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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Decision Memorandum for Final Results, and Partial Revocation
of Antidumping Duty Administrative Review: Certain Frozen
Warmwater Shrimp from the People's Republic of China

SUMMARY

We have analyzed the case briefs and rebuttal briefs submitted in the administrative review of certain frozen warmwater shrimp ("shrimp") from the People's Republic of China ("PRC"). The Department of Commerce ("Department") published the Preliminary Results of review on March 12, 2013.¹ The period of review ("POR") is February 1, 2011, through January 31, 2012. We have not made any changes to the margin calculations from the Preliminary Results. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

BACKGROUND:

In accordance with 19 CFR 351.309(c)(ii), the Department of Commerce ("Department") invited parties to comment on our Preliminary Results. On May 20, 2013, the Department issued a post-preliminary analysis of Zhanjiang Regal Integrated Marine Resources Co., Ltd. ("Regal") and preliminarily determined that Regal was eligible for a company-specific revocation.² From June

¹ See Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results of Administrative Review; 2011-2012, 78 FR 15696 (March 12, 2013) ("Preliminary Results").

² See Memorandum To Paul Piquado, Assistant Secretary, Import Administration, From: Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, 11/12 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from the People's Republic of China: Post-Preliminary Analysis for Zhanjiang Regal Integrated Marine Resources Co., Ltd., and Zhanjiang Newpro Foods Co., Ltd., dated May 20, 2013, ("Post-Prelim Analysis Memo").

3, 2013, to June 7, 2013, the Department conducted a verification of the information submitted by Regal. On June 21, 2013, the Department issued its verification report.³

The Department gave interested parties an opportunity to comment on the Preliminary Results, Post-Preliminary Analysis Memo, and Verification Report.⁴ On June 28, 2013, Petitioner,⁵ Domestic Processors,⁶ and Hilltop International⁷ filed case briefs. On July 3, 2013, Petitioner and Domestic Processors filed rebuttal briefs.

Scope of the Order

The scope of the 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,⁸ 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 the order, regardless of definitions in the harmonized tariff schedule (“HTS”), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

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 the order. 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 the order.

³ See Memorandum To: The File, Through: Catherine Bertrand, Program Manager, Office 9, Antidumping and Countervailing Duty Operations, From: Alan Ray, International Trade Compliance Analyst Office 9, Antidumping and Countervailing Duty Operations, Subject: Verification of the Sales and Factors Responses of Zhanjiang Regal Integrated Marine Resources Co., Ltd. in the Administrative Review of the Antidumping Duty Order on Frozen Warmwater Shrimp from the People's Republic of China, dated June 21, 2013 (“Regal Verification Report”).

⁴ See letter from Catherine Bertrand, Program Manager, Office 9, To All Interested Parties, Re: Antidumping Duty Order on Certain Frozen Warmwater Shrimp from the People's Republic of China, dated June 21, 2013.

⁵ The Ad Hoc Shrimp Trade Action Committee (“Petitioner”).

⁶ The American Shrimp Processors Association (“Domestic Processors”).

⁷ As in past reviews, Hilltop International reported in its Section A response that it is part of an affiliated group of companies that includes Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd., Fuqing Yihua Aquatic Food Co., Ltd., Ocean Duke Corporation and Kingston Foods Corporation (collectively, “Hilltop”).

⁸ “Tails” in this context means the tail fan, which includes the telson and the uropods.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.1020); (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 0306.23.0020 and 0306.23.0040); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.0510); (5) dried shrimp and prawns; (6) Lee Kum Kee's shrimp sauce;⁹ (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.1040); and (8) certain battered shrimp. Battered 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. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by these orders are currently classified under the following HTS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. These HTS subheadings are provided for convenience and for customs purposes only; the written description of the scope of these orders is dispositive.¹⁰

DISCUSSION OF THE ISSUES

General Issues

Comment 1: Respondent Selection

Petitioner's Comments:

- The Department improperly selected Regal and Hilltop as mandatory respondents by exclusively relying on Type 03 CBP import data.
- Due to the discrepancies between the sales reported by Regal and by its U.S. importers entered as Type 03 during the sixth administrative review ("AR6"), the presumption of reliability of U.S. Customs and Border Protection ("CBP") data for purposes of respondent selection was rebutted in this review.
- There is a history under this order of discrepancies between Regal's reported data and entries by its importers.

⁹ The specific exclusion for Lee Kum Kee's shrimp sauce applies only to the scope in the PRC case.

¹⁰ 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 ("ITC") 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); see also Ad Hoc Shrimp Trade Action Committee v. United States, 703 F. Supp. 2d 1330 (CIT 2010) and Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam (Investigation Nos. 731-TA-1063, 1064, 1066-1068 (Review), USITC Publication 4221, March 2011).

- The discrepancy surrounding Zhanjiang Newpro Foods' ("Newpro") separate rate application in this review and the Department's recent findings for Hilltop in AR6 are additional evidence of the problems with CBP data.
- The Department was obligated to issue quantity and value ("Q&V") questionnaires and release Type 01 CBP data.

Department's Position:

We disagree with Petitioner and continue to determine that we properly selected Hilltop and Regal as respondents using Type 03 CBP data. During respondent selection, Petitioner did not provide evidence regarding the collection methodology or any documentation to support its claims that CBP data are unreliable. Additionally, as discussed below, Regal's AR6 data and the discrepancy surrounding Newpro's entry do not demonstrate that the Department's reliance on CBP data was flawed.

First, Petitioner argues that discrepancies in Regal's data from AR6 rebut the presumption of reliability for the Type 03 CBP data in this review. Petitioner claims that this is analogous to the circumstances in the fourth administrative review ("AR4") which led the CIT to remand the Department's reliance on Type 03 CBP data. Petitioner also notes that the CIT ultimately upheld the Department's reliance on Type 03 CBP data because, in part, the Department verified Regal's information during AR4 and found no discrepancy. These are the exact facts in this review. Although petitioner claims there were discrepancies in Regal's AR6 data, the Department conducted verification of Regal's information in this review and discovered no inaccuracies in its reported data.¹¹ As in AR4, we verified Regal's information and confirmed its reported data, as such these results do not call into question the presumption of reliability of the Type 03 CBP data. Thus, the Department disagrees that Regal's AR6 data undermines respondent selection in this review.

Petitioner argues that other evidence discovered during AR6 demonstrates past discrepancies with Hilltop's data, rebutting the presumption of reliability of the Type 03 CBP data. However, the data cited by Petitioner for AR6 pertained to activities related to Hilltop which occurred in 2004 and 2005, and there is no indication that the seventh administrative review ("AR7") CBP data were affected. Additionally, the discrepancy surrounding Newpro's entry was not an error with the CBP data.¹²

As we stated in the respondent selection memo,¹³ we further disagree that the release of "Type 1" data would prove beneficial in this case. Absent physical inspection of each entry, the release

¹¹ See Regal Verification Report at 12-14.

¹² For additional proprietary discussion regarding the Newpro issue, see Post-Prelim Analysis Memo at 7, and Memorandum To: The File Through: Catherine Bertrand, Program Manager, Office 9, Import Administration, From: Josh Startup, International Trade Analyst, Office 9, Import Administration, Subject: Seventh Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China ("PRC"): Zhanjiang Newpro Foods Co., Ltd. ("Newpro") Separate Rate Application.

¹³ See Memorandum To James Doyle, Director, Office 9, Import Administration, From: Katie Marksberry, Senior International Trade Analyst, Office 9, Import Administration, Re: Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Selection of Respondents for Individual Review, dated May 17, 2012.

of “Type 1” data would reveal nothing more than entries claimed as being outside of the scope of this review. “Type 1” entries, which are by definition not subject merchandise, are outside the purview of the Department’s administrative review. As Petitioner notes, the CIT upheld our decision not to release Type 01 data in the AR4 Remand.¹⁴ There, the CIT agreed with the Department that “{t}he classification itself does not yield any specific information that would assist the Department in expeditiously determining whether merchandise should have been reported as Type 03, or making any modifications to the Type 03 data for purposes of respondent selection.”¹⁵ As we explained then, “Type 01 and Type 03 data are, by definition, mutually exclusive. Type 01 data are comprised of entries classified as non-subject merchandise; Type 03 data are comprised of entries classified as subject merchandise.”¹⁶ In this case, although Petitioner suggests that the release of Type 01 data coupled with importer information could be used to reconcile Regal’s and Newpro’s alleged discrepancies, Petitioner does not explain how to achieve reconciliation of the two data sets.¹⁷ We also note that although the CIT indicated that an explanation how to reconcile the different types of CBP data would have strengthened Petitioner’s argument for its release, the CIT did not indicate that such an explanation would be sufficient rationale to compel the Department to release Type 01 data.¹⁸

As already stated, Type 01 entries are for non-subject merchandise only. In this case, Type 03 entries include shrimp that are subject to the antidumping order, *i.e.*, shrimp that physically meets the description of the scope language (see above). Comparing the two sets of data would not allow for any useful conclusions to be drawn. For example, if a company has 10,000 kg of Type 01 entries and 50,000 kg of Type 03, the information does not lead to any conclusion beyond the amount of each type. Additionally, the Department cannot tell from a Type 01 entry what exactly the merchandise is beyond the fact that CBP reported that it is not subject to the order. To begin to make a determination about Type 01 entries, the Department would have to obtain the entry documents for any and each Type 01 entry and examine it on an individual basis.¹⁹ Further, a determination as to whether entries are properly classified as Type 01 or Type 03 is a function of CBP, not of the Department.

Type 03 CBP data reflects actual entries of subject merchandise and are the same entries upon which we will assess the antidumping duties determined by this review. As discussed in prior segments of this proceeding, the Department has elected to issue Q&V questionnaires in other cases where CBP data proved an insufficient measure of subject merchandise.²⁰ However, with respect to this proceeding, we do not agree with Petitioner’s claims that the circumstances warrant departure from the Department’s established practice of using CBP data to select

¹⁴ See Ad Hoc Shrimp Trade Action Comm. v. United States, 828 F. Supp. 2d 1345 (Ct. Int’l Trade 2012) (“AR4 Remand”).

¹⁵ See id. at 1355.

¹⁶ See id. at n. 14.

¹⁷ See Petitioner’s Case Brief, dated June 28, 2013, at 11-12 (“Petitioner’s Case Brief”).

¹⁸ See AR4 Remand, 828 F. Supp. 2d at 1355.

¹⁹ See *e.g.*, Memorandum To: James Doyle, Director, Office 9, Import Administration, From: Katie Marksberry, Senior International Trade Analyst, Office 9, Import Administration, Re: Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Selection of Respondents for Individual Review, dated May 17, 2012, for an example of the quantities in the CBP data .

²⁰ See id. at 5-6.

respondents.²¹ In the past, the Department has issued Q&V questionnaires in instances where the volume of measure was reported in different units within the CBP data,²² but that issue is not in dispute in this case. Further, the CIT upheld the Department’s reliance on Type 03 CBP data “[i]n the absence of evidence in the record that the CBP data – for merchandise entered during the relevant POR and subject to the AD order at issue – are in some way inaccurate or distortive.”²³ As explained above, the Department does not find that any evidence on the record shows inaccuracies or distortions for this period of review. In light of the foregoing, we do not agree with Petitioner that issuing Type 01 CBP data or sending Q&V questionnaires would prove to be a more reliable basis to select respondents in this proceeding than Type 3 CBP data.

We continue to find that reliance on Type 03 CBP data was reasonable for respondent selection purposes, and that neither the release of Type 01 CBP data nor the issuance of Q&V questionnaires was required or warranted.

Company Specific Issues

Comment 2: India as the Surrogate Country for Regal’s Fifth Administrative Review (“AR5”) Analysis

Background: As part of its request for review in AR7, Regal requested revocation based on three consecutive zero percent margins in AR5, AR6, and AR7. In the original AR5 review, Regal was a separate rate company and received a zero percent margin that was the pulled-forward from AR4. To assess Regal’s revocation request, we requested information and data from the AR5 POR to confirm that Regal did not dump during that time. The Department was not reopening AR5, but rather only reviewing Regal’s AR5 data for company-specific revocation purposes and India remained the surrogate country. The Department used India as the surrogate country for its review of Regal’s AR5 data.

Petitioner’s Comments:

- The Department improperly used India as the surrogate country for its analysis of Regal’s AR5 data because the CIT invalidated that selection in the remand of the AR5 Final Results.²⁴

²¹ See e.g., Certain Lined Paper Products From India: Preliminary Results of the First Antidumping Duty Administrative Review, 73 FR 58548 (October 7, 2008), unchanged in, Certain Lined Paper Products from India: Notice of Final Results of the First Antidumping Duty Administrative Review, 74 FR 17149 (April 14, 2009); Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results of the New Shipper Review and Fourth Antidumping Duty Administrative Review and Partial Rescission of the Fourth Administrative Review, 73 FR 52015 (September 8, 2008), unchanged in, Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 11349 (March 17, 2009).

²² See e.g., Wooden Bedroom Furniture From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Review in Part, 75 FR 5952, 5953 (February 5, 2010), where the Department issued Q&V Questionnaires, unchanged in final, 75 FR 50992 (Aug. 18, 2010).

²³ See Pakfood Pub. Co., Ltd. v. United States, 753 F. Supp. 2d 1334, 1345 (Ct. Int’l Trade 2011).

²⁴ See Ad Hoc Shrimp Trade Action Comm. v. United States, 882 F. Supp. 2d 1366, 1374-76 (CIT 2012) (“AR5 Remand Order”).

- The Department did not provide the further consideration required by the CIT in its preliminary selection of India as the surrogate country in AR5, making its selection of India unlawful.
- Thailand is more economically comparable to China than India is, and the surrogate data from Thailand is a higher quality than that of India, and the Department properly selected Thailand in AR6 and AR7.

Domestic Processors' Comments:

- If the Department continues to calculate an AR5 rate for Regal, India should not be selected as the surrogate country, because the CIT's remand instructions required the Department to reconsider that selection.²⁵
- While the Department did not reach the surrogate country question in the remand because the issue was rendered moot, the CIT's analysis regarding the selection of India remains intact.
- Thailand is the proper surrogate country for AR5 analysis and there is sufficient data on the record to assign Thai factors of production.

Department's Position:

We disagree with Petitioner and Domestic Processors that the Department's use of India as the surrogate country in its analysis of Regal's AR5 data was improper. Contrary to Petitioner's contention, in the AR5 Remand Order the CIT did not order the Department to reject India as a surrogate country or to select Thailand, but rather to give the issue further consideration.²⁶ The issue then became moot when the Department applied adverse facts available ("AFA") to Hilltop in the Final Results of the Remand Redetermination. In our post-prelim analysis, consistent with the AR5 Final Results,²⁷ we continued to rely on India as a reliable source for surrogate values ("SVs") because during the POR India was at a comparable level of economic development, was a significant producer of comparable merchandise, and had publicly available and reliable data.²⁸

We note that in the AR5 Final Results, although we found both India and Thailand economically comparable to the PRC, we found that the Indian surrogate value data satisfied more of the Department's selection criteria. Specifically, we found that the financial statements of Falcon Marine were more reliable than those from Thai companies, making India a more reliable source of data for the surrogate country selection.²⁹

As explained below, we disagree with Petitioner and continue to regard both Thailand and India as being at the same level of economic development as the PRC. Because the Department treats the PRC as a non-market economy ("NME"), when calculating normal value ("NV"), section 773(c)(4) of the Tariff Act of 1930, as amended ("Act"), requires the Department to value the factors of production ("FOPs"), to the extent possible, in a surrogate country that is (a) at a level

²⁵ See id.

²⁶ See id.

²⁷ See Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 51940 (August 19, 2011) ("AR5 Final Results"), using India as the primary surrogate country, unchanged from Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of Fifth Antidumping Duty Administrative Review, 76 FR 8338, 8342 (February 14, 2011).

²⁸ See Post-Prelim Memo at 3.

²⁹ See AR5 Final Results and accompanying Issues and Decision Memo at 7-10.

of economic development comparable to the PRC and (b) a significant producer of comparable merchandise.³⁰ In AR5, we found both Thailand and India to be significant producers of identical merchandise.³¹ The Act directs the Department to identify one or more countries that are “at a *level* of economic development comparable to that of the nonmarket economy country.” Section 773(c)(4)(A) of the Act (emphasis added). Section 773(c)(4)(A) of the Act is silent with respect to how the Department determines a country to be at the same level of economic development as the NME country. Importantly, section 773(c)(4) of the Act does not direct the Department to select the country that is most economically comparable, in terms of gross national income (“GNI”), to the NME whose products are under review. As such, the Department’s long-standing practice has been to identify those countries which are at the same level of economic development to the PRC in terms of a range of GNI data available in the World Development Report provided by the World Bank.³² Within a given range, differences in per capita GNI between the countries do not imply any difference in level of economic development.

In AR5, the Department determined that India, Indonesia, Peru, the Philippines, Thailand, and Ukraine were countries comparable to the PRC in terms of economic development.³³ In that period of review, the PRC had a GNI of \$2,940, India had a GNI of \$1,070, Indonesia had a GNI of \$2,010, the Philippines had a GNI of \$1,890, Thailand had a GNI of \$2,840, Ukraine had a GNI of \$3,210, and Peru had a GNI of \$3,990.³⁴ Therefore, the GNIs ranged from India’s at \$1,070 to Peru’s at \$3,990.³⁵

The Department continues to find that based on GNI levels, these six countries are comparable to the PRC in terms of economic development and serve as an adequate group to consider as potential sources of SV data. In Fujian Lianfu Forestry, the court upheld, as supported by substantial evidence, Commerce’s selection of India as the chosen primary surrogate country even though there were other economically-comparable countries with GNIs closer to the GNI of China.³⁶ In support of its determination in that case, Commerce explained:

While the Department’s regulations at 19 CFR 351.408 instruct the Department to consider per capita income when determining economic comparability, neither the statute nor the Department’s regulations define the term ‘economic comparability.’ As such, the Department does not have a set range within which a country’s GNI per capita could be considered economically comparable. In the context of the World Development Report, which contains approximately 180

³⁰ See also Import Administration Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (“Policy Bulletin 04.1”); available at: <http://ia.ita.doc.gov/policy/index.html>.

³¹ See AR5 Final Results and accompanying Issues and Decision Memo at 7.

³² See Pure Magnesium from the People’s Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order, 75 FR 80791 (December 23, 2010) (“Magnesium from the PRC”), and accompanying Issues and Decision Memorandum at Comment 4.

³³ See Certain Frozen Warmwater Shrimp From the People’s Republic of China: Preliminary Results and Preliminary Partial Rescission of Fifth Antidumping Duty Administrative Review, 76 FR 8338, 8342 (February 14, 2011).

³⁴ See Memo to the File, From: Josh Startup, International Trade Analyst, Office 9, Import Administration, Subject: AR5 Surrogate Country and Values Memo and Comments, dated December 14, 2012, at Attachment I.

³⁵ See id.

³⁶ See Fujian Lianfu Forestry Co., Ltd., v. United States, 638 F. Supp. 2d 1325 (CIT 2009).

countries and territories, the difference in GNI per capita between India and the PRC is minimal. As previously stated in the Surrogate Country Selection Memo, 'while the difference between the PRC's USD1,290 per capita GNI and India's USD620 per capita GNI in 2004 seems large in nominal terms, seen in the context of the spectrum of economic development across the world, the two countries are at a fairly similar stage of development.'³⁷

By identifying a range of countries that are economically comparable to the PRC based on GNI, the Department provides parties with a starting point for establishing a predictable practice that is consistent with the statutory requirements. The Department previously has found that the selection of the range of economically-comparable countries based on levels of economic development to be reasonable and consistent with the Act.³⁸

Regarding Petitioner's comment that Thailand is more economically comparable to the PRC than India, we emphasize again that there is no requirement in the Act that we select the country that has GNI that is *closest* to the PRC's GNI. As explained above, although some variations in nominal terms between the GNI of these countries exist, they do not undermine the economic comparability of these countries. The Department considers all countries identified by Import Administration's Office of Policy to satisfy the economic-comparability requirement of the statute for the purposes of selecting a surrogate country. Therefore, we continue to consider each of the six countries comparable to the PRC in terms of economic development. Policy Bulletin 04.1 states that the countries appearing on the surrogate country list should not be considered distinct in terms of economic development (and thus economic comparability).

With respect to the CIT's decision in the AR5 Remand Order, we disagree with Petitioner and Domestic Producers that the reasoning in the decision compels the Department to select the country most comparable to the NME under review in terms of GNI. In its decision, the CIT explained that:

An unexplained and conclusory blanket policy of simply ignoring relative GNI comparability within a particular range of GNI values does not amount to a reasonable reading of the evidence in support of a surrogate selection where more than one potential surrogate within that GNI range is a substantial producer of comparable merchandise for which adequate data is publicly available. Rather, in such situations, Commerce must explain why its chosen surrogate's superiority in one of the three eligibility criteria outweighs another potential surrogate's superiority in one or more of the remaining criteria.³⁹

The Department does not believe that the Act requires it to compare relative GNI of the economically-comparable countries in its analysis. In AR5, the Department thoroughly analyzed whether the potential surrogate countries are significant producers of comparable merchandise and whether reliable SV data is available in these countries. Specifically, as discussed in the

³⁷ See id.

³⁸ See Magnesium from the PRC at Comment 4; see also, Dorbest Ltd v. United States, 789 F. Supp. 2d 1364 (CIT 2011).

³⁹ See AR5 Remand Order, 882 F. Supp. 2d at 1375.

AR5 Final, we noted that the record reflected that both countries had exports of subject merchandise during the POR.⁴⁰ There, we also explained why the data from India were superior to that from Thailand, noting that of the ten FOPs, three had a more specific Indian HTS number while seven had equally specific Indian and Thai HTS numbers.⁴¹ Additionally, in AR5, we determined that the financial statement of Falcon Marine was the best information available with which to calculate surrogate financial ratios because it was a producer of comparable merchandise, its production process closely resembled that of respondent's production process⁴² (i.e., it is a shrimp farmer as well as shrimp processor), the company was profitable, and its 2008-2009 statement was contemporaneous with the AR5 POR.⁴³

Therefore, we view the scenario that the CIT addressed in both Amanda 2009⁴⁴ and the AR5 Remand Order as distinct from this review, given that we have taken into consideration differences of quality of data sources. Given the above, we continue to find all of the countries that appear in the Surrogate Country Letter to be economically comparable to the PRC and are significant producers of comparable merchandise for the purpose of considering them as an appropriate source to find data to value FOPs in this case. Further, in analyzing the relative merits of the data, we conclude that India remains the most reliable source for our analysis of Regal's AR5 data for the purpose of determining its revocation request.

Comment 3: Market Economy Purchases

Petitioner's Comments:

- The Department should apply the new 85 percent threshold before using only actual market economy purchase prices to value inputs, rather than the current 33 percent threshold because this policy sets too low a threshold.

No other party commented on this issue.

⁴⁰ See "Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Kabir Archuletta, Case Analyst, Office 9, re; Fifth Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Surrogate Factor Valuations for the Preliminary Results," dated February 7, 2011 ("Prelim SV Memo") at Exhibit 11b.

⁴¹ See AR5 Final Results and accompanying Issues and Decision Memo at 7.

⁴² We note that Hilltop was the respondent in AR5, but Regal also has an integrated production process, so this analysis remains valid. See Regal's Section C&D Questionnaire Response dated July 10, 2012, at Exhibit D-2 ("Regal C&D").

⁴³ See AR5 Final Results and accompanying Issues and Decision Memo at 10.

⁴⁴ Amanda Foods v. United States, 647 F. Supp. 2d 1368 (Ct. Int'l Trade 2009).

Department's Position:

We disagree with Petitioner that we should use the 85 percent threshold for ME purchases that was proposed in 2012. While the Department recently adopted a change in practice, based on the initiation date of this administrative review, the new practice is not applicable.⁴⁵ We note the effective date of the new rule is September 3, 2013 and is applicable for all proceedings or segments of proceedings (e.g., investigations and administrative reviews) initiated on or after September 3, 2013. Therefore, for the final results, we will continue to follow our prior practice of using ME prices for ME purchases made at the 33 percent threshold.

Comment 4: Surrogate Value for Scrap*Domestic Processors' Comments:*

- The Thai SV for scrap is aberrational at an average unit price ("AUV") of 53.5 baht/kg, which is over three times higher than the surrogate value the Department used in AR6.
- The AR7 import value is based on a very small quantity of only four metric tons ("MT") from a single ME country.⁴⁶
- Information from Thai Union Frozen Products Public Co., Ltd., used in the concurrent administrative review of Shrimp from Thailand, demonstrates that the revenue from scrap sales should only comprise a minute percentage of sales of subject merchandise. However, Thai import statistics suggest that for harmonized system ("HS") 0306.13 and HS 0306.23, the scrap price the Department is currently using would be 86 percent of the price of the finished product. The Department should instead use the Indonesian AUV used Vietnam shrimp AR6 and inflate it accordingly. Alternatively, the Department should inflate the Thai Global Trade Atlas ("GTA") AUV used in AR6.

No other parties submitted comments on this issue.

Department's Position:

The Department disagrees with domestic processors that the Thai surrogate value for scrap is aberrational. The Department's practice is to examine first whether the AUV is high compared to AUVs from other potential surrogate countries on the surrogate country list, or if the AUV is high compared to the same HTS number for the surrogate country over multiple years.⁴⁷ Second, the Department prefers comparing statistics from the same data (e.g. GTA to GTA) source.⁴⁸ Finally, the Department notes that while small quantities of imports may be distortive, they are not inherently so.⁴⁹

Although the GTA value for Thai scrap (53 baht/kilogram ("kg")) is three times higher than in AR6 (15 baht/kg), domestic processors have not demonstrated that the Thai AUV is high compared to any other country on the surrogate country list. Additionally, domestic processors

⁴⁵ See Use of Market Economy Input Prices in Nonmarket Economy Proceedings, 78 FR 46799 (August 2, 2013).

⁴⁶ See Domestic Processors' Case Brief dated June 28, 2013, at 9 ("Domestic Processors' Brief"), and Domestic Processors' Surrogate Value Comments dated September 24, 2012, at 2-3, and Attachment 2 ("Domestic Processors' SV Comments").

⁴⁷ See id.

⁴⁸ See id.

⁴⁹ See id.

have only compared the Thai AR7 GTA AUV to one other review period (AR6) to argue that the AUV is “historically high.”⁵⁰ Although the AR7 GTA AUV is higher than that used in AR6, domestic processors have not made a comparison to a historical period of time.⁵¹ Comparison to one other administrative review alone is not convincing evidence that the GTA AUV is aberrational. Domestic processors also point to Thai Union data from the concurrent review of shrimp from Thailand to show that the Thai AR7 GTA AUV is high compared to the value of the finished product. However, the source of the import statistics cited in Attachment 2 of the Thai Union submission are unclear from the portion placed on the record, and therefore are unreliable for comparison purposes.⁵²

The Department has consistently found that small quantities alone are not inherently distortive.⁵³ In this case, we do not find that four MT is so small a quantity that it has resulted in a distorted AUV, and domestic processors have not provided evidence to demonstrate this quantity for this HTS number is distortive.

Finally, with regards to domestic processor’s comments that based on revenue statistics from Thai Union, scrap sales should only comprise a small fraction of the revenue from sales of subject merchandise, the record only contains one reconciliation worksheet for Thai Union, which does not include any of Thai Union’s actual financial statement or documents.⁵⁴ Therefore, we cannot draw any conclusions from a worksheet which is not necessarily a reflection of Thai Union’s actual financial data. Additionally, Thai Union represents only one company in a different country and market from Regal, and therefore the revenue it derives from its scrap sales may vary due to differences in prices and production process. Therefore, for these final results, we find that the AR7 Thai GTA AUV used in the Preliminary Results represents the best available data on the record, and are not aberrational.

Comment 5: Regal’s Reported Scrap Data

Domestic Processors’ Comments:

- The quantities of byproduct scrap reported by Regal in AR5 and AR7 appear inconsistent with the quantity of subject merchandise Regal reportedly sold.

No other parties submitted comments on this issue.

Department’s Position:

Domestic Processors overlook the fact that Regal’s reported byproduct included scrap from its self-produced merchandise, as well as its tolling operation for unaffiliated companies, domestic and third country sales.⁵⁵ When the proper comparison is made between the total amount of all

⁵⁰ See Domestic Processors’ SV Comments at Attachment 2.

⁵¹ See CVP23 and CVP23 I&D Memo at Comment 4, where Petitioners placed five years of data on the record to establish a historical period.

⁵² See *id.* at Attachment 2.

⁵³ See e.g., Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping New Shipper Reviews, 2011-2012, 78 FR 39708 (July 2, 2013), and accompanying Issues and Decision Memorandum at Comment 4.

⁵⁴ See Domestic Processors’ SV Comments at Attachment 2, Exhibit B-3.

⁵⁵ See Regal’s Section C&D Supplemental Questionnaire Response, dated August 28, 2012, at 29-30 (“Section CD

byproduct generated and the total amount of all subject and non-subject merchandise produced by Regal during the POR, there is no discrepancy in the quantity reported.⁵⁶ We also note that we verified Regal's information in this review and found no discrepancies in its reported data. Therefore, we have continued to grant Regal the by-product offset for these final results.

Comment 6: Revocation of Regal

Petitioner's Comments:

- The Department should not grant Regal a company-specific revocation because the Department has not examined the discrepancies between what Regal claims to have shipped and what was entered as Type 03 by its importers.
- At a minimum, the Department should reconcile Regal's reported sales quantities in the Type 03 CBP data for ARs 5, 6, and 7, before granting Regal's revocation request.

Domestic Processors' Comments:

- Without a calculated AR5 margin, Regal fails to qualify for company-specific revocation based on the Department's revocation policy.
- The Department lacked the legal authority to redo AR5 for Regal,⁵⁷ which became final when the Final Determination published, and which Regal never challenged.
- Redoing AR5 for Regal would set a bad policy precedent for the Department, as it would require it to redo completed reviews when a party seeks revocation based on three years of zero margins when the first year was a carry-over rate.

Department's Position:

We disagree with Petitioner and Domestic Processors that company-specific revocation for Regal is improper. First, as we stated in the Post-Prelim Analysis memo, the Department did not "re-calculate" Regal's AR5 margin, but rather analyzed Regal's AR5 data solely for the purpose of determining Regal's eligibility for revocation and to ensure there was no evidence of dumping during the revocation period.⁵⁸ The zero percent margin that Regal received in AR5, which was an assigned rate from the prior review (and also the margin actually calculated for Regal in AR4⁵⁹) consistent with the Department's practice at the time, was never subject to judicial challenge and continues to be a final margin for duty assessment purposes for AR5. Contrary to Petitioner's and Domestic Processors' claims, the Department did not "redo" a completed administrative review and did not "recalculate" Regal's AR5 margin for assessment. The final results of AR5 with respect to Regal remain unchanged.

Supp.)). The amounts of Regal's total production of merchandise under consideration, broken out into self-produced shrimp and the amount tolled can be found on page 2 of Regal's Section A Supplemental Questionnaire Response, dated July 20, 2012.

⁵⁶ For a more detailed analysis of this issue, see Memorandum To The File From Josh Startup, Case Analyst, Office 9, Import Administration, Subject: Seventh Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Analysis Memo for Zhanjiang Regal Integrated Marine Resources Co., Ltd. at 2 ("Regal Final Analysis Memo").

⁵⁷ Citing Peer Bearing Company v. United States, 853 F. Supp. 2d 1365, 1372 (Ct. Int'l Trade 2012).

⁵⁸ See Post-Prelim Analysis Memo at 5.

⁵⁹ See Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 49460, 49463 (August 13, 2010)

The now-revoked regulations granted the Department the authority to consider whether company-specific revocation is appropriate on a case-by-case basis under 19 CFR 351.222(b)(2). The regulation was silent with respect to its implementation when the Department has limited its examination of respondents due to the large number of producers/exporters named in the review. Accordingly, the regulation did not require the Department to individually examine and calculate an assessment rate in a prior review for the respondent requesting revocation. Because Regal was individually examined in this review and in the prior review, the Department determined that a reasonable application of the regulation under such circumstances would be to allow Regal an opportunity to demonstrate that it met the requirements of the regulations with respect to company-specific revocation.

The Department conducted a verification of Regal's information for revocation purposes during this review. This is consistent with the Department's past practice. Pursuant to section 782(i)(2) of the Tariff Act of 1930, as amended, the Department conducts verification when revoking the order, in part. When considering a company-specific revocation request, the Department conducts verification, during which it reviews and analyzes the respondent's information for the entire revocation period (*i.e.* the three reviews during which the respondent was found not to have dumped).⁶⁰ During Regal's on-site verification, we verified Regal's AR7 FOP and sales data, and completed Q&V reconciliations and completeness tests for ARs 5, 6, and 7. There were no discrepancies from Regal's reported data. As such, there is no basis to find that Regal's reported data is inaccurate.

We have determined that Regal satisfied all of the 19 CFR 351.222(b)(2)(i) (2011) criteria. Our analysis of Regal's data confirms that Regal sold subject merchandise at not less than NV during AR5, AR6, and AR7.⁶¹ Therefore, for the final results, we have determined that the Department had the authority to analyze Regal's AR5 data for revocation purposes to confirm that no evidence indicates that Regal was dumping during AR5, AR6, and AR7. Additionally, pursuant to 19 CFR 351.222(b)(2)(i)(B), Regal has agreed in writing to immediate reinstatement of the order if it is found subsequent to revocation to have sold subject merchandise at less than fair value.⁶² Finally, the Department is aware of no other evidence that indicates that the continued application of the order is necessary 19 CFR 351.222(b)(2)(i)(C). Therefore, the Department is revoking the order with respect to Regal.

Comment 7: Hilltop as Part of PRC-Wide Entity

Hilltop's Comments:

- The record does not support the preliminary determination by the Department to treat Hilltop as part of the PRC-wide entity.
- Hilltop is a Hong Kong exporter, and therefore should be exempt from the separate rate analysis in accordance with the Department's longstanding policy.⁶³

⁶⁰ See 19 CFR 351.222 (f)(2)(ii).

⁶¹ 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); see also Preliminary Results.

⁶² See Regal's Request for Administrative Review and Revocation, dated February 28, 2012 ("Regal Request for Review"), at 2-3.

⁶³ See *e.g.*, Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the

- Hilltop submitted record evidence, including a Hong Kong business license and registration, does not support treating Hilltop as part of the PRC-wide entity, and the Department’s failure to consider these documents violates section 778 of the Act.

Petitioner’s Rebuttal Comments:

- Hilltop met all four statutory prongs of section 776(a) of the Act for AFA, any one of which is sufficient for AFA.
- The Department need not accept information supporting a claim of independence from government control once the respondent has ceased participating.
- Exporters in Hong Kong are not exempt from the presumption of government control, as evidenced by Hilltop’s having submitted separate rate information in its section A questionnaire response.
- Hilltop requested a review of itself and its “affiliated Chinese processors,” and the Department’s initiation stated there was a rebuttable presumption “all” companies in the PRC are subject to government control.

Domestic Processors’ Rebuttal Comments:

- Hilltop’s refusal to answer questions about its separate rate status makes the information it submitted on the record unreliable, and therefore it is not entitled to a separate rate.

Department’s Position:

We continue to find that Hilltop is part of the PRC-wide entity. In this review, Hilltop submitted a Section A questionnaire response in which it provided information regarding its affiliates and corporate structure.⁶⁴ Based on Hilltop’s responses, the Department issued a supplemental Section A questionnaire asking follow-up questions about Hilltop’s sales process, affiliates and corporate structure.⁶⁵ For example, the Department requested that Hilltop submit information regarding its corporate structure, whether Hilltop resold subject merchandise to the United States during the POR supplied by any PRC entity other than Hoitat, Fuqing Yihua, or Fuqing Minhua, and whether Hilltop was involved in any joint ventures.⁶⁶ In response, Hilltop submitted a letter stating that it “respectfully declines to respond to additional information requests in the above-referenced proceeding.”⁶⁷ Hilltop declined to provide evidence of price negotiations, more complete sales packages, or to state if its sales were subject to review by any level of government during the POR.⁶⁸ The requested information was necessary to establish Hilltop’s eligibility for a separate rate. Because Hilltop refused to answer the additional questions regarding its eligibility for a separate rate, the Department was unable to conclusively determine that Hilltop is separate from the PRC-wide entity.⁶⁹ By refusing to participate any further in the review, Hilltop foreclosed our opportunity to verify the information it provided, and should be

People’s Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 Fed. Reg. 24,892, 24,900 (May 6, 2010).

⁶⁴ See Hilltop’s Section A Questionnaire Response, dated July 12, 2012, at 17-24.

⁶⁵ See Hilltop’s Section A Supplemental Questionnaire, dated September 11, 2012.

⁶⁶ See *id.* at 5-7.

⁶⁷ See Hilltop’s October 3, 2012, submission, Re: Further Information Requests for Hilltop International in the Seventh Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China, Case No. A-570-893 (“Hilltop Further Information submission”).

⁶⁸ See *id.* at 5.

⁶⁹ See AMS Assocs., Inc. v. United States, 2013 U.S. App. LEXIS 12853 (Fed. Cir. June 24, 2013), *3-14 (“AMS”).

considered part of the PRC-wide rate. The Federal Circuit made clear that the Department is not required to accept information on the record supporting a claim of independence from government control once a respondent willingly stops participating in a proceeding.⁷⁰

For these reasons, Hilltop failed to rebut the presumption that it and its PRC affiliates were free from government control because it refused to answer supplemental questions that were necessary to the separate rate analysis. The CIT recently upheld the Department's decision to deny a Hilltop separate rate, albeit under different facts, in the AR5 Remand Final even though Hilltop argued it was exempt from the separate rate test as a Hong Kong exporter. Therefore, for these final results, we continue to find that Hilltop is part of the PRC-wide entity.

Comment 8: Assignment of AFA to the PRC-Wide Entity and Corroboration of the PRC-Wide Rate

Background:

In the Preliminary Results we assigned AFA to the PRC-Wide entity, including Hilltop. Hilltop argued in its case brief that the PRC-wide rate has not been properly corroborated.⁷¹ Following the submission of case briefs, the Court of International Trade issued an opinion on the AR5 remand results, remanding only the Department's corroboration analysis for the PRC-wide entity.⁷² The Department then placed two sets of documents⁷³ on the record of this review from the original investigation and Section 129 proceeding, which it intended to use to corroborate the PRC-wide rate and allowed parties to comment.

Hilltop's Case Brief Comments:

- The application of the 112.81 percent rate from the Petition to the PRC-wide entity (including Hilltop) is unsupported by record evidence and is contrary to the law.
- According to the CIT in Peer Bearing,⁷⁴ the Department is not required to corroborate the PRC-wide rate with respect to Hilltop's experience, but the PRC-wide rate must be corroborated as reliable and relevant to the PRC-wide entity as a whole. Additionally, the rate is not corroborated as required by section 776 of the Act.
- The 112.81 percent rate is 12 times higher than any rate calculated for a respondent under this order, and is not commercially reasonable.

⁷⁰ Id. at 12-13. (There the Court stated "In the absence of verifiable information that would be necessary for Aifudi (respondent) to carry its burden made any other Aifudi-submitted information immaterial to the point in dispute. At least in these circumstances, Commerce committed no legal error in disregarding all of Aifudi's remaining information").

⁷¹ See Hilltop's case brief, dated June 28, 2013, at 8-16.

⁷² See Ad Hoc Shrimp Trade Action Committee v. United States, Court No. 11-00335, Slip Op. 13-93, (July 23, 2013) ("AR5 Remand Opinion and Order") at 27

⁷³ See Memo To The File, From: Josh Startup, International Trade Analyst Office 9, Import Administration, Subject: Placing Documents on the Record of the Seventh Administrative Review, dated August 5, 2013("MTF Placing Documents on Record"), and Memo To The File, From: Josh Startup, International Trade Analyst Office 9, Import Administration, Subject: Placing Section 129 Documents on the Record of the Seventh Administrative Review, dated August 14, 2013.

⁷⁴ See Peer Bearing Co. v. United States, 587 F. Supp. 2d 1319, 1327 (Ct. Int'l Trade 2008) ("Peer Bearing").

Petitioner's Rebuttal Brief Comments:

- The PRC-wide rate was corroborated in the investigation and does not need to be corroborated specifically with respect to Hilltop.

Domestic Processors' Rebuttal Brief Comments:

- Hilltop's is an extreme case, because it never established it was entitled to a separate rate, nor did it submit usable responses in this proceeding. Thus, there is no usable information on the record to calculate an individual rate for Hilltop, leaving the PRC-wide rate from the investigation as the only rate reasonably applicable to Hilltop.

Petitioner's Comments on New Information Placed on the Record:

- The record fully corroborates the PRC-wide rate, and the CIT recognizes that "there is no requirement that the PRC-wide rate entity rate based on AFA relate specifically to the individual company."⁷⁵
- According to KYD,⁷⁶ previously corroborated margins enjoy the presumption of validity, and the investigation documents placed on the AR7 record fully corroborate the 112.81 percent PRC-wide margin.
- In Ta Chen,⁷⁷ the CIT affirmed the Department's AFA rate corroborated using a single sale that represented only 0.04 percent of the sales database.

Hilltop's Comments on New Information Placed on the Record:

- The last document the Department placed on the record on the August 5, 2013, was only identified as a "work file," with no indication of if or how it was used in the Section 129 proceeding, or whether it is all or only a portion of Shantou Red Garden Foodstuff Co.'s ("Red Garden") sales. Additionally, it is unclear if the work file is final or a "working" margin run, as the work file has a significantly lower quantity than the respondent selection memo. The Department should also place on the record the proprietary analysis memorandum and related attachments, final SAS worksheets and output and all related electronic files.
- To the extent that the Department finds it relevant to the corroboration issue, it should also provide the full analysis and margin calculations for the two other respondents in the 129 proceeding.
- The "work file" placed on the record produces an overall margin of -11.05 percent without the application of zeroing, and fails to corroborate the 112.81 percent in the aggregate. The Department must explain why it is reasonable to select certain individual transactions and how it produces a reliable PRC-wide rate.
- The use of any margin from the Section 129 proceeding would fail to adequately corroborate the PRC-wide rate. The CIT clearly stated that the Department should not use "outdated" information to corroborate a representative rate for the current period.⁷⁸ While the Section 129 proceeding publication is recent, the data it contains is not.

⁷⁵ See Petitioner's Comments on Factual Information Placed on the Record, dated August 9, 2013, at 2.

⁷⁶ See KYD, Inc. v. United States, 607 F.3d 760, 767 (Fed. Cir. 2010) ("KYD").

⁷⁷ See Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330, 1339 (Fed. Cir. 2002) ("Ta Chen").

⁷⁸ See Slip Op. 12-93 at 23-24, quoting Ferro Union, Inc. v. United States, 44 F. Supp. 2d 1310, 1335 (Ct. Int'l Trade 1999) ("Ferro Union").

- Any rates based on margins calculated from the original investigation are unreliable because they are based on normal value calculations using Indian surrogate value and costs.

Petitioner’s Rebuttal Comments on New Information:

- Hilltop’s claim that the CIT’s instructions in the AR5 Remand directed the Department not to use ‘outdated’ information to corroborate a representative rate is not supported by the CIT’s actual instructions, and Hilltop offers no alternative method to corroborate the rate.
- Lifestyle Enterprise states that due to the great discretion granted to the Department in applying an AFA margin, the coordination standard required is “at least enough evidence to allow reasonable minds to differ.”⁷⁹
- In this case, the CIT has noted that the rate being corroborated is not specific to Hilltop,⁸⁰ and the rate is based on the PRC-wide entity’s own failure to respond to questionnaires, and as such, the rate is corroborated with respect to the PRC-wide entity as a whole.⁸¹

Hilltop’s Rebuttal Comments on New Information:

- Petitioner fails to explain how the new factual information placed on the record is not outdated.
- Ta Chen does not support the use of outdated sales data from the investigation to corroborate the PRC-wide rate in this review, because in that case the sale used to corroborate the AFA rate was from the review at issue.⁸²

Hilltop’s Comments on Additional New Information:

- The additional new information fails to explain the extremely wide range of transaction-specific margins for Red Garden and that such a wide range of margins is typical.
- The Department has declined to add information from the other respondents in the 129 determination. If Red Garden’s data is relevant, then the data from the other respondents is equally relevant, and at a minimum, should be placed on the record of this proceeding.
- The Department has failed to provide any information explaining how the recalculated margins from 2003 continue to be relevant or probative in the current proceeding given the number of more recent margin calculations. This is troubling in light of the CIT’s recent statement that to properly corroborate the PRC-wide rate, the Department must determine the rate is a relevant PRC-wide rate.⁸³

Petitioner’s Rebuttal to Hilltop Comments on Additional New Information:

- Hilltop fails to demonstrate any legal justification for its arguments, and therefore cannot wait to present a legal basis for these arguments later to the CIT in any potential appeal without flying in the face of the administrative exhaustion requirement.
- The record now fully corroborates the PRC-wide rate of 112.81 percent which should be sustained in the final results.

⁷⁹ See Petitioner’s Rebuttal to Hilltop Comments on New Information, dated August 13, 2013, at 4, citing Lifestyle Enter., Inc. v. United States, 896 F. Supp. 2d 1297, 1301 (Ct. Int’l Trade 2013) (“Lifestyle Enterprise”).

⁸⁰ See AR5 Remand Opinion and Order, at *21.

⁸¹ See Jiangsu Changbao Steel Tube Co., Ltd. v. United States, 884 F. Supp. 2d 1295, 1301 n.10 (Ct. Int’l Trade 2012).

⁸² See Ta Chen, 298 F.3d at 1339.

⁸³ See Ferro Union, 44 F. Supp. 2d at 1335.

Department's Position:

The Department disagrees with Hilltop's argument that it did not place sufficient context or explanation for the "work file" placed on the record on August 5, 2013. The attachment page clearly states that the last part of the attachment was a work file from Red Garden's margin program used in the Section 129 proceeding.⁸⁴ Nonetheless, we supplemented the record with additional record evidence from the section 129 proceeding to demonstrate that the highest control number ("CONNUM")-specific margins are directly from Red Garden's programs. As discussed in detail below, our corroboration analysis is based upon a comparison of these highest CONNUM-specific margins, in accordance with our normal practice, and it is not necessary to release all data and programs for the other respondents to the section 129 proceeding in order to corroborate the PRC-wide rate.

The issue of corroborating the PRC-wide rate starts with the original investigation, which was initiated on January 27, 2004.⁸⁵ On July 16, 2004, the Department published the PRC Shrimp LTFV Prelim,⁸⁶ which was accompanied by an unpublished memorandum corroborating the rate used as the PRC-wide rate and the AFA rate.⁸⁷ On December 8, 2004, the Department published the PRC Shrimp LTFV Final and on February 1, 2005, the Department published an amended final and Order, finding individually calculated rates between de minimis and 84.93 percent and continuing to assign 112.81 percent to the PRC-wide entity.⁸⁸ However, as noted by the Court in its Remand Opinion and Order, the individually calculated margins in the LTFV Investigation were subsequently reduced to between 5.07 and 8.45 percent, as a result of domestic court proceedings.⁸⁹

⁸⁴ See MTF Placing Documents on Record, at page 3, where the cover page for the attachment stated, ".Work File 'Margin' from recalculation of the antidumping duty margin for Shantou Red Garden Foodstuff Co., Ltd. in the antidumping duty investigation of certain frozen and canned warmwater shrimp from the People's Republic of China in connection with the Department's section 129 determination implementing the findings of the World Trade Organization's panel report in United States - Anti-Dumping Measures on Certain Shrimp and Diamond Saw Blades from China (DS422), dated June 8, 2012.

⁸⁵ See Frozen and Canned Warmwater Shrimp From Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam, 69 FR 3876 (January 27, 2004) ("Initiation Notice").

⁸⁶ 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").

⁸⁷ See Memorandum to the File from Joe Welton, Analyst, through James C. Doyle, Program Manager, and Edward Yang, Office Director, "Corroboration of the PRC-Wide Adverse Facts-Available Rate" (July 2, 2004) ("Corroboration Memo").

⁸⁸ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China, 69 FR 70997 (December 8, 2004) ("PRC Shrimp LTFV Final or "LTFV Investigation") and Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order, 70 FR 5149, 5151 (February 1, 2005), respectively.

⁸⁹ See AR5 Remand Opinion and Order, at 25, citing, Allied Pacific Food (Dalian) Co. v. United States, 716 F. Supp. 2d 1339 (CIT 2010); Shantou Red Garden Foodstuff Co. v. United States, 880 F. Supp. 2d 1332 (CIT 2012); see also Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Determination and Amended Final Determination of the Antidumping Duty Investigation, 77 FR 66434 (November 5, 2012); Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Amended Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision, 76 FR 30100 (May 24, 2011).

In the Initiation Notice, the Department described how the calculation of export price and normal value was carried out in the Petition, noting that export price was based on official U.S. import statistics during the period of investigation (“POI”) and that normal value was based on the FOPs provided by several significant producers in the United States of the domestic like product.⁹⁰ We further noted that those FOPs were valued using surrogate values from India.⁹¹ The Department conducted a thorough examination of the methodology employed in the Petition, which included a discussion with the foreign market researcher contracted by Petitioner to obtain cost data for the primary input, raw warmwater shrimp, and making adjustments to Petitioner’s methodology, where appropriate.⁹² Upon confirmation that the methodology employed in the Petition conformed to the Department’s rules and regulations, this investigation was initiated with estimated recalculated dumping margins from 112.81 percent to 263.68 percent.⁹³

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as “[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”⁹⁴ The SAA provides further that the term “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.⁹⁵ To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics, and customs data, as well as information obtained from interested parties during that particular investigation.⁹⁶ To corroborate the margin calculations in the petition for use as adverse facts available for purposes of the preliminary determination in this investigation, the Department conducted a thorough examination of the evidence supporting the calculations in the petition.

As noted above, concurrent with publication of the PRC Shrimp LTFV Prelim, the Department issued a Corroboration Memo which detailed the determination to use total AFA, pursuant to sections 776(a) and 776(b) of the Act, as the rate assigned to the PRC-wide entity because the exporters comprising the single PRC-wide entity failed to respond to the Department’s request for information and because that entity failed to cooperate to the best of its ability.⁹⁷ As adverse facts available the Department used information from the Petition because the margins derived from the Petition were higher than the calculated margins for the selected respondents.⁹⁸ To corroborate the Petition margins, the Department compared those margins to the margins calculated for a respondent in the investigation, the Allied Pacific Group (“Allied”), noting that Allied was a significant producer and produced the merchandise under consideration using all factors of production described in the petition and under the same production standards as the

⁹⁰ See Initiation Notice, 69 FR at 3880-3881.

⁹¹ See id.

⁹² See id.

⁹³ See id., 69 FR at 3881.

⁹⁴ See Statement of Administrative Action accompanying the URAA, H.R. Rep No. 103-366 at 870 (“SAA”).

⁹⁵ See SAA at 870.

⁹⁶ See SAA at 870.

⁹⁷ See Corroboration Memo at 1.

⁹⁸ See id.

petition.⁹⁹ This analysis found that there was a significant percentage of Allied’s CONNUMs¹⁰⁰ with positive margins and that a significant volume of those CONNUMs had margins which exceeded the lowest Petition margin of 112.81 percent.¹⁰¹ We also examined the methodology for how the margin was calculated in the petition and found it to be reliable.¹⁰² Accordingly, the Department found that the Petition margin of 112.81 percent was relevant to this investigation and had probative value.¹⁰³

Given that the margins used to corroborate the Petition have been revised pursuant to the Allied Pacific and Red Garden litigation, we have revisited the record of the LTFV Investigation¹⁰⁴ to determine whether the margins calculated in the Petition, and vetted and revised by the Department at that time, remain relevant to the investigation and reliable, and thus have probative value. No information has been presented in this review to question the reliability of the rate. Further, we have examined the record evidence with respect to the revised margin calculations and have confirmed that although the final weighted-average margins may have been revised downward, a significant percentage of positive, CONNUM-specific margins remain for Red Garden and significant volumes of CONNUM-specific margins continue to be higher than the lowest Petition margin of 112.81 percent for one respondent.

Specifically, we looked to the margins calculated for Red Garden, a mandatory respondent in the LTFV Investigation and the respondent with the highest volume of sales during the POI.^{105,106} As was the case with Allied, we note that Red Garden produced shrimp in accordance with Hazard Analysis and Critical Control Point (“HAACP”) plans, which is required in order to comply with the U.S. Food and Drug Administration’s enforcement of food safety in the U.S. food supply,¹⁰⁷ and that the Petition based its calculations assuming production under the same

⁹⁹ See Corroboration Memo at 2.

¹⁰⁰ In most investigations, administrative reviews and new shipper reviews, the subject merchandise has different CONNUMs to identify the individual models of products for matching purposes. The CONNUMs are assigned to each unique product reported in the sales response. Identical products are assigned the same CONNUM in both the comparison market sales database (or in a non-market economy context, the factors of production database) and U.S. sales database. See Antidumping Manual (October 13, 2009), at Chapter 4, page 10.

¹⁰¹ See Corroboration Memo at 3.

¹⁰² See *id.*

¹⁰³ See *id.*

¹⁰⁴ See PRC Shrimp LTFV Final.

¹⁰⁵ See Memorandum to Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, Group III, from Edward C. Yang, Office Director, Office 9, “Selection of Respondents for the Antidumping Investigation of Certain Frozen and Canned Warmwater Shrimp from the People’s Republic of China” (February 23, 2004) (“Respondent Selection Memo”) at Attachment I.

¹⁰⁶ We note that the Corroboration Memo states that Allied is the largest single exporter of subject merchandise from the PRC. See Corroboration Memo at 2. However, a review of the margin programs for Allied and Red Garden, as well as the Respondent Selection Memo, confirm that this does not appear to have been the case. See Respondent Selection Memo at Attachment II; Memorandum to the File through James C. Doyle, Program Manager, China/NME Unit, from Alex Villanueva, Case Analyst, “Analysis for the Preliminary Determination of Certain Frozen and Canned Warmwater Shrimp from the People’s Republic of China (‘the PRC’): The Allied Pacific Group (‘Allied’)” (July 2, 2004); Memorandum to the File through James C. Doyle, Program Manager, China/NME Unit, from Joe Welton, Case Analyst, “Analysis for the Preliminary Determination of Certain Frozen and Canned Warmwater Shrimp from the People’s Republic of China (‘the PRC’): Red Garden Foodstuff Co., Ltd.” (July 2, 2004).

¹⁰⁷ See Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products, 60 FR 65096 (December 18, 1995).

standards.¹⁰⁸ Additionally, we note that Red Garden used all FOPs to produce subject merchandise during the POI which were included in the Petition, specifically: raw shrimp, tripolyphosphate, labor, electricity, water, and packing materials.¹⁰⁹ Therefore, Red Garden produced merchandise under consideration using all FOPs described in the Petition and under the same production standards as the Petition. Finally, we note that Red Garden was the largest single exporter of merchandise under consideration from the PRC, and thus is a significant exporter of merchandise subject to this investigation. Therefore, we find that Red Garden's margins are relevant for purposes of corroboration of a margin based on information from the Petition.

An analysis of Red Garden's sales data, FOP data, and calculated margins, subsequent to revisions pursuant to judicial review, reveals that more than half of the CONNUMs examined in Red Garden's margin calculation had positive margins.¹¹⁰ Of those CONNUMs with positive margins, the Department found that the percentage with dumping margins exceeding 112.81 percent is sufficient to demonstrate the probative value of the lowest Petition margin of 112.81 percent.¹¹¹ Furthermore, by quantity, we found that CONNUMs accounting for a significant volume of merchandise under consideration were sold at prices that resulted in margins which exceeded 112.81 percent.¹¹² Therefore, contrary to Hilltop's contention, we find that the Petition rate continues to be relevant to this investigation, even after taking into account subsequent changes to the original calculations pursuant to remand redetermination, and the rate to be corroborated for purposes of this draft remand. Further, we conclude that the margin of 112.81 percent is based on information from the petition and has probative value. We note that the CAFC has upheld the Department's application of AFA rates to an individual respondent when that data represented 0.5 percent of total sales or a single sale by the respondent.¹¹³ Additionally, contrary to Hilltop's contention, the Court did not prohibit the Department from going back to the record of the investigation, and, in fact, expressly contemplated re-corroborating the 112.81 percent if the Department could explain how it satisfies the statutory requirement.¹¹⁴ Additionally, the CIT has upheld the Department's corroboration of a country-wide rate based on data from an earlier segment on several occasions.¹¹⁵

We also disagree with Hilltop's argument that the data from the other two respondents in the investigation are equally relevant to the corroboration of the PRC-wide rate. Red Garden had the highest volume of sales during the investigation period,¹¹⁶ and it produced merchandise under consideration using all of the FOPs described in the Petition, and under the same production

¹⁰⁸ See Corroboration Memo at 2.

¹⁰⁹ See Initiation Notice, 69 FR at 3880.

¹¹⁰ See Memorandum to the File from Josh Startup, International Trade Analyst, Office 9, "Business Proprietary Analysis of Red Garden Foodstuff Co., Ltd., Margin Program" (September 6, 2013) ("Red Garden BPI Memo").

¹¹¹ See Red Garden BPI Memo.

¹¹² See Red Garden BPI Memo.

¹¹³ See e.g., Pam. S.p.A. v. United States, 582 F. 3d 1366 (Fed. Cir. 2009), and Ta Chen, respectively.

¹¹⁴ See Slip Op. 13-93 at 26-27.

¹¹⁵ See e.g., Peer Beering and Watanabe Group v. United States, 33 Int'l Trade Rep. (BNA) 1012 (Ct. Int'l Tr. 2010).

¹¹⁶ See Red Garden BPI Memo at 2, and Compare Memorandum to the File through James C. Doyle, Program Manager, China/NME Unit, from Joe Welton, Case Analyst, "Analysis for the Preliminary Determination of Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China ('the PRC'): Red Garden Foodstuff Co., Ltd." (July 2, 2004).7-8 ("Red Garden LTFV Analysis Memo") with Initiation Notice, at 3880.

standards as the Petition.¹¹⁷ The selection of Red Garden's data is reasonable because that data was from the investigation, in which we originally corroborated the PRC-wide rate, and incorporates the results of U.S. court litigation that is now final and complete.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation program accordingly. If accepted, we will publish the final results of review and the final dumping margins in the Federal Register.

AGREE_____ DISAGREE_____

Paul Piquado
Assistant Secretary
for Import Administration

Date

¹¹⁷ See Red Garden LTFV Analysis Memo for a list of its FOPs.

Appendix

The companies that are not eligible for a separate rate and are part of the PRC-wide entity include:

1. Aqua Foods (Qingdao) Co., Ltd.
2. Asian Seafoods (Zhanjiang) Co., Ltd.
3. Beihai Evergreen Aquatic Product Science And Technology Co Ltd
4. Dalian Hualian Foods Co., Ltd.
5. Dalian Shanhai Seafood Co., Ltd.
6. Dalian Taiyang Aquatic Products Co., Ltd.
7. Dalian Z&H Seafood Co., Ltd.
8. Fujian Chaohui International Trading
9. Fujian Dongshan County Shunfa Aquatic Product Co., Ltd.
10. Fujian Rongjiang Import and Export Corp.
11. Fuqing Minhua Trade Co., Ltd
12. Fuqing Yihua Aquatic Food Co., Ltd.
13. Fuqing Yiyuan Trading Co., Ltd.
14. Guangdong Jiahuang Foods Co., Ltd.
15. Guangdong Jinhang Foods Co., Ltd.
16. Guangdong Shunxin Sea Fishery Co. Ltd.
17. Guangdong Wanya Foods Fty. Co., Ltd.
18. Hai Li Aquatic Co., Ltd.
19. Hainan Brich Aquatic Products Co., Ltd.
20. Hainan Hailisheng Food Co., Ltd.
21. Hainan Xiangtai Fishery Co., Ltd.
22. Haizhou Aquatic Products Co., Ltd.
23. Hilltop International
24. Hua Yang (Dalian) International Transportation Service Co.
25. Kingston Foods Corporation
26. Maoming Xinzhou Seafood Co., Ltd.
27. Ocean Duke Corporation
28. Olanya (Germany) Ltd.
29. Qingdao Yuanqiang Foods Co., Ltd.
30. Rizhao Xinghe Foodstuff Co., Ltd.
31. Rui'an Huasheng Aquatic Products Processing Factory
32. Savvy Seafood Inc.
33. Sea Trade International Inc.
34. Shandong Meijia Group Co., Ltd.
35. Shanghai Linghai Fisheries Trading Co. Ltd.
36. Shanghai Lingpu Aquatic Products Co.

37. Shanghai Smiling Food Co., Ltd.
38. Shanghai Zhoulian Foods Co., Ltd.
39. Shantou Jiazhou Foods Industry
40. Shantou Jin Cheng Food Co., Ltd.
41. Shantou Longsheng Aquatic Product Foodstuff Co., Ltd.
42. Shantou Ruiyuan Industry Company Ltd.
43. Shantou Wanya Foods Fty. Co., Ltd.
44. Shenzhen Allied Aquatic Produce Development Ltd.
45. Shenzhen Yudayuan Trade Ltd.
46. Thai Royal Frozen Food Zhanjiang Co., Ltd.
47. Xiamen Granda Import & Export Co., Ltd.
48. Yancheng Hi-king Agriculture Developing Co., Ltd.
49. Yanfeng Aquatic Product Foodstuff
50. Yangjiang Anyang Food Co., Ltd.
51. Yangjiang City Yelin Hoi Tat Quick Frozen Seafood Co., Ltd.
52. Yangjiang Wanshida Seafood Co., Ltd.
53. Yelin Enterprise Co., Ltd.
54. Zhangzhou Xinwanya Aquatic Product
55. Zhangzhou Yanfeng Aquatic Product
56. Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd.
57. Zhanjiang Fuchang Aquatic Products Co., Ltd.
58. Zhanjiang Go Harvest Aquatic Products Co., Ltd.
59. Zhanjiang Haizhou Aquatic Product Co. Ltd.
60. Zhanjiang Hengrun Aquatic Co, Ltd.
61. Zhanjiang Jinguo Marine Foods Co., Ltd.
62. Zhanjiang Join Wealth Aquatic Products Co., Ltd.
63. Zhanjiang Longwei Aquatic Products Industry Co., Ltd.
64. Zhanjiang Newpro Foods Co., Ltd.
65. Zhanjiang Rainbow Aquatic Development
66. Zhanjiang Universal Seafood Corp.
67. Zhejiang Daishan Baofa Aquatic Products Co., Ltd.
68. Zhejiang Xinwang Foodstuffs Ltd.
69. Zhejiang Zhoufu Food Co., Ltd.
70. Zhoushan Corporation
71. Zhoushan Haiwang Seafood Co., Ltd.