Gallant Ocean (Thailand) Co., Ltd v. United States,
Court No. 2009-1282 (CAFC April 16, 2010)

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 United States Court of International Trade (CIT or the Court) on July 16, 2010, for proceedings consistent with the opinion issued by the U.S. Court of Appeals for the Federal Circuit (CAFC) in the same case. See Gallant Ocean (Thailand) Co., Ltd v. United States, 602 F.3d 1319 (Fed. Cir. 2010) (Gallant Ocean). In its opinion, the CAFC agreed with the Department's assignment of an antidumping duty margin for Gallant Ocean (Thailand) Co., Ltd. (Gallant Ocean) based on adverse facts available (AFA) but disagreed with the appropriateness of the particular margin selected as AFA (i.e., the highest rate set forth in the petition).

We have complied with the Court's instructions and have selected a new AFA rate for Gallant Ocean using the information contained on the record of the instant proceeding. This rate is 14.34 percent.

B. BACKGROUND

On September 12, 2007, the Department published its final results in the 2004-2006 administrative review of the antidumping duty order on shrimp from Thailand. See Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52065 (Sept. 12, 2007) (Thai Shrimp Final Results). The period of review (POR) covers the period August 4, 2004, to January 31, 2006.

As part of this decision, the Department assigned a final dumping margin of 57.64 percent to a company named Gallant Ocean, an exporter of Thai shrimp to the United States.

This rate was based on AFA, necessitated by the fact that Gallant Ocean failed to cooperate with the Department by ignoring multiple requests for information.

In October 2007, Gallant Ocean appealed the Department's decision before the CIT. In its appeal, Gallant Ocean argued that the final rate assigned to it by the Department had no rational relationship to its commercial practices. In January 2009, the Court found that the Department's decision was supported by substantial evidence and in accordance with law, and thus it sustained this decision in all respects. See Gallant Ocean (Thailand) Co., Ltd v. United States, 602 F.Supp. 2d 1337 (CIT 2009).

Gallant Ocean then appealed the CIT's decision before the CAFC. On April 16, 2010, the Court agreed with Gallant Ocean, deeming the selected rate "unreasonably high." Thus, the Court vacated the CIT's ruling, ordering the CIT to remand it back to the Department "for further proceedings consistent with this opinion." See Gallant Ocean, 602 F.3d at 1325, corrected June 30, 2010.

Pursuant to the Court's remand instructions, we have selected a new AFA rate for Gallant Ocean using the information contained on the record of the instant proceeding. This rate is 14.34 percent. Because this rate is based entirely on primary information, it is not subject to the corroboration requirements set forth in the Department's regulations at 19 CFR 351.308(d).

C. ANALYTICAL FRAMEWORK

1. Conclusions of the Court

In its April 16, 2010, opinion, the CAFC found that the petition rate of 57.64 percent, used as the basis for the AFA margin assigned to Gallant Ocean, "did not and does not represent commercial reality." See Gallant Ocean, 602 F.3d at 1323. The Court based this finding on the following conclusions:

- The fact that the Department ultimately imposed dumping margins between 5.91 percent and 6.82 percent for cooperating respondents for the same products after the Department's initial investigation shows it possessed better information and shows that the adjusted petition rate was aberrational, as do the facts that: 1) the Department calculated actual dumping margins during the administrative review period ranging from 2.58 percent to 10.75 percent and 2) the adjusted petition rate is more than ten times higher than the average dumping margin for cooperating respondents and more than five times higher than the highest rate applied to a cooperating respondent; and
- Nothing in the record ties the adjusted rate to Gallant Ocean because Gallant Ocean did not participate in the original investigation.

When the above conclusions are taken as a whole, the Court found: 1) the adjusted petition rate is unrelated to commercial reality and, thus, is not a "reasonably accurate estimate" of Gallant Ocean's actual dumping rate; and 2) given that this rate was more than five times the highest rate imposed on similar products, it is far beyond an amount sufficient to deter Gallant Ocean and other uncooperative respondents from future non-compliance. See Gallant Ocean, 602 F.3d at 1324.

When the Court considered the Department's corroboration analysis within the context of the above framework, it found that the Department failed to corroborate the adjusted petition rate with independent sources. The Court dismissed the Department's comparison of this rate with transaction-specific rates calculated for the mandatory respondents for two reasons: 1) the calculated rates represented "a very small percentage" of the respondents' databases with "unusually high dumping transactions," and 2) the Department failed to link these calculated rates with Gallant Ocean's commercial activity. Id. at 1324. The Court distinguished this case

from two others with AFA-related issues, Ta Chen Stainless Steel Pipe, Inc v. United States, 298 F.3d 1330 (Fed. Cir. 2002) (Ta Chen) and PAM, S.p.A. Inc. v. United States, 582 F.3d 1336 (Fed. Cir. 2009) (PAM). In each of those cases, the Court found it reasonable to assign a high AFA rate, even where the selected rate was the margin calculated for a single sale, because the rate was derived from the sales data of the respondent to which the rate was assigned (thereby sufficiently tying the AFA rate to the company's actual trading activity). See Gallant Ocean, 602 F.3d at 1324 and 1325.

The Court held that the Department should have relied on more reliable facts available such as the representative dumping rates of similarly-sized and similarly-situated exporters in the original investigation and in the administrative review. The Court found that the Department had "abundant resources" from which to calculate a "more reasonable" rate, given that "over a dozen respondents submitted timely questionnaires during the administrative review." Id. at 1324. For this reason, the Court remanded the CIT's decision to the Department for "further proceedings consistent with this opinion." Id. at 1325.

2. Contextual Framework and Analysis

As we understand the Court's ruling, the remand order rests on two premises: 1) the magnitude of the petition margin vis-à-vis the rates calculated for other shrimp companies renders the margin "punitive, aberrational, or uncorroborated;" and 2) the absence of linkage between the petition margin and Gallant Ocean makes it unrelated to commercial reality and, thus, not a "reasonably accurate estimate" of Gallant Ocean's actual dumping rate. While these ideas appear to be separate and distinct, a review of the Court's recent rulings in AFA cases reveals that the CAFC does not view them as such. Rather, these rulings consistently show that,

if the latter factor (linkage) is present, the former factor (magnitude) is not a significant consideration.

This conclusion is based on the following three recent CAFC cases, the first two of which were cited by the Gallant Ocean court and the third which followed on the heels of Gallant Ocean: respectively, Ta Chen, PAM, and KYD, Inc. v. United States, 607 F.3d 760 (Fed. Cir. 2010) (KYD). In each of these three cases, the Court upheld the Department's decision to assign an AFA rate which differed significantly from the rates calculated for cooperating respondents, all in orders of magnitude many times higher than the calculated rates. For example, in the administrative review underlying the PAM decision, the Department calculated rates ranging from 0.12 to 7.23 percent;[1] thus, the AFA margin of 45.49 percent was over six times higher than the highest calculated rate and more than 21 times the average calculated figure. Similarly, in KYD, the Department calculated rates ranging from 0.80 to 1.87 percent; thus, the AFA margin of 122.88 percent was more than 65 times the highest rate calculated for a cooperating company and over 100 times more than the average calculated rate.

As the Gallant Ocean court correctly points out, the facts in both Ta Chen and PAM are distinguishable from those present here – not because of the size of the chosen AFA margins but because the selected margins were based on the uncooperative exporter's own data. Thus, the Court in both of those cases held that the AFA rates were sufficiently linked to the exporter to deem the rates appropriate. Again, the relevant factor in each of these cases was not the magnitude of the margins but their linkage to the company at issue.

This degree of linkage was not present in KYD, because the AFA rate of 122.88 percent was taken from the petition. However, the Court found it reasonable to assign an AFA rate on

[1] See Notice of Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination Not to Revoke in Part, 69 FR 6255, 6257 (Feb. 10, 2004).

the grounds that a "prior dumping margin imposed against an exporter in an earlier administrative review continues to be valid if the exporter fails cooperate in a subsequent proceeding." See KYD at 607 F.3d at 767. Moreover, in the case of KYD, the Federal Circuit was also satisfied with the AFA rate selected by the Department because, although the Department was deprived of any direct evidence of an actual dumping margin in the original determination, the Court found that the Department filled that evidentiary gap by looking to "high-volume transaction-specific margins for cooperative companies" that allowed the Department to conclude that the AFA margin selected "does not lie outside the realm of actual selling practices."

It is clear from the above precedent that the linkage factor is of paramount importance to the Court, and that this linkage factor should be accorded heavy weight when selecting among available AFA rates. It is also clear that the Courts accord the Department substantial deference in selection of AFA rates. See, e.g., Chevron U.S.A. Inc. v. Natural Res. Def. Council Inc., 467 U.S. 837, 842-844, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984). See also Suramericana de Aleaciones Laminadas C.A. v. United States, 966 F. 2d 660, 665 (Fed. Cir. 1992) (stating that it is not the court's duty to "weigh the wisdom of, or to resolve any struggle between, competing views of the policy interest, but rather to respect legitimate policy choices made by the agency in interpreting and applying the statute").

Interpreting this precedent narrowly by focusing on the size of the margin in isolation would result in the severe limitation of the Department's discretion. Moreover, such an interpretation would lead to the bizarre result of precluding the Department from ever assigning as AFA petition margins which differ markedly from average rates calculated for cooperating parties, except in the specific instance where: 1) that same petition margin was assigned as an

AFA rate in a previous review and; 2) the assignment of that rate was not challenged in Court. We believe that such a result is inconsistent with the intent of Congress, as set forth in section 776(b)(1) of the Tariff Act of 1930, as amended, (the Act) (which authorizes the Department to use petition information as AFA), and the Court's own recent rulings.

3. The Linkage Factor for Gallant Ocean

Reading the opinion of the Court in Gallant Ocean in this context, it is possible to view the Court's ruling as consistent with the principles enumerated above. Specifically, the Court found here that "the record does not show that the transactions at and above the 57.64% dumping margin *reflect Gallant's commercial activity*." See Gallant Ocean, 602 F.3d at 1324 (emphasis added). Thus, the Court found that the Department should have relied on more reliable facts available such as the representative dumping rates of "similarly-sized and similarly-situated exporters" in the original investigation and in the administrative review. Id. at 1324. Moreover, the Court found that the Department had "abundant resources" from which to calculate a "more reasonable" rate, given that "over a dozen respondents submitted timely questionnaires during the administrative review." Id. at 1324.

We interpret these statements to signify that the Court finds it unreasonable to use a high petition rate as AFA where better sources of information exist. In this case, however, the Court may not have fully appreciated the nature of the information contained on the administrative record. Thus, while we understand the Court's concerns, we are unable to comply fully with the Court's directive to select an alternative AFA rate that "reflects Gallant's commercial activity." Id. at 1324.

Specifically, the administrative record does not, in fact, contain "abundant resources from which to calculate a reasonable AFA rate," nor did "over a dozen respondents submit{} timely

questionnaires {sic} during the administrative review." Id. at 1324. While it is true that 106 Thai exporters provided certain basic information related to their U.S. export volumes and values during the POR, this information could not be used to perform a dumping calculation, much less to calculate a stand-alone AFA rate. Rather, this information is simply a tabulation of each company's overall volume and value of subject exports to the United States, either directly or via one or more affiliates, as well as a listing of each company's production volume of subject merchandise. Because these responses contain no data on each company's home market or non-U.S. export sales, and only aggregate information on U.S. exports (without detailing product-specific pricing or product mix), it is impossible to derive company-specific dumping margins from them.

Similarly, the administrative record does not contain evidence of "more reliable 'facts otherwise available' such as the representative dumping rates of similarly-sized and similarly situated exporters," nor does it yield any method available to determine "a reasonably accurate estimate of Gallant's actual dumping margin." See Gallant Ocean at 1324 and 1325. This is true because the record contains no information at all about Gallant Ocean's situation, and only a single assertion about its size (i.e., the company's claim in its case brief that it was too small to be picked as a mandatory respondent). Thus, even if the administrative review were to contain additional information submitted by the cooperating parties, it would be impossible to use this information to determine which of these companies were "similarly-sized or similarly situated" to Gallant Ocean without data related to Gallant Ocean's own sales and production. Furthermore, without this information, we are unable to estimate Gallant Ocean's actual dumping margin with any increased accuracy. Therefore, given the paucity of available data

with respect to Gallant Ocean, we are unable to tailor our selection of an alternative AFA rate to reflect Gallant Ocean's actual commercial activity. Id. at 1324.

D. SELECTION OF ALTERNATIVE AFA MARGIN

Section 776(a) of the Act provides that the Department will apply "facts otherwise available" if, inter alia, necessary information is not available on the record or an interested party: 1) withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified. In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information.

At issue here is not whether the use of AFA for Gallant Ocean is justified, but rather which rate forms the basis of an appropriate AFA rate. Section 776(b) of the Act provides that the Department may use as AFA information derived from: 1) the petition; 2) the final determination in the investigation; 3) any previous review; or 4) any other information placed on the record. In this case, the Court has found it impermissible to assign the petition rate. As this is the first administrative review of this antidumping duty order on shrimp from Thailand, there exists no information from previous reviews. Thus, the only sources for AFA here are information obtained from the final determination in the investigation or information placed on the record of this segment of the proceeding.

In this instance, as AFA we have relied on information placed on the record during this segment of the proceeding. Specifically, we first determined the weighted-average of the

margins of the dumped sales for each of the three respondents, and then we chose the highest of these three numbers (i.e., 14.34 percent, calculated using Good Luck Product's data) as AFA. We believe this approach is consistent with the application of an adverse inference for Gallant Ocean as directed by the Court. Although this rate is not tied specifically to Gallant Ocean's own commercial behavior, we find that it is reflective of commercial reality during the POR because it is grounded in the actual behavior of the responding parties during the same period of time as the period in question.[2] Moreover, we find, as an adverse inference, it is reasonable to assume that 1) all of Gallant Ocean's sales were dumped and 2) that Gallant Ocean was dumping those sales at a rate at least as high as the cooperating respondent with the highest weighted-average margin based only on that cooperating respondent's dumped transactions. As noted above, because the selected rate is based on primary information obtained during the course of the review, it is unnecessary to corroborate it.

For the foregoing reasons, we are assigning an AFA margin of 14.34 percent to Gallant Ocean, in accordance with the Court's remand order.

E. COMMENTS FROM INTERESTED PARTIES

On September 28, 2010, Gallant Ocean submitted comments on our draft redetermination issued on September 22, 2010. These comments are addressed below.

Comment 1: *The Department's Calculations Contain a Ministerial Error*

In the draft redetermination, the Department calculated an AFA rate of 33.22 percent, which it believed to be the highest overall weighted-average margin on dumped sales for any of the three respondents. Gallant Ocean contends that this margin was based on incorrect data for one of the three companies (Good Luck). According to Gallant Ocean, using the correct

[2] In its opinion, the Court linked commercial reality directly to the behavior of the responding parties when it cited the rates calculated for them in both the less-than-fair value investigation and in this administrative review.

database yields an actual weighted-average margin for Good Luck of 14.34 percent. Therefore, Gallant Ocean argues that the Department should not use the rate set forth in the draft redetermination when assigning a new AFA rate to it.

Department's Position:

We have examined our calculations and agree that the correct weighted-average margin for Good Luck's dumped U.S. sales transactions is 14.34 percent. Because this rate is higher than the rate calculated for either of the other two mandatory respondents, we are assigning this rate to Gallant Ocean as AFA, consistent with the methodology outlined above.

Comment 2: *The Selected Rate Does Not Comply With The Court's Instructions*

Gallant Ocean argues that the Department failed to comply with the Court's instructions when it preliminarily selected an AFA rate of 33.22 percent. Specifically, Gallant Ocean contends that the Court instructed the Department to choose a rate that is "representative," and, thus, a "reasonably accurate estimate of Gallant Ocean's actual dumping rate." According to Gallant Ocean, because the Department's methodology only takes dumped sales into account, it is not representative of commercial reality and fails to meet the standard required by the Court.

Gallant Ocean contends that, in order to comply with the Court's decision, the Department should select as AFA the highest dumping margin calculated for a respondent in any segment of this proceeding; this rate is 10.75 percent, the margin calculated for Good Luck in the instant administrative review. Gallant Ocean claims that the Department has followed this approach in numerous cases, and the courts have affirmed it. As support for this statement, Gallant Ocean cites F.lli De Cecco Di Filippo Fara S. Maratino S.p.A. v. United States, 216 F.3d 1027, 1033-34 (Fed. Cir. 2000) (De Cecco); Fresh Crawfish Tail Meat From the People's Republic of China: Final Results and Partial Rescission of the 2005-2006 Antidumping Duty

Administrative Review and Rescission of 2005-2006 New Shipper Reviews, 73 FR 20249 (Apr. 15, 2008); Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Final Results and Rescissions of the 2005-2006 Administrative Reviews, 72 FR 51787 (Sept. 11, 2007); and Final Results of Redetermination Pursuant to Court Remand, Elkem Metals Company and Globe Metallurgical Inc. v. United States, 28 CIT 508, No. 01-00098, at 6 (Apr. 15.2004).

Gallant Ocean claims that this margin meets the two stated objectives of the Court: 1) that it be representative of the dumping rates of similarly-sized and similarly-situated exporters; and 2) that it be a reasonably accurate estimate of the respondent's own dumping rate, albeit with some built-in increase intended as a deterrent to non-compliance. As to the first point, Gallant Ocean asserts that a weighted-average rate that takes only dumped sales into account does not reasonably reflect commercial reality and therefore is not representative. As to the second point, Gallant Ocean notes that the Court held in Timken Co. v. United States, 354 F.3d, 1334, 1345 (Fed. Cir. 2004), that the Department "must balance the statutory objectives of finding an accurate dumping margin and inducing compliance, rather than creating an overly punitive result." Gallant Ocean notes that its proposed rate of 10.75 percent should be acceptable because it is nearly twice as high as the cash deposit rate applied to its entries and more than twice the rate that it would have received in the review had it submitted its response on time.

Department's Position:

We disagree that we failed to comply with Court's instructions in this case. In its opinion, the Court found that the petition rate originally assigned as AFA was aberrational and thus not a legitimate source of AFA. For this reason, the Court directed the Department to

determine a "more reasonable" facts available rate, such as the representative dumping rates of "similarly-sized and similarly-situated exporters." Gallant Ocean at 1324.

As explained above, the selected rate is reflective of commercial reality during the POR because it is grounded in the actual behavior of the responding parties during the same period of time. We acknowledge that this rate is not tied specifically to Gallant Ocean's own commercial behavior; however, given that the administrative record contains no information on Gallant Ocean, it is impossible to make such a linkage (thereby determining what is "representative" of its commercial behavior). For the same reason, it is equally impossible to ascertain what the commercial behavior of a "similarly-sized and similarly-situated exporter" would entail, given that the record contains no information on Gallant Ocean's size or situation.

Given these constraints, we find it reasonable to assume that Gallant Ocean was pricing its sales at a level at least as low as any cooperating respondent. Because the Courts have consistently held that it is permissible to include a built-in increase as a deterrent to non-compliance, as Gallant Ocean itself has acknowledged, we also find it reasonable to exclude non-dumped transactions from the calculated AFA rate.

We disagree with Gallant Ocean that it would be appropriate to use Good Luck's weighted average margin in this case, including both fairly- and unfairly-priced sales transactions. We find no basis here to assume that an uncooperating party is dumping at the same rate as a cooperating party. While the Department may have made such assumptions in the past, those determinations were made based on the facts in those particular cases and resulted from the exercise of the Department's discretion, as permitted by law. Moreover, in other cases involving AFA, the Department has made different decisions. For example, in the companion case involving frozen warmwater shrimp from India, the Department determined that the highest

rate alleged in the petition was sufficiently high as to effectuate the purpose of the AFA rule. See, e.g., Certain Frozen Warmwater Shrimp From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 40492, 40495 (July 15, 2008).

In summary, although the Court may not have fully appreciated the extent of the data available on the administrative record of this case both with respect to Gallant Ocean itself and with respect to the available data from which to choose an appropriate AFA rate, we believe that the rate selected nonetheless satisfies the Court's concerns. This rate is grounded in commercial reality, given that it is based on actual sales transactions made during a contemporaneous period by an exporter of the same merchandise; and it is not aberrational, given that it is based on a large number of those sales transactions and its magnitude is in line with the calculated rates for the cooperating parties.

Finally, as to Gallant Ocean's statement that its proposed rate of 10.75 percent should be acceptable because it is nearly twice the rate that it would have received in the review had it submitted its response on time, we find this statement to be tantamount to Gallant Ocean self-selecting its own rate based on information not on the administrative record.

Comment 3: *The Department's Methodology is Based on an Incorrect Legal Interpretation*

Gallant Ocean argues that the Department's methodology for selecting the revised AFA rate is based on two incorrect legal premises: 1) if the AFA rate can be linked to the respondent in question, the magnitude of the rate is not a significant consideration; and 2) the rate chosen in this case is primary information and thus not subject to corroboration under section 776(c) of the Act.

As to the former point, Gallant Ocean notes that in De Cecco, 216 F.3d at 1032, the Federal Circuit held that the "purpose of section 1677e(b) is to provide respondents with an

incentive to cooperate, not to impose punitive, aberrational, or uncorroborated margins." Gallant Ocean asserts that this principle should be read to signify that the Department cannot disregard whether the magnitude of a selected AFA rate is unreasonably high simply because it is based on the respondent's own information. Nonetheless, Gallant Ocean asserts that, even if the Department's interpretation were correct, it means that magnitude is an important consideration in this case. Thus, Gallant Ocean implies that the Department should select a smaller margin.

As to the latter point, Gallant Ocean contends that Good Luck's information is not primary information and thus it is subject to corroboration. As support for this claim, Gallant Ocean cites two administrative review periods involving ball bearings exported from multiple countries. See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore and the United Kingdom: France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, 70 FR 54711, 54712 (Sept. 16. 2005) (Ball Bearings 2005) (where the Department stated that information "from another company in the same proceeding constitutes secondary information"), and Ball Bearings and Parts Thereof From France, Germany, Italy, and Singapore: Preliminary Results of Antidumping Duty Administrative Reviews, Partial Rescission of Administrative Reviews, and Notice of Intent To Revoke Order In Part, 68 FR 6404, 6405 (Feb. 7, 2003) (Ball Bearings 2003). Therefore, Gallant Ocean argues that the Department should treat information from Good Luck and any other companies as secondary information and corroborate it, as required by section 776(c) of the Act.

Department's Position:

We agree with Gallant Ocean that the Department may not rely on aberrational margins as the basis for AFA, irrespective of their magnitude. In this case, however, the selected margin

of 14.34 percent is not aberrational because it is derived from numerous mainstream sales transactions made by a cooperating respondent during the course of the review period. Moreover, its size in absolute terms is smaller than the size of the margin found objectionable by the Court.

With respect to the corroboration requirement, we disagree with Gallant Ocean that Good Luck's information is secondary information, or that primary information is by necessity linked to the respondent under consideration. Section 776(c) of the Act states:

> When the administering authority or the Commission relies on secondary information, rather than information obtained in the course of an investigation or review, the administering authority or the Commission, as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal.

See section 776(c) of the Act (emphasis added). See also 19 CFR 351.308(c). The Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. No. 103-316, Vol. 1 (1994), at 870, further defines secondary information:

> Secondary information is information 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. Secondary information may not be entirely reliable because, for example, as in the case of the petition, it is based on unverified allegations, or as in the case of information from prior section 751(a) reviews, it concerns a different time frame than the one at issue.

See SAA at 870. As this language makes clear, secondary information is not "information obtained in the course of an investigation or review." Because Good Luck's sales information was obtained in the course of the review, it is primary information not subject to the corroboration requirement set forth in the Act. As such, there is no need to corroborate this information.

Finally, we disagree with Gallant Ocean that the cases cited to support its position are on point. Contrary to Gallant Ocean's assertions, in those cases, the Department did not in fact use information from the same company in the same segment of the proceeding to calculate an AFA rate. Rather, in each case, the Department selected as adverse facts available a rate calculated in the less-than-fair-value investigation (i.e., the same proceeding, albeit a different segment), and therefore it properly corroborated the rate as directed by the Act. See Ball Bearings 2005, 70 FR at 54712; Ball Bearings 2003, 68 FR 6405; and Final Determinations of Sales at Less than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, 54 FR 18992, 18997 (May 3, 1989).

F. CONCLUSION

The Department hereby complies with the remand order as directed by the Court in Gallant Ocean and assigns a final dumping margin of 14.34 percent to Gallant Ocean. Upon a final and conclusive court decision, we will publish amended final results to that effect.

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Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

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(Date)