



A-570-893

Changed Circumstances Review

Public Document

IA/NME/9: KJA

February 21, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh *CM*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Reconsideration of
Changed Circumstances Review: Certain Frozen Warmwater
Shrimp from the People's Republic of China

I. SUMMARY

The Department of Commerce ("the Department") has determined that the record of this changed circumstances review ("CCR") contains material misrepresentations and, consequently, is unusable for any purposes. Accordingly, we recommend that our original determination that Hilltop International ("Hilltop")¹ is the successor-in-interest to Yelin Enterprise Co. Hong Kong ("Yelin") be reversed and that you find that Hilltop should be considered part of the PRC-wide entity, absent a determination of its own rate, separate from the PRC-wide entity. As discussed below, we also recommend finding that the application of facts available ("FA") is appropriate because Hilltop: (A) withheld information requested by the Department; (B) failed to provide such information in a timely manner or in the form or manner requested; (C) significantly impeded the proceeding under the antidumping statute; and (D) provided information that cannot be verified. Further, because we find that Hilltop failed to cooperate to the best of its ability, the application of adverse facts available ("AFA") with an adverse inference, pursuant to section 776(b) of the Tariff Act of 1930, as amended (the "Act"), is also warranted. Accordingly, as AFA we are finding that Hilltop is not the successor-in-interest to Yelin.

¹ Hilltop is affiliated with Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd., Fuqing Yihua Aquatic Food Co., Ltd., Yelin Enterprise Co., Ltd., Ocean Beauty Corporation, Ever Hope International Co., Ltd., Ocean Duke Corporation and Kingston Foods Corporation. Further, the Department has found Hilltop, Yelin Enterprise Co., Ltd., Ocean Beauty Corporation, and Ever Hope International Co., Ltd. to be a single entity. See Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results, Partial Rescission, Extension of Time Limits for the Final Results, and Intent To Revoke, in Part, of the Sixth Antidumping Duty Administrative Review, 77 FR 12801, 12804 (March 2, 2012) ("Preliminary Results").



II. BACKGROUND

Yelin was a mandatory respondent in the LTFV Investigation² and PRC Shrimp AR1.³ In the PRC Shrimp LTFV Final, Yelin received a margin of 82.27 percent.⁴ In PRC Shrimp AR1, which covered the period July 14, 2004, through January 31, 2006, and published in September 2007, Yelin received a de minimis margin.⁵

On March 16, 2007, Yelin filed a submission requesting that the Department conduct a CCR of the antidumping duty order on certain frozen warmwater shrimp from the PRC to confirm that Hilltop is the successor-in-interest to Yelin.⁶ However, as described below in part V.A., this submission was filed by Hilltop. On June 18, 2007, the Department published the final results of this CCR and found Hilltop to be the successor-in-interest to Yelin.⁷

On March 2, 2012, the Department published the sixth administrative review (“AR6”) Preliminary Results. Subsequent to the AR6 Preliminary Results, the Ad Hoc Shrimp Trade Action Committee (“Petitioner”) submitted information concerning recent convictions of entities/persons affiliated with Hilltop and allegations of a transshipment scheme of shrimp through the Kingdom of Cambodia (“Cambodia”) in the first and second administrative reviews of this proceeding, involving Hilltop, Hilltop’s U.S. affiliate Ocean Duke Corporation (“Ocean Duke”), and Ocean King (Cambodia) Co., Ltd. (“Ocean King”), a Cambodian company.⁸

On September 4, 2012, the Department published the AR6 Final Results, wherein we determined that the entirety of Hilltop’s submissions was unusable and, therefore, Hilltop was not eligible for a separate rate and would be considered part of the PRC-wide entity.⁹ This determination was based on the finding that Hilltop had a Cambodian affiliate, Ocean King, from the first administrative review (“AR1”) through most of AR6, which Hilltop repeatedly failed to disclose

² See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People’s Republic of China, 70 FR 5149 (February 1, 2005) (“PRC Shrimp LTFV Final” or “LTFV Investigation”).

³ See Certain Frozen Warmwater Shrimp From the People’s Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 52049 (September 12, 2007) (“PRC Shrimp AR1”).

⁴ We note that while Hilltop’s LTFV Investigation margin was revised on May 24, 2011, pursuant to court decision, the preliminary rate of 98.34 percent and the final rate of 82.27 percent were in effect at the time of Hilltop’s entries during the AR1 POR. See Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the People’s Republic of China, 69 FR 42654 (July 16, 2004) (“PRC Shrimp LTFV Prelim”); PRC Shrimp LTFV Final.

⁵ See PRC Shrimp AR1, 72 FR at 52052.

⁶ See Letter from Yelin to the Secretary of Commerce “Request for Expedited Changed Circumstances Determination” (March 16, 2007) (“CCR Request”).

⁷ See Certain Frozen Warmwater Shrimp from the People’s Republic of China: Notice of Final Results of Changed Circumstances Review, 72 FR 33447 (June 18, 2007) (“Hilltop CCR Final”).

⁸ See Memo to the File from Kabir Archuleta, International Trade Analyst, Office 9, “Placing Documents on the Record of Changed Circumstances Review” (December 13, 2012) (“AR6 Public Documents”) Attachment I “031212 Petitioner Pre-Verification Comments (PD).pdf” (“Petitioner’s March 12 Submission”).

⁹ See Administrative Review of Certain Frozen Warmwater Shrimp From the People’s Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 77 FR 53856 (September 4, 2012), and accompanying Issues and Decision Memorandum (“AR6 Final Results”)

to the Department. The Department determined that Hilltop impeded the review by concealing and repeatedly denying the existence of any affiliation with Ocean King, and only when irrefutable evidence of the affiliation was placed on the record did Hilltop acknowledge the five-year affiliation.¹⁰

On December 5, 2012, we reopened the record of this CCR to reconsider our determination in light of the evidence discovered in AR6 regarding Hilltop's affiliation with Ocean King.¹¹ On December 13, 2012, the Department placed public documents submitted in AR6 on the record of this proceeding.¹² On December 17, 2012, the Department placed documents containing business proprietary information obtained during AR1 and AR6 on the record of this proceeding.¹³

On December 31, 2012, the Department received comments from Petitioner on the documents placed on the record of this CCR.¹⁴ On January 7, 2013, the Department received rebuttal comments from Hilltop.¹⁵

Scope of the Order¹⁶

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,¹⁷ deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTS"), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

¹⁰ See Memo to the File from Kabir Archuletta, International Trade Analyst, Office 9, "Placing Documents on the Record of Changed Circumstances Review" (December 17, 2012) ("AR1/AR6 BPI Documents") at Attachment I "062712 Hilltop Supp7 Response (BPI).pdf" ("Hilltop AR6 Seventh Supplemental Response") at pg. 2.

¹¹ See Letter to All Interested Parties from Catherine Bertrand, Program Manager, Office 9, "Certain Frozen Warmwater Shrimp from the People's Republic of China: Reopening the Record of Changed Circumstance Review" (December 5, 2012).

¹² See AR6 Public Documents.

¹³ See AR1/AR6 BPI Documents.

¹⁴ See Letter from Petitioner to the Secretary of Commerce "Comments on Record Evidence" (December 31, 2012) ("Petitioner Prelim Comments").

¹⁵ See Letter from Hilltop to the Secretary of Commerce "Hilltop Rebuttal Comments: Certain Frozen Warmwater Shrimp from the PRC: Reopening the Record of Changed Circumstances Review" (January 7, 2013) ("Hilltop Prelim Rebuttal Comments").

¹⁶ We note that on April 26, 2011, the Department amended the antidumping duty order to include dusted shrimp, pursuant to the U.S. Court of International Trade ("CIT") decision in Ad Hoc Shrimp Trade Action Committee v. United States, 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission determination, which found the domestic like product to include dusted shrimp. See Certain Frozen Warmwater Shrimp From Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision, 76 FR 23277 (April 26, 2011). The scope reproduced here is the scope that was in effect when the Department conducted this original CCR proceeding.

¹⁷ "Tails" in this context means the tail fan, which includes the telson and the uropods.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, white-leg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this investigation. In addition, food preparations, which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) Lee Kum Kee’s shrimp sauce; (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); (8) certain dusted shrimp; and (9) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (“IQF”) freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

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

The Department has the inherent authority to cleanse its proceedings of potential fraud.¹⁸ Where new evidence indicating possible fraud or misrepresentation comes to light after the completion of a proceeding, the Department may consider whether that information affected its determination.¹⁹ In this case, new evidence came to light during the subsequent AR6 indicating that Hilltop made misrepresentations to the Department during this CCR. Based on this newly-discovered evidence, the Department finds it appropriate to reconsider the final results of this CCR.

IV. STATUTORY PROVISIONS

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 sections 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 section 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party “promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative form in which such party is able to submit the information,” the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

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) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed “deficient” under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

¹⁸ See Tokyo Kikai Seisakusho Ltd. v. United States, 529 F.3d 1352, 1360-61 (Fed. Cir. 2008) (“TKS”) (affirming the Department’s authority to reconsider an administrative review when later discovered evidence of fraud indicated that the underlying proceeding had been tainted); Elkem Metals, Inc. v. United States, 193 F. Supp. 2d 1314, 1321 (CIT 2002).

¹⁹ See TKS, 529 F.3d at 1360-61; see e.g. Home Prods. Int’l v. United States, 633 F.3d 1369, 1378 (Fed. Cir. 2011).

Furthermore, section 776(b) of the Act states that if the Department “finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission . . . , in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.”²⁰

V. FACTS

A. Yelin and Hilltop’s Organizational Structure

In its request for a CCR, Yelin identified its two 50 percent owners and stated that it was a Hong Kong registered partnership.²¹ In May 2006, one partner discontinued the partnership in the company and was replaced by a new partner, who is also a manager and director of three related companies in Taiwan.²² The company conducted business under both the names Yelin and Hilltop until July 2006, after which it conducted business solely under the Hilltop name.²³ Yelin was formally dissolved on December 12, 2006.²⁴ Thus, while the CCR request made on March 16, 2007, was filed under Yelin’s name, the submission states that Yelin had dissolved more than three months prior to submission of the request. Accordingly, we find that the CCR request was made by Hilltop in order to be found the successor-in-interest to Yelin.

Mr. To Kam Keung was the General Manager of Yelin and Hilltop and was the signatory to Hilltop’s certification of accuracy accompanying Hilltop’s CCR Request.²⁵ Attached to Hilltop’s CCR Request, Mr. To Kam Keung, as the General Manager of Hilltop, submitted a declaration of facts regarding the transition from Yelin to Hilltop,²⁶ which was accompanied by the following statement:

“Pursuant to 28 U.S.C. §1746, I state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.”

Duke Chau-Shing Lin (“Duke Lin”) is the president and part of owner of Ocean Duke, Hilltop’s U.S. reseller, and his son, Roger Lin, is the vice president and majority owner of Ocean Duke.²⁷

B. AR6 Allegations and Hilltop’s Response

As noted above, Petitioner’s March 12, 2012, Submission contained allegations of a transshipment scheme of shrimp in AR1 and the second administrative review (“AR2”) of this

²⁰ See also Statement of Administrative Action (“SAA”) accompanying the Uruguay Round Agreements Act (“URAA”), H.R. Rep. No. 103-316 at 870 (1994).

²¹ See CCR Request, at 3.

²² See *id.*

²³ See *id.*

²⁴ See *id.*

²⁵ See certification accompanying CCR Request.

²⁶ See CCR Request, at Exhibit 4.

²⁷ See Petitioner’s March 12 Submission, at Exhibit 1 (“Sentencing Report”), pg. 2.

Order, involving Hilltop, Ocean Duke, and Ocean King, a Cambodian company.²⁸ These allegations were largely based on documentation released in conjunction with a federal investigation of Duke Lin, president and part owner of Ocean Duke,²⁹ that was conducted over a five-year period and involved multiple federal agencies and resulted in a plea agreement on charges of mislabeling fish fillets.³⁰ The documentation included internal emails dated in 2004 and 2005 between Duke Lin and To Kam Keung (a.k.a. Peter To), Yelin’s General Manager and part owner,³¹ indicating that the companies were in the process of establishing a Cambodian affiliate to be named Ocean King, that they had shipped containers of shrimp from Vietnam to Cambodia for repackaging and relabeling, and that they were to ensure there was no paper trail between the Cambodian factory’s supplier and Yelin.³² The documentation also included import data showing that between May 2004 and July 2005 Ocean Duke imported over 15 million pounds of shrimp from Cambodia, including significant quantities from Ocean King.³³ However, official government production data indicated that Cambodia produced less than 400 thousand pounds of shrimp during all of 2004 and 2005.³⁴

In its comments regarding U.S. Customs and Border Protection (“CBP”) import data released by the Department in AR6, Hilltop stated in two submissions that it was not affiliated with Ocean King and that “neither the company, nor its owners or officers, invested any funds in Ocean King.”³⁵

On June 1, 2012, in an attempt to discern the reliability of the allegations being made against Hilltop and to provide Hilltop an opportunity to demonstrate the inaccuracy of the allegations, the Department issued a detailed supplemental questionnaire requesting further explanation of the record evidence.³⁶ On June 15, 2012, Hilltop submitted a partial response in which it declined to provide responses to the majority of the requested information related to prior reviews.³⁷ Additionally, in its partial response, Hilltop stated the following:

- “During the period from February 1, 2008 through January 31, 2011, Hilltop and/or Ocean Duke, and/or any individuals affiliated with Hilltop and/or Ocean Duke, had no Cambodian affiliate or Cambodian affiliates.”³⁸
- “Ocean Duke and/or Yelin/Hilltop had no affiliation or business dealings with Ocean King (Cambodia) on or after February 1, 2008.”³⁹

²⁸ See Petitioners’ March 12 Submission.

²⁹ See Sentencing Report, at pg. 2.

³⁰ See Sentencing Report.

³¹ See Sentencing Report, at pg. 3; AR1/AR6 BPI Documents, at Attachment I “082712 Hilltop AFA Memo (BPI).pdf” (“Hilltop AR6 AFA Memo”) at 4.

³² See Sentencing Report, at Attachments 19, 14 and 20, respectively.

³³ See Sentencing Report, at pg. 22 and Attachments 9 and 10.

³⁴ See Sentencing Report, at 22-23 and Attachments 17 and 18.

³⁵ See AR1/AR6 BPI Documents, at Attachment I “052412 Hilltop Comments on Cambodia CBP Data (BPI).pdf” at pg. 2 n. 1; AR1/AR6 BPI Documents, at Attachment I “053112 Hilltop Rebuttal Comments on CBP Import Data (BPI).pdf” at pg. 6 (“Hilltop Rebuttal Comments on CBP Data”).

³⁶ See AR6 Public Documents “060112 Hilltop Supp6 Questionnaire (PD).pdf” (“Hilltop AR6 Sixth Supplemental Questionnaire”).

³⁷ See AR1/AR6 BPI Documents, at Attachment I “061512 Hilltop Supp 6 Response (BPI).pdf” (“Hilltop AR6 Sixth Supplemental Response”).

³⁸ See *id.*, at pg. 12.

- “Exhibit Two contains a chart showing all companies and/or entities in which Duke Lin and Peter To owned shares and/or held management positions, from February 1, 2008 to the present.” The chart at Exhibit 2 did not list Ocean King.⁴⁰

On July 19, 2012, the Department released public registration documents for Ocean King that identified To Kam Keung as a Board Member and 35 percent shareholder beginning in July 2005 and ending in September 2010.⁴¹ We also sent Hilltop a supplemental questionnaire requesting again that Hilltop provide information regarding its affiliations and commercial behavior, as well as information regarding its prior statements that it was not affiliated with Ocean King.⁴² Hilltop continued to refuse to provide the requested information regarding its activities prior to the fourth administrative review (“AR4”), but conceded that an affiliation existed with Ocean King through September 2010.⁴³ During AR6, Hilltop was notified on at least four occasions that the Department would use facts available, and may be required to use an adverse inference in conducting its analysis, if Hilltop failed to provide the requested information.⁴⁴ Hilltop’s refusal to provide information requested by the Department regarding the allegations raised by Petitioner limited the Department’s ability to investigate the relevant evidence as it pertained to Hilltop’s participation in this proceeding.

C. Summary of AR6 Findings

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

- As noted above, Hilltop was found to be the successor-in-interest to Yelin,⁴⁵ a determination which is under reconsideration in this segment. Yelin received a preliminary rate of 98.34 percent in the PRC Shrimp LTFV Prelim and Ocean Duke’s imports from the PRC subsequently plummeted.⁴⁶
- At the same time that Ocean Duke’s imports from the PRC were reduced to virtually zero, Ocean Duke’s imports from Cambodia skyrocketed.⁴⁷
- During this time period, Yelin, in consultation with Ocean Duke, established a shrimp processing plant in Cambodia, discussed sending Vietnamese products⁴⁸ to Cambodia for

³⁹ See id., at pg. 14.

⁴⁰ See id., at pg. 14 and Exhibit 2.

⁴¹ See AR6 Public Documents, at Attachment I “061912 MTF - Ocean King Registration Documents (PD).pdf” (“Ocean King Registration Documents”).

⁴² See AR Public Documents, at Attachment I “061912 Hilltop Supp7 Questionnaire (PD).pdf” (“Hilltop AR6 Seventh Supplemental Questionnaire”).

⁴³ See Hilltop AR6 Sixth Supplemental Response, at pg. 1; see also Hilltop AR6 Seventh Supplemental Response, at pg. 2.

⁴⁴ See Hilltop AR6 AFA Memo, at pg. 14-15; Hilltop AR6 Sixth Supplemental Questionnaire, at 2-3; Hilltop AR6 Seventh Supplemental Questionnaire, at pg. 2-3.

⁴⁵ See Certain Frozen Warmwater Shrimp from the People’s Republic of China: Notice of Final Results of Changed Circumstances Review, 72 FR 33447 (June 18, 2007).

⁴⁶ See Sentencing Report, at Attachments 9-10.

⁴⁷ See Sentencing Report, at Attachments 9-11.

⁴⁸ During this period, Vietnamese shrimp were also subject to antidumping duty proceedings.

processing and repackaging,⁴⁹ and intentionally obscured the invoicing chain, possibly so as to mask the source of the shrimp.⁵⁰ Record evidence also confirms that Yelin and Hilltop and Ocean Duke concealed the Ocean King affiliation from the Department beginning at AR1 verification and through eight months of AR6.⁵¹

- Between May 2004 and July 2005 Ocean Duke imported more than 6.8 million kilograms (“kgs”) of shrimp with a declared country-of-origin Cambodia, a period during which Cambodia only produced 185,000 kg of shrimp.⁵² The true country-of-origin of these imports is necessarily in question and internal communications suggest at least some imports came from Vietnam.⁵³
- Hilltop certified⁵⁴ to having no shipments from the PRC in PRC Shrimp AR2,⁵⁵ a period in which it continued to receive imports from Cambodia.⁵⁶
- The de minimis margin calculated for Yelin in AR1, which published on September 12, 2007,⁵⁷ and was a margin based on a period in which its PRC imports were severely curtailed,⁵⁸ had a significant effect on Hilltop’s imports from the PRC.⁵⁹

⁴⁹ See Sentencing Report, at Attachment 19 (“Ocean King Email”) (Wherein To Kam Keung wrote to Duke Lin: “I have discussed with Truong to get some good shrimp suppliers {fr}om Vietnam and send some raw material through the border in order to let the factory have something to do {af}ter grand open in July”); Sentencing Report, at Attachment 14 (In an email dated May 13, 2004, from a Yelin email address, the sender stated that they “are shipping some containers of {shrimp} from VN to Cambodia for repacking. really want to reuse all white cartons of Vietnam and stick MC labels in Cambodia...” On May 14, 2004, Roger Lin replied, with a cc to Duke Lin, “Please do NOT let them do this. They must print new master cartons for Cambodia origin products. Do NOT allow them to sticker over Product of Vietnam cartons. Thanks”).

⁵⁰ See Sentencing Report, at Attachment 20 (Wherein Duke Lin wrote to To Kam Keung “Cambodia Factory need set up PO to their Supplier also direct wire to their supplier, Yelin HK cannot have any Involve or any paper related!”).

⁵¹ Compare Hilltop Rebuttal Comments on CBP Data at Exhibit 2 pg. 4 and Exhibit 3 pg. 3; Hilltop AR6 Sixth Supplemental Response, at pg. 12-14 and Exhibit 2; with Hilltop AR6 Seventh Supplemental Response, at pg. 1.

⁵² See Sentencing Report, at pg. 5 and Attachment 18 (15 million pounds (“lbs”) x .453592).

⁵³ See Ocean King Email (Wherein To Kam Keung wrote to Duke Lin: “I have discussed with Truong to get some good shrimp suppliers {fr}om Vietnam and send some raw material through the border in order to let the factory have something to do {af}ter grand open in July”); Sentencing Report, at Attachment 14 (In an email dated May 13, 2004, from a Yelin email address, the sender stated that they “are shipping some containers of {shrimp} from VN to Cambodia for repacking. really want to reuse all white cartons of Vietnam and stick MC labels in Cambodia...” On May 14, 2004, Roger Lin replied, with a cc to Duke Lin, “Please do NOT let them do this. They must print new master cartons for Cambodia origin products. Do NOT allow them to sticker over Product of Vietnam cartons. Thanks”).

⁵⁴ As noted above, Yelin was formally dissolved in December 2006. Accordingly, while Yelin may have been under review in this segment, the review was initiated in April 2007 and any submissions made on Yelin’s behalf would have been prepared by Hilltop. See Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam and the People’s Republic of China, 72 FR 17095 (April 6, 2007).

⁵⁵ See Certain Frozen Warmwater Shrimp from the People’s Republic of China: Rescission of the Second Administrative Review, 72 FR 61858 (November 1, 2007) (“PRC Shrimp AR2”).

⁵⁶ See Sentencing Report, at Attachment 11.

⁵⁷ See Certain Frozen Warmwater Shrimp from the People’s Republic of China: Notice of Final Results and Rescission, In Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 52049 (September 12, 2007).

⁵⁸ See Sentencing Report, at Attachments 9-11.

⁵⁹ See Hilltop AR6 AFA Memo, at pg. 9-10; and AR1/AR6 BPI Documents, at Attachment I “070612 MTF - AR3 CBP data on the record (BPI).pdf”.

- Because Hilltop’s request for review was withdrawn, its sales in the third administrative review (“AR3”) were not reviewed and the cash deposit rate established in AR1 was carried forward into AR4.
- We note that Hilltop indicated in AR6 that it continued to sell shrimp from Cambodia into AR4.⁶⁰ This suggests that the massive amounts of shrimp it imported from Cambodia through May 2006⁶¹ were sufficient to sustain the sales and customer base for Yelin and Hilltop, through the 18-month period of AR1, the 12-month period of AR2, and the 12-month period of AR3.

D. Hilltop’s Representations to the Department Regarding Affiliations in This CCR

In Hilltop’s CCR Request, Hilltop stated that the pertinent facts regarding the conversion from Yelin to Hilltop are not in question because they were detailed on the record of AR1, were verified by Department officials shortly before Hilltop submitted its CCR request, and were supplemented by additional details in Hilltop’s CCR Request.⁶² We note that in Hilltop’s CCR Request, Hilltop cited to a number of documents on the record of AR1 in support of its statements. However, as those documents were not placed on the record of this segment when this CCR was originally conducted, the Department subsequently placed those documents on the official record of this CCR.⁶³ Because Hilltop supported its statements in this CCR regarding Yelin and Hilltop’s corporate structure and affiliations with citations to documents from the record of AR1, we find it relevant to review these facts as constituting the CCR record as a whole.

The CCR record demonstrates that during AR1, we asked Yelin in a supplemental questionnaire to provide a detailed corporate history for Yelin and each of its affiliates, including any changes in ownership and acquisition of land or facilities, and to confirm that Yelin has reported its full universe of affiliated companies, regardless of whether those companies were involved in the sale or production of subject merchandise.⁶⁴ Yelin included information regarding certain third-country affiliates, but did not report Ocean King.⁶⁵ We also asked Yelin to report all entities in which To Kam Keung held shares.⁶⁶ Again, Yelin did not report Ocean King. In a subsequent supplemental questionnaire, Yelin provided a list showing each of the Yelin shareholders/managers and their percentage ownership in affiliated companies.⁶⁷ The list did not include Ocean King. Each supplemental response was certified as accurate by Mr. To Kam Keung.

⁶⁰ See Hilltop AR6 Seventh Supplemental Response, at pg. 2.

⁶¹ See Sentencing Report, at Attachment 11.

⁶² See CCR Request, at 2.

⁶³ See AR1/AR6 BPI Documents.

⁶⁴ See AR1/AR6 BPI Documents, at Attachment II “090106 Yelin Supplemental Section A Response (BPI)” at 1-4 and Exhibit 1.

⁶⁵ See *id.*

⁶⁶ See AR1/AR6 BPI Documents, at Attachment II “090106 Yelin Supplemental Section A Response (BPI)” at 6.

⁶⁷ See AR1/AR6 BPI Documents, at Attachment II “010307 Yelin Supplemental Response (BPI)” at 8 and Exhibit 3.

Accompanying a submission made by Hilltop in AR6 were the AR1 verification reports for Yelin and Ocean Duke.⁶⁸ As part of the verification procedure, which took place from January 22 through January 23, 2007, Department officials reviewed the nature of affiliations between Yelin and other companies and specifically asked whether Yelin had any affiliations with companies in Cambodia, Laos, Thailand, and Vietnam.⁶⁹ To Kam Keung explained that other than certain companies already identified in Yelin's responses, "Yelin {was} not affiliated with any entities in those countries."⁷⁰ Again, To Kam Keung signed Hilltop's certification of accuracy accompanying Hilltop's resubmission in AR6 of the PRC Shrimp AR1 verification report.

At the AR1 verification of the U.S. importer, Ocean Duke, which took place from January 25 through January 26, 2007, Roger Lin, stated with regard to Ocean Duke's affiliations outside of the PRC and Taiwan that the Yelin group is affiliated with certain third-country companies already identified on the record and that Ocean Duke has no other affiliations in these or any other countries (e.g., Cambodia, Laos, Myanmar, etc.).⁷¹

In a sworn affidavit signed by Mr. To Kam Keung, submitted as an exhibit to Hilltop's CCR Request, Mr. To attested to the fact that "there have been no other investments or divestitures in the way of mergers, acquisitions, share purchases or sale of assets in any company since...the antidumping duty order was published."⁷² Also, included in Mr. To's affidavit are statements regarding his exclusive control over the day-to-day operations of Hilltop and statements to the effect that neither the Yelin shareholder nor the Hilltop shareholder "have had or currently have any operational control or oversight of any activities at Yelin. These individuals are mere investor shareholders with no managerial responsibilities or day-to-day interaction with HK Yelin/Hilltop staff."⁷³

E. Comments from Interested Parties in Light of AR6 Disclosures

Petitioner's Comments:⁷⁴

- In AR6 Hilltop repeatedly submitted material misrepresentations to the Department with respect to its Ocean King affiliation and failed to counter the record evidence of transshipment.
- In light of the AR6 record, Yelin and Hilltop made material misrepresentations to the Department in AR1 and this CCR.
- The claims made by Mr. To in this CCR that he is the sole decision maker in Hilltop operations is not supported by AR6 record correspondence with Duke Lin.
- The Department determined that Hilltop was the successor-in-interest to Yelin based on Hilltop's representations regarding its ownership and management structure, information which was then discredited in AR6.

⁶⁸ See Hilltop Rebuttal Comments on CBP Data, at Exhibit 2 ("Yelin AR1 Verification Report") and Exhibit 3 ("Ocean Duke Verification Report").

⁶⁹ See Yelin AR1 Verification Report, at pg. 4.

⁷⁰ See Yelin AR1 Verification Report, at pg. 4.

⁷¹ See Ocean Duke Verification Report, at pg. 3.

⁷² See CCR Request, at Exhibit 4, pg. 5.

⁷³ See *id.*, at pg. 3-4.

⁷⁴ See Petitioner Prelim Comments.

- As in AR6, the Department should find Hilltop’s information unreliable due to material misrepresentations and that Hilltop has not rebutted the presumption of state control.
- The Department should conclude that Hilltop is not the successor-in-interest to Yelin and treat Hilltop as part of the NME-entity.

Hilltop’s Comments:⁷⁵

- The Department has limited this reexamination of its original determination to the effects of newly discovered evidence on the determination that Hilltop was the successor to Yelin. Therefore, Petitioner’s focus on AR1 is misplaced and Petitioner provides no analysis as to whether the AR6 disclosures affect the successor-in-interest analysis.
- The Department’s successor-in-interest analysis is limited to whether significant changes occurred between the original company and the new company with respect to management, production facilities, supplier relationships and customer base; none of the AR6 disclosures have any impact on these criteria.
- Mr. To’s personal ownership stake in a third-country company and Ocean Duke’s imports from companies other than Yelin/Hilltop do not have any relevance to Hilltop’s operations or how it sells subject merchandise.
- Because there is no connection between the Department’s AR6 findings and the information reviewed in the original CCR determination, the Department should continue to find that there were no material changes to Yelin’s operations as a result of its conversion to Hilltop.

F. Whether the Record of This CCR Contains Material Misrepresentations

An analysis of the facts on the original record of this CCR, as detailed in section D, above, and compared to the information discovered in AR6 leads to the conclusion that Hilltop submitted material misrepresentations to the Department regarding its affiliation with Ocean King in this CCR and provided incomplete information such that the Department cannot be certain what other misinformation or omissions persist on the record.

While Hilltop argues that statements it made in the concurrent AR1 review have no bearing on the issue at hand, we note that in Hilltop’s request for a CCR, it liberally supported its claims as to its organizational structure, ownership, and supplier relationships with citations to information solely located on the record of AR1.⁷⁶ The Department has since placed that information on the record of this CCR.⁷⁷ In its request for a CCR, Hilltop stated that the “facts at issue regarding the conversion of HK Yelin to Hilltop International have been detailed on the record in the current administrative review of the antidumping duty order covering PRC shrimp” and cited to numerous documents that solely exist on the record of AR1.⁷⁸ Thus, we find that the documents by which Hilltop supported the claims made in its request for a CCR have direct bearing on this CCR and should be included in an analysis of the veracity of its representations to the Department in this segment. Accordingly, we find that Yelin in AR1, in no uncertain

⁷⁵ See Hilltop Prelim Rebuttal Comments.

⁷⁶ See CCR Request.

⁷⁷ See AR1/AR6 BPI Documents.

⁷⁸ See CCR Request, at pg. 2.

terms, denied any affiliation with any company in Cambodia, a statement which is directly contradicted by the AR6 disclosures.⁷⁹

Although Hilltop argues that the Department's successor-in-interest analysis is limited to whether significant changes occurred between the original company and the new company with respect to management, production facilities, supplier relationships and customer base, the Department finds this to be an unpersuasive rationalization of Hilltop's false claims and fails to acknowledge the Department's inherent authority to protect the integrity of its proceedings.⁸⁰ Moreover, the fact that Hilltop never disclosed that a major supplier of merchandise meeting the physical description of the scope was an affiliated entity precluded the Department from considering whether Yelin underwent any shift in supplier relationships in the conversion to Hilltop. The discovery that the original CCR record on which our determination was based was incomplete and contained material misrepresentations regarding Hilltop's corporate structure and supply chain renders the entire record flawed and unusable, particularly in light of Hilltop's refusal to provide information regarding its activities with regard to this affiliate and other potentially undisclosed entities.⁸¹

Hilltop's claim that ownership of Ocean King amounted to a personal ownership stake of Mr. To's and its characterization that Ocean Duke's imports from Ocean King were not, in fact, imports from Yelin/Hilltop are undermined on numerous fronts. First, the Statute of Ocean King⁸² submitted in Hilltop's Seventh Supplemental Questionnaire Response, lists as Mr. To Kam Keung's address, the address of Yelin rather than a personal address.⁸³ In that submission, Hilltop also confirmed that an "affiliation within the statutory definition of 19 U.S.C. § 1677(33) existed between the Hilltop Group and Ocean King until September 28, 2010."⁸⁴ Second, email correspondence contained in the Sentencing Report in which Mr. To informs Duke Lin of the specifics of the planned investment in Ocean King, down to capital investment required and exact ownership percentages between Hong Kong and Cambodian investors,⁸⁵ belies the claim that Mr. To acted independently or that Duke Lin had no involvement in this endeavor. Moreover, the U.S. Sentencing Report also contains email correspondence in which Duke Lin directs Mr. To as to matters of invoice procedures between Hilltop and the Cambodian factory, further undermining the claim that Duke Lin had no operational control over Hilltop or the Cambodian factory.⁸⁶ Third, CBP data released by the Department suggests that one of Hilltop's three Taiwanese affiliates may have played a role in the vast majority of Ocean Duke imports from Cambodia,⁸⁷ indicating that Hilltop had a role in supplying Ocean Duke with the Cambodian supply of shrimp, which was of highly questionable origin. Because Hilltop

⁷⁹ See Hilltop AR6 Seventh Supplemental Response at pg. 2.

⁸⁰ See TKS, 529 F.3d 1352, 1361-62 (Fed. Cir. 2008) ("Instead, the trial court correctly ruled that Commerce, under the circumstances presented, acted within its inherent authority to protect the integrity of its proceedings from fraud.").

⁸¹ See Hilltop AR6 AFA Memo at pg. 12-14.

⁸² The documents establishing Ocean King as a limited liability company, or its articles of incorporation, are titled "Statute of Ocean King (Cambodia) Co., Ltd." See Hilltop AR6 Seventh Supplemental Response, at Exhibit 1.

⁸³ See Hilltop AR6 Seventh Supplemental Response at Exhibit 1 (2005 Statute of Ocean King), compared with AR1/AR6 BPI Documents, at Attachment II "110907 HK Yelin Verification Exhibits (BPI).pdf" at Exhibit 1 pg. 4.

⁸⁴ See Hilltop AR6 Seventh Supplemental Response, at pg. 2.

⁸⁵ See Sentencing Report, at Attachment 19.

⁸⁶ See Sentencing Report, at Attachment 20.

⁸⁷ See AR1/AR6 BPI Documents, at Attachment I "051712 Cambodia Data File (BPI).xls."

refused in AR6 to address the allegations of transshipment when questioned by the Department, we cannot be certain that merchandise shipped from Cambodia was not, in fact, subject to this antidumping duty order.⁸⁸ Thus, we find that the material misrepresentations made on the original CCR record and by Hilltop in AR6 have a direct bearing on this CCR, not only in terms of the organizational structure and affiliations of Hilltop, but also on its supplier relationships and, consequently, our successor-in-interest analysis.

Notwithstanding the false claims made in connection with the original CCR record, and Hilltop's misrepresentations in AR6, we also find material misrepresentations with regard to statements made in Hilltop's request for a CCR. First, as briefly detailed above, Mr. To's claims that no other shareholder of Hilltop had any operational control or oversight of any activities at Yelin or Hilltop and have no input into the daily operations of Yelin/Hilltop,⁸⁹ appear contradicted by the email correspondence contained in the U.S. Sentencing Report. On July 14, 2004, Duke Lin sent to To Kam Keung an email with the subject line "Supply from Cambodia" the following:

Dear Peter {To Kam Keung}

After discuss here is what you need to clarify , when we order from you about this Original Please be careful about following

1. Please set up PO to Cambodia Factory.
2. You need pay to factory direct !
3. Cambodia Factory need set up PO to their Supplier also direct wire to their supplier, Yelin HK cannot have any Involve or any paper related!
4. All shipment need attach with Certification Of Original from Cambodia (Every PO need attach one document)

Rest of part can keep the same routing as before!

If need more detail please call me!

Regards

Duke⁹⁰

On October 21, 2004, Duke Lin sent to To Kam Keung an email with the subject line "Re: Daily Communication" that covered a variety of operational matters but also included, as the first item, the following:

1. Be Careful in China
Red Chamber keep spray a lots of rumor to our buyer & competitors about Cambodia business Please make sure factory have strict security system to protect we has to get protect!⁹¹

⁸⁸ See, e.g., Hilltop AR6 Sixth Supplemental Response; Hilltop AR6 Seventh Supplemental Response; Hilltop AR6 AFA Memo, at pg. 12-14.

⁸⁹ See CCR Request, at Exhibit 4, pg. 3-4.

⁹⁰ See Sentencing Report, at Attachment 20.

Thus, although Mr. To claimed in Hilltop's CCR Request that he was the sole decision maker with regard to the daily operations and management of Hilltop,⁹² he appears to accept very direct instruction on matters of Hilltop's daily operations from Mr. Lin. Further, as a result of Hilltop's refusal in AR6 to provide any explanation of the circumstances of these internal communications, the immediate appearance is one that Duke Lin played a very direct role in the management and daily operations of Hilltop, as well as in the establishment of an affiliated Cambodian facility.

In addition to the aforementioned instances of misrepresentations and inaccuracies presented by Hilltop, the affidavit signed by Mr. To and submitted with Hilltop's CCR Request contains a particularly clear instance of a false representation. As noted above, Mr. To attested to the fact that "there have been no other investments or divestitures in the way of mergers, acquisitions, share purchases or sale of assets in any company since...the antidumping duty order was published."⁹³ This statement is clearly contradicted by the AR6 disclosures and further undermines the reliability and completeness of the entire record.

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

Because Hilltop concealed its relationship with Ocean King since its inception in 2005, the Department was not able to fully examine the impact that this relationship may have had on the sale and production of subject merchandise, the implications it may have held for Hilltop's supply chain and movement of goods, or whether there were any additional undisclosed affiliations in this review and prior reviews, as the evidence suggests. The Department recently stated that "in order for the Department to use information in an AD/CVD proceeding, it needs to be verifiable, and information that contains a material misrepresentation or omission would not be verifiable."⁹⁴ Accordingly, the record with respect to Hilltop contains numerous instances of material misrepresentations and missing information and cannot be verified.

Because Mr. To failed to disclose his ownership of Ocean King and Hilltop's affiliation with Ocean King, the Department was prevented from being able to fully investigate Ocean Duke's entries from Cambodia during AR1 and AR2. In order to calculate an accurate dumping margin, the Department must determine whether affiliates⁹⁵ are involved in the sale or production of subject merchandise and whether a significant potential for manipulation of price, production, or export decisions exists. This information is essential to the Department's determination of what sales and production information must be reported and whether to treat the respondent and its affiliate(s) as a single entity for purposes of the antidumping duty

⁹¹ See Sentencing Report, at Attachment 37.

⁹² See CCR Request, at Exhibit 4, pg. 3-4.

⁹³ See CCR Request, at Exhibit 4, pg. 5.

⁹⁴ See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule, 76 FR 7491, 7496 (February 10, 2012) ("Certification Interim Final Rule").

⁹⁵ The statute defines affiliates as those that are in a "control" relationship with each other. The statutory definition of affiliates includes, among others, "(A) members of a family, including brothers,... (E) any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or share of any organization and such organization; and (F) two or more persons directly or indirectly controlling, or controlled by, or under common control with, any person." Section 771(33) of the Act; see also 19 CFR 351.102(b).

proceeding.⁹⁶ Because Hilltop submitted material misrepresentations to the Department in its request for a CCR, we cannot rely on any of the information provided in Hilltop's request for a CCR. Therefore, as we are reversing our determination that Hilltop was the successor-in-interest to Yelin, Hilltop is not entitled to a rate separate from the PRC-wide entity.⁹⁷

Because the Department finds that necessary information is not on the record, and that Hilltop withheld information, failed to submit information in a timely manner, significantly impeded this proceeding, and provided information that could not be verified, pursuant to sections 776(a)(1) and (2)(A), (B), (C) and (D) of the Act, the Department is using the facts otherwise available. Further, because the Department finds that Hilltop has failed to cooperate to the best of its ability by providing misleading and inaccurate information, pursuant to section 776(b) of the Act, the Department has determined to use an adverse inference when applying facts available in this review. Accordingly, as AFA, we find that Hilltop is not the successor-in-interest to Yelin and is, therefore, not entitled to benefit from the antidumping dumping duty cash-deposit rate calculated for Yelin, and that Hilltop is properly considered part of the PRC-wide entity.

H. Adverse Facts Available

Section 776(a)(1) of the Act provides that the Department shall apply "facts otherwise available" if necessary information is not on the record. Because Yelin and Hilltop submitted material misrepresentations with regard to its affiliations, and certified to the accuracy of such false information, we find that we cannot rely on any of the information submitted by Yelin or Hilltop in this CCR.

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

We find that Hilltop withheld accurate information regarding its affiliation with Ocean King in its request for a CCR. Hilltop's ultimate admission in AR6 that there was an affiliation with Ocean King since AR1, which Hilltop only disclosed once faced with conclusive evidence, came too late for the Department and interested parties to fully examine the impact this relationship may have had on the sale and production of subject merchandise. As noted above, in order for the Department to use information in an antidumping or countervailing duty proceeding, it needs to be verifiable, and information that contains a material misrepresentation or omission would

⁹⁶ See *Hontex Enterprises v. United States*, 342 F. Supp. 2d 1225, 1230-34 (CIT 2004); 19 CFR 351.401(f).

⁹⁷ See, e.g., *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Changed Circumstances Review*, 75 FR 46914, 46916 (August 4, 2010); *Frozen Warmwater Shrimp from Vietnam: Notice of Final Results of Antidumping Duty Changed Circumstances Reviews*, 74 FR 42050, 42051 (August 20, 2009).

not be verifiable.⁹⁸ Accordingly, the record contains numerous instances of material misrepresentations and missing information and cannot be verified.⁹⁹

We find the entirety of Hilltop's information submitted in this CCR to contain material misrepresentations and inaccuracies such that Hilltop significantly impeded this proceeding. Hilltop's failure to disclose its Cambodian affiliate allowed it to ship massive amounts of shrimp, which record evidence demonstrates was highly unlikely to be of Cambodian origin, to the United States while avoiding the Department's scrutiny and antidumping duties. This enabled Hilltop's U.S. reseller, Ocean Duke, to maintain its U.S. customer base until the final results of AR1 were published, when it received a de minimis margin based on relatively few entries and was able to resume its shipments from the PRC at a zero cash-deposit rate.

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

Hilltop's failure to disclose its relationship with Ocean King was not a mere oversight or result of inaccurate record keeping and surely demonstrates that it impeded the proceeding by not disclosing the affiliation. During the AR1 verification, Mr. To had been a board member of Ocean King for one and a half years,¹⁰⁰ and Ocean Duke had imported vast quantities of shrimp from Ocean King.¹⁰¹ Ocean King's documents of incorporation state that board members shall meet on a yearly basis indicating that, presuming the vast sales of shrimp sourced from Ocean King were insufficient, Mr. To would reasonably have been reminded of his substantial investment in the company on a yearly basis.¹⁰² The record does not contain any reasonable explanation as to how Mr. To overlooked this material change in the affiliation structure of his own company. In fact, Hilltop's most substantive remarks regarding this oversight, submitted in AR6, are relegated to examples of possible reasons: "Mr. To Kam Keung's prior statements on affiliation may have been in error (e.g., due to his lack of operational involvement with Ocean King **or for whatever reason**). . . ."¹⁰³ The Department afforded Hilltop numerous opportunities to recall the affiliation with and investment of \$350,000 U.S. dollars in Ocean

⁹⁸ See Certification Interim Final Rule, 76 FR at 7496.

⁹⁹ See, e.g., Certain Lined Paper Products from the People's Republic of China: Notice of Final Results of the Second Administrative Review of the Antidumping Order, 74 FR 63387 (December 3, 2009), affirmed in The Watanabe Group v. United States, 2010 Ct. Int. Trade LEXIS 144, Slip. Op. 2010-139 (2010).

¹⁰⁰ See Ocean King Registration Documents, at Attachment I, compared to, Hilltop Rebuttal Comments on CBP Data, at Exhibit 2 and Exhibit 3.

¹⁰¹ See Sentencing Report, at Exhibits 10 and 11.

¹⁰² See Hilltop AR6 Seventh Supplemental Response, at Exhibit 1.

¹⁰³ See AR6 Public Documents, at Attachment I "072312 Hilltop Rebuttal Brief (PD).pdf" at pg. 9 (emphasis added).

King,¹⁰⁴ but Hilltop instead chose to deny any involvement or investment in Ocean King until faced with undeniable evidence. Further, we note that Mr. To is the official that has signed each of Hilltop's certifications of accuracy in this segment,¹⁰⁵ a fact that further undermines the accuracy and reliability of every submission provided by Hilltop in this CCR.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Because the fact that an affiliation existed between Hilltop and Ocean King was not revealed until more than five years after the publication of the Department's final results in this CCR,¹⁰⁶ the Department was precluded from determining whether any of Hilltop's submitted information failed to comply with our rules and from requesting further information in the form of supplemental questionnaires. Moreover, Hilltop never disclosed to the Department, until faced with evidence to the contrary, that they were affiliated with Ocean King, thereby suggesting that they never intended to disclose the relationship.

Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if (1) the information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot be used, (4) the interested party demonstrated that it acted to the best of its ability in providing the information, and (5) the information can be used without undue difficulties. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties. Hilltop submitted information that cannot be verified and numerous submissions that now suffer the deficiencies of containing inaccurate or incomplete information. Further, Hilltop submitted unverifiable, incomplete information and did not demonstrate that it acted to the best of its ability to provide requested information.

The pattern of concealment regarding the affiliation with Ocean King during this CCR and in AR6 has been demonstrated to undermine the credibility and reliability of Hilltop's responses overall. Such actions undermine the integrity of the antidumping duty administrative review process and impede our ability to complete the administrative review, pursuant to section 751 of the Act. Further, by failing to disclose its relationship with Ocean King, Hilltop withheld information, failed to provide information in a timely manner, and provided information that could not be verified. Therefore, application of facts available is warranted pursuant to sections 776(a)(2)(A),(B), (C), and (D) of the Act.

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its

¹⁰⁴ See Hilltop AR6 Seventh Supplemental Response, at Exhibit 1.

¹⁰⁵ See, e.g., CCR Request; Hilltop Prelim Rebuttal Comments.

¹⁰⁶ See Hilltop AR6 Seventh Supplemental Response, at pg. 2; compared to Hilltop CCR Final.

ability to comply with a request for information. Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹⁰⁷

Furthermore, “affirmative evidence of bad faith, or willfulness, on the part of a respondent is not required before the Department may make an adverse inference.”¹⁰⁸ The U.S. Court of Appeals for the Federal Circuit (“CAFC”) has held that the “best of its ability” standard “requires the respondent to do the maximum it is able to do.”¹⁰⁹ The CAFC further elaborated:

While the standard does not require perfection, and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping. It assumes that importers are familiar with the rules and regulations that apply to the import activities undertaken and requires that importers, to avoid a risk of an adverse inference determination in responding to Commerce's inquiries: (a) take reasonable steps to keep and maintain full and complete records documenting the information that a reasonable importer should anticipate being called upon to produce; (b) have familiarity with all of the records it maintains in its possession, custody, or control; and (c) conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of the importers' ability to do so.¹¹⁰

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

For all of the reasons outlined above, the Department finds, pursuant to section 776(b) of the Act, the application of AFA is warranted as the Department has determined that Hilltop has failed to cooperate by not acting to the best of its ability to comply with the Department’s requests for information. Moreover, because the Department is unable to rely upon any of Hilltop’s submitted information, we find that Hilltop is not the successor-in-interest to Yelin and is considered part of the PRC-wide entity.

The application of AFA is necessary in this case because Hilltop failed to cooperate to the best of its ability in making material misrepresentations and withholding necessary information such that the Department cannot rely upon any of Hilltop’s submitted information for any purpose. Hilltop’s failure to report at least one undisclosed affiliate and its refusal in AR6 to provide information regarding allegations of transshipment makes it impossible for the Department to be confident that its submissions do not contain additional material misrepresentations.

¹⁰⁷ See SAA accompanying the URAA, H. Doc. No. 103-316, at 870 (1994).

¹⁰⁸ See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997).

¹⁰⁹ See Nippon Steel Corporation v. United States, 337 F. 3d 1373, 1382 (Fed. Cir. 2003).

¹¹⁰ See id.

Recommendation:

For the reasons set forth in detail above, and pursuant to sections 776(a)(2)(A),(B), (C), (D), and 776(b) of the Act, we recommend that the Department apply total AFA to Hilltop, finding that Hilltop is not the successor-in-interest to Yelin. Accordingly, Hilltop is part of the PRC-wide entity and subject to the PRC-wide entity rate in effect.

AGREE DISAGREE



Paul Piquado
Assistant Secretary
for Import Administration

21 FEBRUARY 2013
Date