

**FINAL RESULTS OF DETERMINATION PURSUANT TO COURT REMAND**

Pacific Giant, Inc., Worldwide Link, Inc., Ocean Duke Corp. v. United States

Slip Op. 02-83, Court No. 01-00340 (CIT August 6, 2002)

**SUMMARY**

On August 6, 2002, the United States Court of International Trade (CIT) issued an order in Pacific Giant, Inc., Worldwide Link, Inc., Ocean Duke Corp. v. United States, Slip Op. 02-83, Court No. 01-00340 (Pacific Giant v. U.S.), remanding the case to the Department of Commerce (the Department) and requesting that the Department further explain its decision to apply adverse facts available to the labor factors of respondent Huaiyin Foreign Trade Corporation No. 30 (Huaiyin30), as determined in Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review, 66 FR 20634 (April 24, 2001) (98/99 Final Results), and as amended by Freshwater Crawfish Tail Meat From the People's Republic of China: Amended Final Results of Administrative Review and New Shipper Reviews, 66 FR 30409 (June 6, 2001) (98/99 Amended Final Results).

Specifically, the CIT's August 6, 2002, order requires the Department to "reconsider and further explain whether an adverse inference should apply to the first sales channel labor factors of respondent Huaiyin30 and to determine, if needed, the appropriate labor factors to apply." In accordance with the CIT's order, we have examined the Department's record for the September 1, 1998, to August 31, 1999, administrative review period (98/99 administrative

## Public Version of Proprietary Document

review) and have determined that an adverse inference should continue to apply to the first sales channel labor factors of respondent Huaiyin30, as discussed further below. We continue to find that the highest labor factors on the record of this review are appropriate to use as adverse facts available for the first sales channel.

### BACKGROUND

On August 1, 1997, the Department published its Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value (LTFV Final), 62 FR 41347 (August 1, 1997). Huaiyin30 was not a respondent in the LTFV investigation. *Id.* Huaiyin30 was also not a respondent in the first administrative review. See 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), 65 FR 20948 (April 19, 2000).

On September 30, 1999, the Department received requests from Huaiyin30 and the Crawfish Processors Alliance (petitioner) for an administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). The Department then conducted an administrative review for the period September 1, 1998, through August 31, 1999.

On October 11, 2000, the Department published Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Administrative Review and New Shipper Reviews, Partial Rescission of the Antidumping Duty Administrative

## Public Version of Proprietary Document

Review, and Rescission of a New Shipper Review, 65 FR 60399 (98/99 Preliminary Results). In the 98/99 Preliminary Results, consistent with section 776(a) of the Tariff Act of 1930, as amended (the Act), the Department determined that the use of facts available (FA) for Huaiyin30 was warranted because its factors of production information from two sales channels and its identification of suppliers could not be verified.<sup>1</sup> (See the business proprietary versions of “Antidumping Duty Administrative Review of Freshwater Crawfish Tail Meat from the People’s Republic of China (A-570-848): Sales Verification Report for Huaiyin Foreign Trade Corporation (30)” (Huaiyin30 Sales Verification Report), dated September 29, 2000, “AD Review of Freshwater Crawfish Tail Meat from the People’s Republic of China (PRC) (A-570-848): Factors Verification Report for Baoying Freezing Factory” (Baoying Freezing Verification Report), dated September 29, 2000, and “AD Review of Freshwater Crawfish Tail Meat from the People’s Republic of China (PRC) (A-570-848): Factors Verification Report for Huaiyin County Freezing Factory” (Huaiyin Freezing Verification Report), dated September 29, 2000). Pursuant to section 776(b) of the Act, the Department determined that the use of partial adverse FA was warranted for Huaiyin 30's first sales channel labor factors and for all of the factors for Huaiyin30's second sales channel because Huaiyin30 failed to act to the best of its ability in responding to the Department’s requests for information. Specifically, regarding Huaiyin30's first sales channel, at the verification of Huaiyin Freezing, [ ] supplier of crawfish tail meat for Huaiyin 30's direct sales (i.e., the first sales channel), the Department was unable to verify any of

---

<sup>1</sup> At verification, we discovered that Huaiyin30 had two channels of sales. In the first channel, Huaiyin30 acted as a principal, purchasing tail meat and selling it directly to its U.S. customer. In the second channel, Huaiyin30 assisted certain U.S. importers in purchasing crawfish tail meat from PRC processors.

**Public Version of Proprietary Document**

the labor factors of production which Huaiyin30 reported for Huaiyin Freezing. See Memorandum from Thomas Gilgunn to Joseph A. Spetrini, “Determination of Partial Adverse Facts Available for Huaiyin Foreign Trade Corporation (30) in the Administrative Review of Freshwater Crawfish Tail Meat from the People’s Republic of China” (AFA Memo), dated September 29, 2000. For the 98/99 Preliminary Results, the Department determined a weighted average dumping margin for Huaiyin30 of 240.34 percent.

On April 24, 2001, the Department published its 98/99 Final Results, in which it determined a weighted average dumping margin for Huaiyin30 of 139.68 percent. Huaiyin30's rate in the 98/99 Final Results dropped from the 98/99 Preliminary Results due to the Department’s use of an alternative surrogate value. See 98/99 Final Results, 66 FR at 20635 and accompanying Decision Memorandum at Comment 13. In the 98/99 Final Results, the Department continued to find that the application of partial adverse facts available was warranted for Huaiyin30's labor factors of production for its first sales channel and that total adverse facts available was warranted for all factors of production for Huaiyin30's second sales channel. In applying partial adverse facts available to Huaiyin30's first sales channel labor factors, the Department used the highest labor factors reported for the 98/99 administrative review. In applying adverse facts available to Huaiyin30's second sales channel for all factors of production, the Department used the PRC-wide rate of 201.63 percent from the LTFV Final.

On June 6, 2001, the Department published its 98/99 Amended Final Results in which it corrected a calculation error in the 98/99 Final Results, resulting in an amended weighted average dumping margin for Huaiyin30 of 138.69 percent. See 98/99 Amended Final Results.

## Public Version of Proprietary Document

The Department continued to apply adverse facts available to Huaiyin30's labor factors in its first sales channel and total adverse facts available to all factors of production for its second sales channel.

Thereafter, Plaintiffs filed a timely complaint with the CIT challenging the Department's determination in the 98/99 Final Results to: (1) apply adverse facts available to Huaiyin30's second sales channel; (2) apply adverse facts available to Huaiyin30's first sales channel labor factors; (3) apply a 201.63 percent rate to Huaiyin30's second sales channel; and (4) assign a surrogate value to the well water consumed during crawfish tail meat production. In addition, plaintiffs claimed that the "Continued Dumping and Subsidy Act of 2000" (Byrd Amendment) violates the plaintiffs' due process rights.

On August 6, 2002, the CIT issued its Opinion and Order in Pacific Giant v. U.S., remanding in part and affirming in all other respects, the Department's 98/99 Final Results, as amended. The CIT's August 6, 2002, remand order requires the Department to reconsider and further explain whether an adverse inference should apply to the first sales channel labor factors of respondent Huaiyin30 and to determine, if needed, the appropriate labor factor to apply.

On September 20, 2002, the Department released its "Draft Results of Determination Pursuant to Court Remand" to respondent parties and to petitioner for comment. On September 25, 2002, respondent parties submitted comments to the Department regarding the draft results. Petitioner did not submit comments regarding the Department's draft results. Our analysis of these comments is contained below in the section "Interested Party Comments on Draft Results."

**DISCUSSION**

The following discussion is in response to the CIT's remand order of August 6, 2002, which requires the Department to reconsider and further explain whether an adverse inference should apply to the first sales channel labor factors of respondent Huaiyin30 and to determine, if needed, the appropriate labor factor to apply.

*Applicable Law*

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Furthermore, section 776(b) of the Act provides that the Department may use an inference

## Public Version of Proprietary Document

adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. See also Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreement Act, H.R. Rep. No. 103-316 at 870 (1994).

### *Use of Facts Available*

It is undisputed that Huaiyin30 and Huaiyin Freezing, a supplier for Huaiyin30's first sales channel, submitted direct, indirect and packing labor factors of production which were not verifiable. See Pacific Giant v. U.S., Slip Op. 02-83 at 14. As such, pursuant to section 776(a)(2)(D) of the Act, the use of facts available is warranted. Id. Moreover, at no point in the administrative review, prior to verification, did Huaiyin30 notify the Department of the existence of any problems with its labor factors, or seek guidance on the applicable reporting requirements, as contemplated in section 782(c)(1) of the Act. Because the Department was unaware of any deficiencies in this data prior to verification, section 782(d) of the Act does not apply to these facts. The Department must next consider in making its determination, based on the facts available, whether an adverse inference is warranted, as discussed below.

### *Use of Adverse Facts Available*

In order to apply adverse facts available to Huaiyin30's unverifiable labor factors, the Department must demonstrate that Huaiyin30 failed to cooperate by not acting to the best of its ability. This Court has stated that "such a finding is supported by substantial evidence if

## Public Version of Proprietary Document

Commerce (1) articulates its reasons for concluding a party failed to act to the best of its ability; and (2) explains why the missing information is significant to the review.” See Pacific Giant v. U.S., Slip Op. 02-83, (quoting Nippon Steel Corp. v. United States, 118 F. Supp. 2d 1366, 1378 (Ct. Int’l Trade 2000) (Nippon)).<sup>2</sup> This Court has further indicated that “Commerce’s reasons for concluding a party failed to act to the best of its ability should include (1) a finding that a party could comply with the request for information; and (2) a finding of either a willful decision not to comply or insufficient attention to statutory duties under the unfair trade laws.” Id. (quoting Nippon 118 F. Supp. 2d at 1378-79).

The Department’s finding that Huaiyin30 failed to act to the best of its ability is supported by substantial evidence that Huaiyin30 could have complied with the Department’s request that it provide the Department with accurate, verifiable labor factors for its suppliers. Huaiyin30's main business is selling crawfish tail meat, and during the period of review it dealt with a limited number of crawfish tail meat processors, including Huaiyin Freezing. As such, Huaiyin30 was in a position to provide the Department with accurate information on its suppliers’ factors of production, including labor. During verification, Huaiyin Freezing stated that it maintains attendance records on a daily basis, and that it tallies these sheets to calculate total monthly labor hours. See “Huaiyin Freezing Verification Report” at 7. As the data requested by the Department was routinely maintained by Huaiyin Freezing in the normal course of business, it was readily available and, as a consequence, would not have been burdensome to

---

<sup>2</sup> An appeal in Nippon has been docketed at the U.S. Court of Appeals for the Federal Circuit. See 02-1266, 1267.

## Public Version of Proprietary Document

report accurately to the Department. Furthermore, Huaiyin30 and Huaiyin Freezing were the only parties which had access to this information and, therefore, the only parties that could have complied with the Department's request for information on Huaiyin Freezing's labor factors.

The Department's determination that Huaiyin30 failed to act to the best of its ability is further supported by substantial evidence that Huaiyin30 gave insufficient attention to its statutory duty to reply accurately to requests for factual information relevant to the administrative review, and to demonstrate how it calculated its direct, indirect, or packing labor factors of production which it reported to the Department. Huaiyin30 had sufficient notice that the Department intended to review labor factors upon receipt of the Department's Section D questionnaire and verification outline. The Department's Section D questionnaire requested, in part, that Huaiyin30:

**Report the unskilled labor hours required to produce a unit of the subject merchandise.** Note that these should be the actual labor hours worked, not standard labor times. Unskilled labor should include all unskilled production workers, inspection/testing workers, relief workers, and any other unskilled workers directly involved in producing the merchandise. In addition, your reported unskilled labor hours should include the hours worked by any contract labor hired by your company to assist in the production of the merchandise.

**Report the skilled labor hours required to produce a unit of the subject merchandise.** Skilled labor includes supervisors, senior engineers, technicians, quality control, etc. Skilled labor should include all skilled production workers, inspection/testing workers, relief workers, and any skilled other workers directly involved in producing the merchandise and not reported as unskilled labor. In addition, your reported skilled labor hours should include the hours worked by any contract labor hired by your company to assist in the production of the merchandise.

**Report the indirect labor hours required to produce a unit of the subject merchandise.** Indirect labor includes all workers not previously reported who are indirectly involved in the production of the subject merchandise.

See "Huaiyin30 Questionnaire," at section D, pp. 5-6 (1/24/00) (*emphasis added*).

## Public Version of Proprietary Document

In addition, prior to verification of Huaiyin30, the Department provided Huaiyin30 with a verification outline which requested, in part, that the necessary documentation be prepared and ready to present to the Department's verifiers during verification. Specifically, the Department made the following requests of Huaiyin30:

**Show how you calculated the labor expenses in your submission.** Be prepared to tie your calculation worksheet to: 1. Time and motion studies; 2. Daily attendance sheets; 3. Workshop payroll records; 4. Workshop production records.

**Prepare** one set of document packages to support the reported per-unit labor amounts. The package should include all payroll, production, and accounting records necessary to confirm the per-unit amounts reported. Use peeling and de-veining as an example.

**Explain and support your identification of indirect labor factors. Demonstrate** that these labor factors are properly identified as indirect, rather than direct.

See "Huaiyin 30 verification outline," at 6 (6/23/00) (*emphasis added*). Despite these detailed instructions from the Department, Huaiyin30 gave insufficient attention to its statutory duty to prepare for verification in that it failed to review the sources of data in its questionnaire responses with respect to these labor factors.

The Department also disagrees with the notion that Huaiyin30's submission of unverifiable labor factors was merely "inadvertent" or a "mistake." The Department's interpretation of section 776(b) does not require the submission of error-free data. To the contrary, the Department regularly gives respondents an opportunity to explain errors in its data by submitting minor corrections to its responses before verification begins. The respondent did, in fact, avail itself of this opportunity. See "Huaiyin Freezing Verification Report" at 1-2. At verification, Huaiyin30 presented the Department with several corrections to its questionnaire

## Public Version of Proprietary Document

response, but nothing was provided with respect to labor factors of production. In addition to corrections submitted by the respondent, the Department found additional errors during verification. Id. at 2. For example, the Department found that the respondent's factor for "bags used per pound of tail meat" was lower than that which was reported in its questionnaire response.<sup>3</sup> Despite these additional problems with Huaiyin30's questionnaire response, and even though the Department found that Huaiyin30 did not act to the best of its ability with respect to certain information, the Department used information provided by Huaiyin30, where possible, to calculate a margin. The Department only used partial adverse facts available in the first sales channel for labor factors, as Huaiyin30's failure to demonstrate to the Department how any of Huaiyin Freezing's direct, indirect or packing labor factors had been calculated amounted to more than mere "mistake" or "inadvertence." To label unverifiable labor factors submitted by Huaiyin30 a "mistake" or mere "inadvertence," Huaiyin30 would have at least needed to demonstrate to the Department how the mistake occurred or what was inadvertent about the errors in its response. However, as noted, Huaiyin 30 was unable to demonstrate to the Department how it calculated any of its reported labor factors. Id. at 7. In short, Huaiyin30 left the Department without even an explanation as to how or why the error occurred.

By its plain terms, section 776(b) requires the Department to determine whether a respondent has complied with the Department's request to the best of the respondent's ability. When, as happened here, a respondent provides wholly inaccurate information on its direct,

---

<sup>3</sup> The Department found that Huaiyin Freezing uses [ ] grams of bag per pound of tail meat instead of the [ ] grams reported. Id. at 2

## Public Version of Proprietary Document

indirect, and packing labor factors in its questionnaire response and is not prepared sufficiently to support its response to the Department's questionnaire with regard to those labor factors at verification and cannot demonstrate to the Department how it calculated the unverifiable labor factors, the Department finds that the respondent has fallen below the standard of responding "to the best of its ability" and the use of adverse inferences is appropriate.

The Department also considers the unverifiable labor factors to be significant to the 1998/1999 administrative review. For nonmarket economy countries, the standard methodology for calculating normal value is not applicable. Instead, the Department constructs a normal value using the nonmarket economy producer's factors of production. Therefore, such basic information as that which is used to calculate labor factors is an integral part of the antidumping duty margin calculation process. In this administrative review, [

]. It is, therefore, highly important to any meaningful calculation of an antidumping duty margin for Huaiyin30. Furthermore, this information is solely within the control of respondents.

In addition to the reasons set forth above, it remains the Department's position that the application of adverse facts available to the unverifiable labor factors Huaiyin30 reported for its first sales channel supplier, Huaiyin Freezing, is further supported by the Department's finding that Huaiyin30 did not cooperate to the best of its ability in reporting all of the factors of production for its second sales channel. Ultimately, Huaiyin30 is the party who is responsible for ensuring the accuracy and completeness of all of its processors' factors of production data,

## Public Version of Proprietary Document

regardless of the channel in which distribution eventually occurs. However, if the Court determines that a separate analysis must be applied to each sales channel, the Department has clearly demonstrated above that the application of an adverse inference to the first sales channel labor factors is supported within the meaning of section 776(b) of the Act.

### INTERESTED PARTY COMMENTS ON DRAFT RESULTS

#### *Respondent's Comments*

In their September 25, 2002, comments to the Department's draft results of remand, respondents contend that the Department continues to incorrectly apply the highest labor factors on the record as adverse facts available for the labor factors of production for all of Huaiyin30's crawfish tail meat processors, without the Department having record evidence that all of Huaiyin30's processors reported incorrect labor factors or failed to cooperate with the Department. Respondents claim that the Department determined to apply adverse facts available to Huaiyin30's first sales channel labor factors despite the fact that the Department chose not to verify the other processors for Huaiyin30's first sales channel. Respondents argue that the Department has improperly assumed that because the Department was unable to verify labor factors for Huaiyin Freezing, that Huaiyin30's other crawfish tail meat processors would have trouble verifying their labor data as well.

Moreover, respondents contend that in the initial investigation of sulfanilic acid from the People's Republic of China, the Department was faced with a dilemma similar to that existing in the subject review. See Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid

**Public Version of Proprietary Document**

from the People's Republic of China (Sulfanilic Acid), 57 FR 29705, at 29708-09 (July 6, 1992).

In Sulfanilic Acid, the Department verified two out of the four producers that supplied factors of production to the Department. Because there were problems at the verifications of the two producers, the petitioner argued that the Department should apply adverse facts available to the other two factories that were not verified. The Department refused, noting that “[t]he purpose of verification is to spot-check the respondent’s questionnaire response and is not intended to be an exhaustive examination of the response.... In this investigation to determine factors of production, we selected two of the four factories as representative of subject merchandise produced in the PRC....” *Id.* Respondents argue that the Department ignores the point that a segment of a particular industry in the country subject to investigation does not necessarily serve as a representative of all the suppliers to certain exporters.

*Department’s Position*

As a preliminary matter, we note that the sole argument that respondents have alleged is that the Department cannot apply partial AFA to *all* of the processors in Huaiyin30's first sales channel. Respondents do not challenge the Department’s AFA analysis with regard to Huaiyin30's failure to act to the best of its ability by providing the Department with unverifiable labor factors for Huaiyin Freezing, the first sales channel supplier verified by the Department.

With regard to respondents’ comments, the Department disagrees with respondent’s contention that the Department lacks substantial record evidence to apply adverse facts available to the labor factors for all of Huaiyin30's crawfish tail meat processors for its first sales channel. As noted above, at verification, the Department discovered that Huaiyin30 had two sales

## Public Version of Proprietary Document

channels. See “AFA Memo” at 1. The Department properly exercised its discretion in verifying questionnaire responses for one processor from each of Huaiyin30's two sales channels. For the first sales channel, the Department verified Huaiyin Freezing. For the second sales channel, the Department verified Baoyang Freezing. In the 98/99 Final Results, the Department applied adverse facts available to all factors of production for Huaiyin30's second sales channel based on respondent's failure to demonstrate how it calculated factors of production for Baoyang Freezing, the only second sales channel supplier verified by the Department. See 98/99 Final Results, 66 FR at 20635 and accompanying Decision Memorandum at Comment 13. This determination was upheld by the CIT. See Pacific Giant v. U.S., Slip Op. 02-83 at 10-12.

Similarly, for the first sales channel at issue in this remand, the Department applied partial adverse facts available to labor factors for Huaiyin30's first sales channel, based on respondent's failure to demonstrate how it calculated labor factors of production for Huaiyin Freezing, the only supplier verified by the Department for Huaiyin30's first sales channel. It was not necessary for the Department to verify every crawfish tail meat processor in Huaiyin30's first sales channel in order to make such a determination. As acknowledged by Huaiyin30, the labor factors for both Huaiyin Freezing and Baoyang Freezing were unverifiable. While it is true that Baoyang Freezing is a supplier from Huaiyin30's second channel sales, it is reasonable for the Department to assume that the labor factors for Huaiyin30's other first sales channel suppliers contained similar problems with accuracy. Furthermore, since Huaiyin30 is responsible for submitting factors of production for its suppliers in its questionnaire response to the Department, it is reasonable to assume that Huaiyin30 exercised the same level of care in ensuring the accuracy of its other suppliers' factor information as it did with the two processors we selected

## Public Version of Proprietary Document

for verification. As the CIT stated in its August 6, 2002 Opinion in this case,

Although other processors may have cooperated fully with the Department, Commerce has discretion to determine the method by which it will conduct a verification. *See NTN Bearing Corp. of Am. v. United States*, 186 F.Supp.2d 1257, 1296 (Ct. Int'l Trade 2002) (quoting *Pohang Iron and Steel Co. V. United States*, No. 98-04-00906, 1999 WL 970743, at \*16 (Ct. Int'l Trade Oct. 20, 1999)) (“Commerce enjoys ‘wide latitude’ in its verification procedures.”); *see also Carlisle Tire and Rubber Co. v. United States*, 622 F. Supp. 1071, 1082 (Ct. Int'l Trade 1985). An exhaustive examination of the respondent’s business is not required. *See PMC Specialties Group, Inc. v. United States*, 20 CIT 1130, 1134 (1996) (quoting *Monsanto Co. v. United States*, 698 F.Supp. 275, 281 (Ct. Int'l Trade 1988)).

See Pacific Giant v. U.S., Slip Op. 02-83 at 12.

Thus, the Court upheld the Department’s decision to verify a limited number of respondent’s suppliers for the second sales channel. Again, with regard to the same issue in the first sales channel, the Department may select which suppliers to verify, as verification is meant to be a spot-check and not an exhaustive examination of the respondent’s business operations.

The Department also disagrees with respondents’ contention that the Department’s application of adverse facts available in Sulfanilic Acid is analogous to the present case. As respondents have noted, in Sulfanilic Acid, the Department did not apply adverse facts available from the two factories that were verified to the other two factories that were not verified. See Sulfanilic Acid, 57 FR at 29708-09. However, the Department explained its reasons for doing so in the final results in Sulfanilic Acid, where the Department noted, “[a]t verification, we found that each factory is unique in its factors of production,” and “we have adjusted our calculation to account for any unique factors that may be applicable to each of the factories.” Id. In contrast to the producers in the Sulfanilic Acid, Huaiyin30's suppliers do not have unique factors of production. In fact, each of Huaiyin30's suppliers reported the same ten factors of production.

## Public Version of Proprietary Document

See 98/99 Final Results, as amended, and accompanying Decision Memorandum at Comment 13.

Huaiyin30 itself concedes that there was a problem verifying the labor factors which it submitted to the Department. Since Huaiyin30 is the party that is responsible for submitting questionnaire responses to the Department, and has the responsibility of ensuring the accuracy and veracity of the data submitted, it is appropriate, based on Huaiyin30's failure to demonstrate how it calculated *any* of the labor factors for the first sales channel supplier verified by the Department, to apply an adverse inference for the labor factors only to Huaiyin30's other first sales channel suppliers. Because administrative reviews must be completed within strict statutory deadlines, it is incumbent upon the respondent to submit accurate data in order for the Department to rely on the completeness of that data when making its determination. In light of these statutory deadlines, it is therefore reasonable for the Department to verify a single supplier's questionnaire response. When, as occurred here, the supplier verified by the Department provides inaccurate data significant to the review, it is not unreasonable for the Department to make a determination that information provided by suppliers not verified by the Department contained similar problems, and to apply partial adverse facts available to the unverified suppliers.

### FINAL RESULTS OF DETERMINATION

In accordance with the CIT's August 6, 2002, order, we have now completed the results of remand. It is the Department's position that an adverse inference should continue to apply to the first sales channel labor factors of respondent Huaiyin30. Huaiyin30 could have complied with the Department's request for information. Huaiyin30 gave insufficient attention to its

**Public Version of Proprietary Document**

statutory duties under the Department’s regulations. In addition, Huaiyin30 failed to provide information which the Department considers significant to this review. Huaiyin30's failure to provide the Department with verifiable labor factors, an important component of any administrative review, went beyond what the Department normally considers a “mistake” or “inadvertence,” and demonstrates Huaiyin30’s failure to act to the best of its ability, within the meaning of section 776(b) of the Act. Accordingly, as adverse facts available, we should continue to apply the highest labor factor on the record of this review to the labor factors in Huaiyin30's first sales channel.

---

Faryar Shirzad  
Assistant Secretary  
for Import Administration

---

Date