued a preliminary injunction enjoining the Department from the imposition of the cash deposit rate as determined in the 99/00 Final Results. The CIT further ordered the Department to establish a future deposit rate for Jiangsu on the basis of Jiangsu’s previous performance independent of Ningbo’s previous performance.

On June 14, 2002, the Department filed a motion for reconsideration of the CIT’s order of June 4, 2002, requesting that the CIT reconsider and clarify its order with respect to the cash deposit rate to apply to Jiangsu pursuant to the preliminary injunction.

On June 17, 2002, Jiangsu filed a response to the Department’s June 14, 2002 motion for reconsideration. In its response, Jiangsu argued that the CIT’s June 4, 2002 order required the Department to establish a cash deposit rate of 2.75 percent for Jiangsu based on its performance in the 1998-1999 administrative review.

On June 21, 2002, The Crawfish Processors Alliance (a domestic party), as defendant-intervenor in this case, filed a response to the Department’s June 14, 2002 motion for reconsideration of the CIT’s June 4, 2002 order. In its response, defendant-intervenor argued that the only two possible rates to establish for Huaiyin 5 are 91.5 percent (the most recent

individual, separate rate calculated for Huaiyin 5) or, in the event Jiangsu is not determined to be Huaiyin 5's successor-in-interest, 223.01 percent (the PRC-wide rate).

On June 25, 2002, Jiangsu filed a reply to the defendant-intervenor's June 21, 2002 response to the Department's motion for reconsideration. In its reply, Jiangsu argued that the 2.75 percent rate was assigned jointly to Ningbo Nanlian and Jiangsu, and not as part of a combined entity. Jiangsu further requested that the CIT order the Department to continue to apply the 2.75 percent rate.

On June 26, 2002, the CIT ordered the Department to: (1) explain the grounds upon which the Department determined a 2.75 percent rate for Jiangsu (aka Huaiyin 5) for the review period prior to the one at issue in this court case; (2) calculate a dumping margin for Jiangsu that would have been applied had Jiangsu and Ningbo Nanlian not been treated as a single entity as determined in the September 1, 1998 to August 31, 1999 administrative review; and (3) explain the Department's legal and factual reasoning in determining a rate of 91.5 percent for Jiangsu pursuant to the CIT's June 4, 2000 order.

On July 1, 2002, Jiangsu filed a motion for reconsideration and clarification of the CIT's remand order of June 26, 2002.

On July 22, 2002, in consideration of Jiangsu's July 1, 2002 motion for reconsideration of the CIT's order, the CIT denied Jiangsu's motion and ordered that the June 26, 2002 order stands as issued. In its July 22, 2002 order, the CIT requested that the Department either admit that Jiangsu's entries are subject to the 2.75 percent rate or seek the CIT's approval for imposition of a deposit rate different from 2.75 percent upon the entries of Jiangsu, if and only if the

Department shows the CIT that the Department's record of the last review during which Jiangsu actually performed provides the CIT with sufficient evidence to support a finding that Jiangsu's own performance (without accounting for the record associated with Ningbo Nanlian), calls for the imposition of a deposit rate different from 2.75 percent.

DISCUSSION

The following discussion is in response to the CIT's remand order of June 26, 2002.

1. The CIT's June 26, 2002 order requires an explanation of whether the dumping margin assigned to Jiangsu Hilong International Trading Co., Ltd during Jiangsu or its predecessor's last period of importation—that is, a 2.75 percent dumping margin—was assigned to Jiangsu (a) solely on the grounds of Commerce's finding of Jiangsu's affiliation with Ningbo; and (b) as a member of the Jiangsu-Ningbo affiliation and not assigned separately to Jiangsu and separately to Ningbo upon the finding of such affiliation.

The 2.75 percent rate assigned to Huaiyin 5 for the September 1, 1998 through August 31, 1999 period of review was based on the Department's decision to treat Huaiyin 5 and Ningbo Nanlian as a single entity during that period. See 98/99 Final Results. During the review, both entities had exports of subject merchandise to the United States. In the 1998/1999 administrative review, the Department was not provided with any new information or evidence of circumstances that differed sufficiently from the circumstances as determined in the 97/98 Final Results that would warrant any reconsideration of the relationship between Huaiyin 5 and Ningbo Nanlian.

In the 97/98 Final Results, the Department determined that the export operations of Ningbo Nanlian and Huaiyin 5 were intertwined, such that the two companies were under common control. Therefore, the Department determined that the two companies should be

treated as a single entity and receive a single antidumping duty rate. However, because Huaiyin 5 refused to allow the Department to verify information it submitted, both companies received the PRC-wide rate of 201.63 percent. See Memorandum from Edward C. Yang to Joseph A. Spetrini: Relationship of Ningbo Nanlian Frozen Foods Company, Ltd. and Huaiyin Foreign Trade Corporation (5), ("NN/H5Memorandum") dated April 7, 2000.

In the 1998/1999 administrative review, the Department was not provided with any new information or evidence of circumstances that differed sufficiently from the circumstances as determined in the 97/98 Final Results that would warrant any reconsideration of the relationship between Huaiyin 5 and Ningbo Nanlian. See 98/99 Final Results. Therefore, the Department calculated a single rate of 2.75 percent for both companies based on *combined*, weight-averaged factors of production and both companies' U.S. sales data (see Attachment A, reflecting the original margin calculations for Huaiyin 5 and Ningbo Nanlian in the 1998/1999 administrative review). As Attachment A shows, the independent, sale-by-sale margins for Huaiyin 5-
calculated on the basis of weight-averaged factors of production from Huaiyin 5's and Ningbo Nanlian's producers-[], while the sale-by-sale margins for Ningbo Nanlian []. For the 1998/1999 administrative review, had the Department not treated Ningbo Nanlian and Huaiyin 5 as a single entity, the two companies would have received their own independent dumping margins, as calculated for Huaiyin 5 in part (2) of this memorandum below. After the 1998/1999 review, Huaiyin 5 did not contest in court the Department's treatment of it and Ningbo Nanlian as a single entity, nor the Department's determination of a single rate of 2.75 percent for the combined entity. See 98/99 Final Results.

2. The CIT order requires that the Department provide a specific figure of a dumping margin, if such figure (a) can be determined, and (b) is different from 2.75 percent, that would have been assigned to Jiangsu (solely on the basis of Jiangsu's actual dumping activities during the last period when Jiangsu or its predecessor's performance was reviewed and not on the basis of cash deposits that were or could have been applicable to Jiangsu or its predecessor's last entries) had Jiangsu not been found to be affiliated with Ningbo during the last period when Jiangsu's performance was reviewed.

Pursuant to the CIT order, the Department has calculated a rate for Huaiyin 5 for the September 1, 1998 through August 31, 1999 period of review that would have been assigned to Huaiyin 5, had it not been treated as a single entity with Ningbo Nanlian during that period. The new rate for Huaiyin 5 is 62.77 percent, resulting in a per kilogram rate of [].⁴

In addition, in footnote 2 of part (2) of the CIT's June 26, 2002 order, the Court states that the Department shall "provide the Court with factual data explaining why the affiliation of Jiangsu and Ningbo Nanlian was granted the dumping margin of 2.75 percent if Jiangsu's entries, that is, the entries of what is assumed to be an indelible member of the affiliation, were allegedly subject to 91.5 percent." To clarify, Huaiyin 5 was no longer subject to the 91.5 percent separate

⁴ The individual rate for Huaiyin 5 was calculated by isolating the sales reported to have been made solely by Huaiyin 5 from those reported to have been made by Ningbo Nanlian. Per information submitted by respondents during the course of the 1998-1999 review, all of Huaiyin 5's sales were made on an export price (EP) basis, while Ningbo Nanlian's were all on a constructed export price (CEP) basis. From this sales information, we calculated the net EP for Huaiyin 5's sales. For the factors of production related to these sales, we used the factor information specific to Huaiyin 5's [], rather than the weighted average of the combined entity's [] suppliers as done in the original calculations. From this factor of production information, we were able to calculate a separate normal value (NV) for Huaiyin 5's sales using the exact same surrogate value information as in the review. The surrogate value information is the same for all companies in a review of a non-market-economy country; only the factors of production are different among companies. Following our standard methodology, we then took the difference between the NV and EP for each of Huaiyin 5's sales and multiplied that by the quantity of each sale, which gave us the total amount of dumping duties due. We then divided this total by Huaiyin 5's total net EP and calculated a dumping margin of 62.77% (see Attachment B reflecting the calculations in greater detail). To determine the per kilogram rate, we divided the total of the dumping margins (calculated as the difference between NV and EP) for Huaiyin 5's sales by the total quantity of subject merchandise sold by Huaiyin 5 during that period of review.

rate at the time the Department issued Ningbo Nanlian and Huaiyin 5 the combined rate of 2.75 percent. See 98/99 Final Results. At that time, Ningbo Nanlian and Huaiyin 5 were already subject to a combined rate of 201.63 percent, in accordance with the final results of the first administrative review, published on April 19, 2000. See 97/98 Final Results.

As noted above in the “Background” section, the Department determined that Huaiyin 5 was entitled to the separate rate of 91.5 percent in the less than fair value investigation, published on August 1, 1997. See LTFV Final. Consequently, pursuant to section 736(a)(3) of the Tariff Act of 1930, as amended (the Act), the Department directed U.S. Customs to collect cash deposits at the rate of 91.5 percent on all imports of the subject merchandise from Huaiyin 5.⁵ See Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat from the People’s Republic of China, 62 FR 48218, 48219 (September 15, 1997). Ningbo Nanlian was not a respondent in the less than fair value investigation. Id. Huaiyin 5’s 91.5 percent cash deposit rate remained in effect until the April 19, 2000 publication of the final results of the first administrative review. On April 19, 2000, in accordance with section 751(a)(2)(C) of the Act, the Department changed the cash deposit rate applicable to Huaiyin 5 from 91.5 percent to 201.63 percent—the rate applicable to Huaiyin 5 and Ningbo Nanlian as a single entity. See 97/98 Final Results, 65 FR at 20948. It was in this first administrative review that the Department first determined that Huaiyin 5 and Ningbo Nanlian should be treated as a single entity. Id. The Department did not apply the 2.75

⁵ For the period between the date of the preliminary determination and the date of the antidumping duty order, importers had the choice of posting a bond in lieu of cash deposits.

percent combined rate to Huaiyin 5 and Ningbo Nanlian until the final results of the second administrative review were published on April 24, 2001. See 98/99 Final Results, 66 FR at 20634. Thus, the only calculated rate available to the Department that applied solely to Huaiyin 5 and not to the combined entity was the 91.5 percent rate calculated from the less than fair value investigation. All of the other rates reflected the application of a combined rate applicable to the single entity of Huaiyin 5 and Ningbo Nanlian.

3. Finally, the CIT order requires an explanation of legal and factual logic of Commerce's decision to disregard Jiangsu's performance during the period when Jiangsu actually imported the merchandise at issue and was deemed to be an affiliate of Ningbo ("actual performance") and to bind Jiangsu to either the conduct that was effectively superseded by the actual performance or to a later conduct by an affiliate in which Jiangsu has not participated in any way.

To clarify, the Department has never disregarded Huaiyin 5's exports during any administrative review period. The Department treated Huaiyin 5 and Ningbo Nanlian as a single entity in the 97/98 Final Results and 98/99 Final Results, assigning them a single, combined rate for each of those periods based on facts available in the 97/98 Final Results, and on *combined*, weight-averaged factors of production and sales data in the 98/99 Final Results. With respect to the 99/00 Final Results, where the Department continued to treat the two companies as a single entity, the Department based its antidumping duty determination solely on export activity during the period of review, September 1, 1999 to August 31, 2000. In the 99/00 administrative review, the Department determined that it was not provided with evidence of circumstances that differed sufficiently from circumstances in the prior reviews to warrant reconsideration of the relationship

between Ningbo Nanlian and Huaiyin 5. As a result, the Department continued to treat the two companies as a single entity. The Department summarized its determination to continue to treat Huaiyin 5 and Ningbo Nanlian as a single entity as follows:

Furthermore, as noted in the verification report concerning these entities, while conducting verification, the Department found evidence of a continuing commercial relationship between NN/LP and Huaiyin 5 with respect to crawfish, as well as evidence of a continuing business relationship between Mr. Wei Wei and both Huaiyin 5 and NN/LP (by virtue of Mr. Wei Wei's dealings with Louisiana Packing Company, which is the U.S. owner in the Ningbo Nanlian joint-venture). See "NN/H5 Verification Report" at 16-17.

With respect to the continuing commercial relationship between Huaiyin 5 and NN/LP, officials of both entities explained to the verification team that in 1999, during the last POR, Huaiyin 5 assisted NN/LP in locating sources of tail meat, in product inspections, etc. Id. However, while verifying Huaiyin 5, the team discovered invoices to Louisiana Packing (the U.S.-based part-owner of joint venture NN/LP) from Huaiyin 5, indicating payment of a commission of 60 cents per pound for 24 containers of crawfish that NN/LP purchased during the POR. Id.

With respect to the continuing business relationship between Mr. Wei Wei and both Huaiyin 5 and NN/LP, verification in the current review revealed several pertinent facts. First, during the Huaiyin 5 verification, in response to the team's request that Huaiyin 5 explain its relationship with Mr. Wei Wei during the POR, Huaiyin 5's general manager, Mr. Yang Yi Xiang, explained that Mr. Wei Wei worked for Huaiyin 5 from 1988 to 1997, but that he quit the company in 1997, and that the company had no business or informal dealings, nor any other type of relationship with him during the POR. However, in reviewing Huaiyin 5's accounting records, the verification team discovered three hotel bills which Huaiyin 5 paid for Mr. Wei Wei during the POR. The first such bill was for Mr. Wei Wei's stay in Shanghai, China, in December, 1999 (i.e., during the current POR). According to Mr. Yang, the other two bills were for Mr. Wei Wei's stays- during the POR-at two different hotels in Lianyungang, China. Mr. Yang then clarified that he will still sometimes ask Mr. Wei Wei to do things for the company. According to Mr. Yang, he and Mr. Wei Wei will also sometimes help maintain relationships with one another's customers. During the verification of NN/LP, Mr. Edward Lee, owner of Louisiana Packing (again, the U.S.-based part-owner of NN/LP) explained that he also still sometimes asks Mr. Wei Wei for help on business matters.

See 99/00 Final Results and accompanying Decision Memorandum at Comment 20.

In light of the Department's findings, the Department continued to determine that Ningbo Nanlian and Huaiyin 5 should receive a single antidumping duty rate for purposes of the 99/00 Final Results. *Id.*

However, pursuant to the June 4, 2002 CIT order enjoining the Department from imposing the cash deposit rate applicable to Huaiyin 5 in the 99/00 Final Results, the Department was "ordered to establish a future deposit rate for Jiangsu on the basis of Jiangsu's previous performance independent of Ningbo's previous performance." In so doing, the Department intended to change Huaiyin 5's deposit rate to 91.5 percent - the most recent (and only) rate calculated on the basis of Jiangsu's previous performance independent of Ningbo Nanlian's previous performance. In a June 10, 2002 letter to the Department, Huaiyin 5 indicated that, in its opinion, in order to comply with the CIT's order, the Department is obligated to set Huaiyin 5's deposit rate to 2.75 percent-the combined rate issued to both Ningbo Nanlian and Huaiyin 5 in the 98/99 Final Results. In addition, on July 1, 2002, Huaiyin 5 filed a motion with the CIT for reconsideration and clarification of its June 26, 2002 order. In its motion, Jiangsu argues that the Department has no precedent for establishing a rate other than that from the previous 1998/1999 administrative review, and therefore is bound to apply the 2.75 rate.⁶ However, the

⁶ The Department's decision to apply a separate rate for Huaiyin 5, based on its previous performance independent of Ningbo, may be distinguished from the Department's decision in the third administrative review for Sulfanilic Acid from the People's Republic of China, 67 FR 1962 (January 15, 2002) (Sulfanilic). In Sulfanilic, the Department did not simply maintain the rate from the previous review period, as Huaiyin 5 suggests that the

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2.75 rate in no way reflects Huaiyin 5's previous performance independent of Ningbo's previous performance. As noted in part (1) of this memorandum, the 2.75 rate was based on *combined*, weight-averaged factors of production and sales data from both Ningbo Nanlian and Huaiyin 5, specific to the 1998/1999 review period. If the Department were to apply the 2.75 rate to Jiangsu, we would not be establishing a rate "independent of Ningbo's previous performance." In so doing, we would in fact be establishing a rate for Jiangsu based partly on Ningbo's performance and therefore directly in conflict with the CIT's June 4, 2002 order. In the CIT's July 22, 2002 order, the Court requested that the Department either admit that Jiangsu's entries are subject to the 2.75 percent rate or seek the CIT's approval for imposition of a deposit rate different from 2.75 percent upon the entries of Jiangsu, if and only if the Department shows the CIT that the Department's record of the last review during which Jiangsu actually performed provides the CIT with sufficient evidence to support a finding that Jiangsu's own performance (without accounting for the record associated with Ningbo Nanlian), calls for the imposition of a deposit rate different from 2.75 percent. As noted in part (2) of this memorandum, had we determined Huaiyin 5 to be independent of Ningbo Nanlian for the 1998/1999 review period, the rate that would have been calculated for Huaiyin 5 is 62.77 percent.

Department did. In Sulfanilic, while we assigned the company its previous rate, that rate was the PRC-wide rate; not a separate rate that had been calculated for the company either on its own or as part of a combined single entity. Here, unlike in Sulfanilic, we had a calculated, separate rate for Huaiyin 5. Thus, that is the appropriate rate to apply to Huaiyin 5 if it should not be considered as part of a single, combined entity with Ningbo Nanlian.

CONCLUSION

In accordance with the CIT's June 26, 2002 order, we have now completed the results of remand. The Department has (1) explained the grounds upon which the Department determined a 2.75 percent rate for Huaiyin 5 for the review period prior to the one at issue in this court case; (2) calculated a dumping margin for Huaiyin 5 (aka Jiangsu) that would have been applied had Huaiyin 5 and Ningbo Nanlian not been treated as a single entity for the review period prior to the one at issue in this court case; and (3) explained the Department's legal and factual reasoning in determining a rate of 91.5 percent for Huaiyin 5 (aka Jiangsu) pursuant to the CIT's June 4, 2000 order.

As we have shown the Court, had we considered Huaiyin 5 to be independent during the 1998/1999 review period, the rate that would have been determined for Huaiyin 5 is 62.77 percent, as calculated in part (2) of this memorandum.⁷ Had the Department determined that Huaiyin 5 was still independent of Ningbo Nanlian and had no shipments in the 99/00 Final Results, we would have rescinded the review for Huaiyin 5, and Huaiyin 5 would have retained its calculated rate of 62.77 percent.

⁷ The Department calculates a rate that is used for assessment purposes for imports made during the period of review, and that becomes a new cash deposit rate for future entries. Since the rate of 62.77 percent is for cash deposits - fully refundable with interest if we find a lower margin after conducting the next review - then a company should not be concerned if they are not dumping, since importers and not exporters pay cash deposits. We note here that Huaiyin 5 (aka Jiangsu) is a Chinese exporter, not a U.S. importer, and thus is not liable for duties.

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In accordance with the Court's July 22, 2002 order, we have demonstrated to this Court that the Department's record for the previous administrative review period, during which Huaiyin 5 actually performed, supports a finding that Huaiyin 5's performance (without accounting for the record associated with Ningbo Nanlian) would have resulted in a rate of 62.77 percent, and thus this Court should impose the 62.77 percent rate for Huaiyin 5 (aka Jiangsu) because we have demonstrated above that Huaiyin 5's (aka Jiangsu's) performance independent of Ningbo Nanlian in the last administrative review would have resulted in the imposition of a rate different from 2.75 percent.

Bernard T. Carreau
Acting Assistant Secretary
for Import Administration

Date