



A-570-893  
ARP: 02/01/12 - 01/31/13  
**Public Document**  
E&C/V: KJA

September 19, 2014

**MEMORANDUM TO:** Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

**FROM:** Gary Taverman   
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

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

---

## SUMMARY

We 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 22, 2014.<sup>1</sup> The period of review ("POR") is February 1, 2012, through January 31, 2013. 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 the Preliminary Results, the Department found that Hilltop International ("Hilltop") and Zhanjiang Newpro Foods Co., Ltd. ("Newpro") did not cooperate to the best of their ability and were part of the PRC-wide entity because Hilltop did not respond to the questionnaire and Newpro withdrew from participating in the review prior to the Preliminary Results. The Department also adjusted the assessment rate for Newpro to account for subject merchandise produced by Newpro that entered the United States as Type 1 entries. In accordance with 19 CFR 351.309(c)(ii), the Department invited parties to comment on our Preliminary Results. On April 23, 2014, Allied Pacific,<sup>2</sup> Domestic Processors,<sup>3</sup> and Hilltop filed case briefs.<sup>4</sup> On April 28, 2014, Petitioner<sup>5</sup> and Domestic Processors filed rebuttal briefs.<sup>6</sup>

---

<sup>1</sup> See Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results of Administrative Review; 2012-2013, 79 FR 15949 (March 22, 2014) ("Preliminary Results").

<sup>2</sup> Allied Pacific Food (Dalian) Co., Ltd., and Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd. (collectively, "Allied Pacific").



## 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,<sup>7</sup> 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.

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;<sup>8</sup> (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

---

<sup>3</sup> The American Shrimp Processors Association (“Domestic Processors”).

<sup>4</sup> See Letter to the Secretary of Commerce from Allied Pacific “Allied Pacific Case Brief” (April 23, 2014); Letter to the Secretary of Commerce from Domestic Processors “Case Brief of the American Shrimp Processors Association” (April 23, 2014); Letter to the Secretary of Commerce from Hilltop “Hilltop International Administrative Case Brief” (April 23, 2014) (“Hilltop Case Brief”).

<sup>5</sup> The Ad Hoc Shrimp Trade Action Committee (“Petitioner”).

<sup>6</sup> See Letter to the Secretary of Commerce from Petitioner “Rebuttal Brief” (April 28, 2014) (“Petitioner Rebuttal Brief”); Letter to the Secretary of Commerce from Domestic Processors “Rebuttal Brief of the American Shrimp Processors Association” (April 28, 2014).

<sup>7</sup> “Tails” in this context means the tail fan, which includes the telson and the uropods.

<sup>8</sup> The specific exclusion for Lee Kum Kee’s shrimp sauce applies only to the scope in the PRC case.

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.<sup>9</sup>

## **DISCUSSION OF THE ISSUES**

### **Comment 1: Adjustment to Newpro's Assessment Rate**

#### **Domestic Processors' Comments:**

- In the Preliminary Results, the Department determined that certain shipments made by Newpro were not included in Newpro's U.S. sales database, and that such sales should be considered sales made by Newpro during the POR.
- Based on the record developed over the course of this review, the Department should make additional adjustments to Newpro's assessment rate for the final results.

**Department's Position:** The details of this discussion contain the business proprietary information of multiple parties. For a complete description of the issues and the Department's analysis of Domestic Processors' arguments and the record of this review, see the Memorandum to James C. Doyle, Director, Enforcement and Compliance, Office V, from Kabir Archuletta, Senior International Trade Analyst, Enforcement and Compliance, Office V, through Catherine Bertrand, Program Manager, Enforcement and Compliance, Office V "Certain Frozen Warmwater Shrimp from the People's Republic of China: Business Proprietary Memo for the Final Results" dated concurrently with this memorandum ("Newpro Final BPI Memo"). For the reasons detailed in the Newpro Final BPI Memo, the Department determines that the record does not support the conclusion put forth by Domestic Processors that additional adjustments to Newpro's assessment rate are necessary for these final results. However, as noted in the

---

<sup>9</sup> 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 Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam (Investigation Nos. 731-TA-1063, 1064, 1066-1068 (Review), USITC Publication 4221, March 2011.

Preliminary Results, we intend to refer the information obtained in this review to U.S. Customs and Border Protection (“CBP”) for further investigation and enforcement, as necessary.<sup>10</sup>

## **Comment 2: Allied Pacific’s Cash Deposit Instructions**

### **Allied Pacific’s Comments:**

- In the Preliminary Results, the Department identified Allied Pacific as part of the PRC-wide entity.
- By stating its cash deposit instructions would be applicable for all PRC-wide entities, the Department implied it would issue cash deposit instructions for U.S. entries of subject merchandise exported by Allied Pacific.
- In the Department’s recent determination under Section 129 of the Uruguay Round Agreements Act, the Department expressly stated that after March 22, 2013, it would “discontinue the collection of cash deposits for estimated antidumping duties for the specified manufacturer-exporter combinations for Allied {Pacific}.”<sup>11</sup>
- The cash deposit instructions issued at the conclusion of this review should instruct CBP not to collect cash deposits from Allied Pacific because it has been excluded from the Order, effective March 22, 2013.

**Department’s Position:** We agree with Allied Pacific that the Department’s recent Section 129 Revocation expressly revoked Allied Pacific from the Order<sup>12</sup> in specific manufacturer-exporter combinations,<sup>13</sup> effective March 22, 2013, which is outside of this POR. Although Allied Pacific’s case brief uses varied language, sometimes noting that the Section 129 Revocation applied only to specific combinations while at other times referring generally to Allied Pacific as an exporter, we do not understand Allied Pacific’s brief to argue that the revocation should be applied beyond its actual terms to all exports made by Allied Pacific. Such an interpretation would be contrary to the plain terms of the Section 129 Revocation. Thus, we understand Allied Pacific to argue that the revoked combinations should not be subject to cash deposits, and we agree with that point.

We further note that, as stated in the Preliminary Results, although Allied Pacific submitted a no shipment certification for this POR,<sup>14</sup> it was found in prior segments to constitute part of the

---

<sup>10</sup> See Memorandum to the File from Kabir Archuletta, Senior International Trade Analyst, Enforcement and Compliance, Office V, through Catherine Bertrand, Program Manager, Enforcement and Compliance, Office V “Certain Frozen Warmwater Shrimp from the People’s Republic of China: Business Proprietary Memo for the Preliminary Results” (March 18, 2014) at 12.

<sup>11</sup> Citing to Certain Frozen Warmwater Shrimp From the People’s Republic of China and Diamond Sawblades and Parts Thereof From the People’s Republic of China: Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders, 78 FR 18958 (March 28, 2013) (“Section 129 Revocation”).

<sup>12</sup> 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) (“Order”).

<sup>13</sup> As noted in the Section 129 Revocation, revocation for Allied Pacific is specific to merchandise manufactured by Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd., or Allied Pacific Aquatic Products (Zhongshan) Co., Ltd., or Allied Pacific Food (Dalian) Co., Ltd., and exported by Allied Pacific (HK) Co., Ltd., or Allied Pacific Food (Dalian) Co., Ltd. See Section 129 Revocation, 78 FR at 18959.

<sup>14</sup> See Letter to the Secretary of Commerce from Allied Pacific Group “No Shipment Certificate” (April 1, 2013).

PRC-wide entity.<sup>15</sup> Thus, any shipments from Allied Pacific, either in the revoked combination or outside of the revoked combination, that may have entered the United States during the POR, should be liquidated at the PRC-wide rate of 112.81 percent, in accordance with our standard practice. However, we intend to issue cash deposit instructions to CBP reiterating our Section 129 Revocation instructions that specify that shipments from Allied Pacific in the revoked manufacturer-exporter combinations shall not be subject to cash deposits, while any shipments entered outside of those combinations will be subject to the PRC-wide rate, to which Allied Pacific was most recently subject.<sup>16</sup>

### **Comment 3: Corroboration of the Adverse Facts Available (“AFA”) Rate**

**Background:** In the Preliminary Results, the AFA rate assigned to the PRC-wide entity (112.81 percent), including Hilltop and Newpro, was the highest rate from any segment of this proceeding, and is the PRC-wide rate from the final determination of the less-than-fair-value investigation.<sup>17</sup> The Department recently conducted corroboration analyses of this rate in light of changes made to our final determination in the less-than-fair-value investigation following litigation in the preceding AR7, as well as in two final redeterminations pursuant to CIT remand.<sup>18</sup> Subsequent to submission of briefs by interested parties in this review, the CIT affirmed our corroboration analysis in the AR4 Remand and AR5 Remand II.<sup>19</sup>

#### **Hilltop’s Comments:**

- Because Shantou Red Garden Foodstuff Co. (“Red Garden”)’s control number (“CONNUM”) -specific information is not part of the record of this review, the Department improperly relied on it to corroborate the AFA rate in this proceeding.
- The age of the Red Garden CONNUM-specific information as well as the availability of more current information makes it unreasonable to use for corroborating the AFA Rate.
- The reliance on only a portion of the Red Garden CONNUM-specific information makes it unreasonable to use for corroborating the AFA Rate.
- The Department’s reliance on Red Garden CONNUM-specific information to calculate a rate twelve times higher than any rate calculated for a respondent under this order is unreasonable.

---

<sup>15</sup> See Preliminary Results, and accompanying Preliminary Decision Memorandum, at 5; see also 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) at Appendix II.

<sup>16</sup> See Memorandum to the File from Kabir Archuleta, Senior International Trade Analyst, Office V “Draft U.S. Customs and Border Protection (“CBP”) Instructions” dated concurrently with this memorandum.

<sup>17</sup> 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”); see also Order.

<sup>18</sup> See Certain Frozen Warmwater Shrimp From the People’s Republic of China: Final Results of Administrative Review; 2011–2012, 78 FR 56209 (September 12, 2013) and accompanying Issues and Decision Memorandum at Comment 8 (“AR7 Corroboration”); see also “Results of Redetermination Pursuant to Court Remand” Court No. 11-00335 Slip Op 13-93 (CIT July 23, 2013) (“AR5 Remand II”), and “Final Results of Redetermination Pursuant to Court Remand” Court No. 10-00275 Slip Op. 13-89 (CIT July 19, 2013) (“AR4 Remand”), available at <http://enforcement.trade.gov/remands/>.

<sup>19</sup> See Ad Hoc Shrimp Trade Action Comm. v. United States, 992 F. Supp. 2d 1285 (CIT 2014) (“AR4/AR5 Opinion”).

**Petitioner’s Rebuttal Comments:**

- The Department was not obligated to corroborate the 112.81 percent PRC-wide margin as to respondents found eligible for separate rates.
- The reliance on Red Garden’s data to determine the AFA rate was supported by the Department’s explanation of its corroboration analysis in prior segments.
- The validity of the rate based on the petition and corroborated during the investigation remains unless rebutted by record evidence, and can be applied with wide discretion to uncooperative respondents.
- Hilltop’s arguments concerning the AFA rate, particularly in relation to other rates calculated for respondents, are based on new factual information not on the record for AR8, and thus cannot be considered.
- Hilltop improperly conflates the facts of this case concerning a PRC-wide rate with cases which only apply to respondents assigned AFA rates separate from the NME-wide entity.
- The age of the data used to determine the AFA rate has no bearing on the determination that the rate has probative value.

**Domestic Processors’ Rebuttal Comments:**

- Because the Courts upheld the practice of using CONNUM-specific margins to corroborate AFA rates, Hilltop fails to distinguish this case when claiming the rate has not been properly corroborated.
- Hilltop’s argument that the PRC-wide rate of 112.81 percent is unreasonably high is unfounded because the rate has been properly corroborated, respondent gave no new information challenging the rate, and the determination of the rate was consistent with the statute and long-standing practice upheld by the Courts.
- There need not be any relation between the rate and Hilltop’s commercial reality considering Hilltop’s failure to cooperate throughout this proceeding.
- The remand concerning corroboration of the PRC-wide rate arising from the fifth review of this order does not affect the rate in this eighth review because the Department subsequently corroborated the rate based on the revised original investigation margins.

**Department Position:** We disagree with Hilltop’s arguments that reliance on Red Garden’s CONNUM-specific information to corroborate the AFA rate applied in every segment of this proceeding was improper and that it is unreasonable to apply the AFA rate of 112.81 percent to the PRC-wide entity. Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>20</sup> To corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.<sup>21</sup> To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the

---

<sup>20</sup> See Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103-316, vol. 1, at 870 (1994) (“SAA”) and 19 CFR 351.308(d).

<sup>21</sup> Id.

information to be used.<sup>22</sup> Independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.<sup>23</sup> In the Preliminary Results, the Department stated the following with respect to the aspect of reliability:

In this case, the AFA rate being assigned to the PRC-wide entity (112.81 percent), including Hilltop and Newpro, is the highest rate from any segment of this proceeding, and is the PRC-wide rate from the final determination of the less-than-fair-value investigation.<sup>24</sup> The Department has recently conducted corroboration analyses of this rate in light of changes made to our final determination in the less-than-fair-value investigation following litigation in the preceding AR7, as well as in two final redeterminations pursuant to court remand.<sup>25</sup> Further, no information was presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information continues to be reliable.<sup>26</sup>

We further stated that:

Pursuant to section 776(c) of the Act, the Department corroborated the petition rate of 112.81 percent by comparing the petition margin to the individual {CONNUM} margins calculated for {Red Garden}, as adjusted following litigation.<sup>27</sup> We found that since the petition margin of 112.81 percent was within the range of Red Garden's calculated CONNUM margins, the margin of 112.81 percent has probative value. Accordingly, in light of the corroboration of this margin in AR7, AR5 Remand II and AR4 Remand, we find that the rate of 112.81 percent is corroborated to the extent practicable within the meaning of section 776(c) of the Act. Moreover, as there is no information on the record of this review that demonstrates that this rate is not appropriate for use as AFA, we determine that this rate has relevance.<sup>28</sup>

As noted above, the CIT affirmed our corroboration of the AFA rate of 112.81 percent in the AR4 Remand and AR5 Remand II on May 20, 2014, approximately one month after submission of briefs in this review.<sup>29</sup> In sustaining the Department's corroboration analysis, the Court stated

---

<sup>22</sup> See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996), unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).

<sup>23</sup> See SAA at 870; see also Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada, 70 FR 12181, 12183 (March 11, 2005).

<sup>24</sup> See PRC Shrimp LTFV Final; see also Order.

<sup>25</sup> See AR7 Corroboration; AR5 Remand II; AR4 Remand.

<sup>26</sup> See Preliminary Results, and accompanying Preliminary Decision Memorandum at 8.

<sup>27</sup> See AR7 Corroboration; AR5 Remand II; AR4 Remand.

<sup>28</sup> See Preliminary Results, and accompanying Preliminary Decision Memorandum, at 9.

<sup>29</sup> See AR4/AR5 Opinion, 992 F. Supp. 2d at 1302.

“Hilltop has presented no new evidence to suggest that the Petition-based countrywide rate, as corroborated using (appropriately recalculated) contemporaneous data from the largest cooperating respondent during the POI, has lost its probative value.”<sup>30</sup> Thus, each of Hilltop’s arguments have previously been analyzed by the Department in the aforementioned remand redeterminations, and the Department’s conclusions have been subjected to judicial review and subsequently upheld by the Court.

In examining Hilltop’s argument that reliance on only a portion of Red Garden’s CONNUM-specific information was improper, the Court held that the Department did not act unreasonably in deciding to limit the data used in our corroboration analysis to only a portion Red Garden’s data. Specifically, the Court noted that “the percentage of Red Garden’s sales made at prices resulting in dumping margins at or exceeding 112.81 percent covered a volume of subject merchandise sufficiently significant to support a reasonable inference that this rate is probative of the non-cooperating countrywide entity’s actual pricing behavior.”<sup>31</sup>

Although Hilltop argues at length that this rate is not grounded in commercial reality and cites to a number of cases where the Courts have found an AFA rate improper on this point, as noted by Petitioner and Domestic Processors, the cases cited by Hilltop involved companies that were entitled to a separate rate or were not otherwise subject to a country-wide rate.<sup>32</sup> Specifically, Gallant Ocean involved an exporter of Thai shrimp, where there is no presumption of government control and no NME-wide rate.<sup>33</sup> In its AR4/AR5 Opinion, the Court stated that “where (as here) the non-cooperating respondent is a NME countrywide entity – definitionally presumed to set prices without regard to market conditions – the actual pricing behavior of the cooperative respondents that have demonstrated eligibility for a separate rate (precisely because they have differentiated themselves from the countrywide entity) does not bear upon the credibility of dumping allegations against the NME countrywide entity in the way that the pricing behavior of cooperative market economy respondents reflects on the credibility of dumping allegations against their similarly-situated market participants.”<sup>34</sup> The Court further stated that “[i]n the NME context, therefore, the inference that the countrywide entity as a whole may be dumping at margins significantly above the cooperating separate rate market participants is not unreasonable.”<sup>35</sup>

In Lifestyle Enterprise, the respondent was not assigned the PRC-wide rate but, rather, a separate rate, based on AFA, which was far greater than the rates assigned to other separate rate companies.<sup>36</sup> Thus, the separate rate assigned in Lifestyle Enterprise was subject to corroboration with respect to the commercial reality of the company at issue, not with respect to the countrywide entity that is presumed to set prices without regard to market conditions. Accordingly, the Department finds Hilltop’s argument with respect to the relative disparity

---

<sup>30</sup> Id.

<sup>31</sup> See AR4/AR5 Opinion, 992 F. Supp. 2d at 1301.

<sup>32</sup> See Hilltop Case Brief, at 4-7.

<sup>33</sup> See Gallant Ocean (Thailand) Co. v. United States, 602 F.3d 1319 (CAFC 2010) (“Gallant Ocean”).

<sup>34</sup> See AR4/AR5 Opinion, 992 F. Supp. 2d at 1299 (citations omitted).

<sup>35</sup> Id. at 1300.

<sup>36</sup> See Lifestyle Enterprise v. United States, 768 F. Supp. 2d 1286, 1298 (CIT 2011) (“Here, the highest separate rate assigned in the current review to a company other than Orient was 29.89%, which was the rate assigned to eighteen parties.”) (“Lifestyle Enterprise”).

between the PRC-wide rate of 112.81 and the rates calculated for separate rate respondents over the course of this proceeding not supported by administrative and legal precedent.

Hilltop cites to Shanghai Taoen<sup>37</sup> in support of its contention that the corroboration burden is greater where a history of calculated margins suggests that the petition rate is no longer appropriate.<sup>38</sup> However, as noted by the Court in its AR4/AR5 Opinion, “Hilltop has presented no new evidence to suggest that the Petition-based countrywide rate, as corroborated using (appropriately recalculated) contemporaneous data from the largest cooperating respondent during the {period of investigation}, has lost its probative value.”<sup>39</sup> Although Hilltop points to calculated rates in other segments of this proceeding for companies qualifying for a separate rate in order to support its claim,<sup>40</sup> as explained above, the PRC-wide rate for non-cooperative respondents need not be corroborated as to the commercial reality of companies qualifying for a separate rate. We further note that the Court in Shanghai Taoen explicitly stated that “both this court and the Federal Circuit have determined that in cases in which the respondent fails to provide Commerce with information necessary to calculate an accurate antidumping margin, ‘it is within Commerce’s discretion to presume that the highest prior margin reflects the current margins.’”<sup>41</sup> Accordingly, we find that neither the age of the information used to corroborate the PRC-wide rate used in every segment of this proceeding, nor the fact that lower margins have been calculated for cooperative separate respondents, leads to the conclusion that the PRC-wide rate of 112.81 percent no longer has probative value and is not properly corroborated, a position that has been affirmed by the CIT.

With respect to Hilltop’s argument that the Department relied on information that is not part of the record of this review to corroborate the AFA rate in this segment, the implication of this reasoning is that in every segment where a non-cooperative respondent is assigned total AFA, the Department must reproduce its corroboration analysis, and supporting data, in each subsequent segment. Hilltop’s argument ignores the fact that the PRC-wide entity rate has been corroborated in prior reviews and no new information is presented that would call into question the probative value of that rate.<sup>42</sup>

As explained in the Preliminary Results, and affirmed by the Court subsequent to publication of the Preliminary Results, we continue to find that because the 112.81 percent rate is both reliable

---

<sup>37</sup> See Shanghai Taoen Int’l Trading Co. v. United States, 360 F. Supp. 2d 1339, at 1347 (CIT 2005) (“Shanghai Taoen”)

<sup>38</sup> See Hilltop Case Brief at 5.

<sup>39</sup> See AR4/AR5 Opinion, 992 F. Supp. 2d at 1302.

<sup>40</sup> We note that Petitioner has highlighted Hilltop’s argument in this regard and alleges that it relies upon new factual information not on the record of this review. See Petitioner Rebuttal Brief, at 7-8. Although Hilltop’s case brief most certainly should have included a citation to the source of its claim that no respondent has received a margin in any segment of this proceeding exceeding 9.08 percent (see Hilltop Case Brief, at 5), the source of that claim is a matter of public record. See, e.g., Third Administrative Review of Frozen Warmwater Shrimp From the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 46565 (September 10, 2009).

<sup>41</sup> See Shanghai Taoen, 360 F. Supp. 2d at 1346 (citing Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330, 1339 (CAFC 2002) (citing Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1190 (CAFC 1990)).

<sup>42</sup> See, e.g., Fresh Garlic From the People’s Republic of China: Partial Final Results and Partial Final Rescission of the 2009-2010 Administrative Review, 77 FR 11486, 11488 (February 27, 2012) and accompanying Issues and Decision Memorandum at Comment 1.

and relevant, it continues to have probative value.<sup>43</sup> This rate (1) constitutes the highest rate from any segment of the proceeding, (2) was applied as the PRC-wide entity rate in the immediately preceding review and has been applied as the PRC-wide entity rate in seven prior reviews, and (3) was corroborated in using CONNUM-specific margins of a respondent in the underlying investigation, as adjusted following litigation. Accordingly, we are not making any changes to the PRC-wide entity rate for these final results.

### 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

*Ronald K. Lorentzen*

Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

*September 19, 2014*  
Date

---

<sup>43</sup> See Preliminary Results, and accompanying Preliminary Decision Memorandum at 8-9.

## Appendix

The PRC-wide entity includes 89 companies currently under review that have not established their eligibility for a separate rate. Those 89 companies, including Hilltop and Newpro, are:

Allied Pacific Aquatic Products Zhanjiang Co., Ltd.  
Allied Pacific Food (Dalian) Co., Ltd.  
Aqua Foods (Qingdao) Co., Ltd.  
Asian Seafoods (Zhanjiang) Co., Ltd.  
Beihai Boston Frozen Food Co., Ltd.  
Beihai Evergreen Aquatic Product Science and Technology Co., Ltd.  
Beihai Wanjiang Marine Products Co., Ltd.  
Dalian Hualian Foods Co., Ltd.  
Dalian Shanhai Seafood Co., Ltd.  
Dalian Taiyang Aquatic Products Co., Ltd.  
Dalian Z&H Seafood Co., Ltd.  
Eimskip Logistics (Qingdao) Co., Ltd.  
Eimskip Logistics Inc.  
EZ Logistics Inc.  
EZ Logistics LLC  
Fujian Chaohui International Trading  
Fujian Dongshan County Shunfa Aquatic Product Co., Ltd.  
Fujian Rongjiang Import and Export Co., Ltd.  
Fuqing Minhua Trade Co., Ltd.  
Fuqing Yihua Aquatic Food Co., Ltd.  
Fuqing Yiyuan Trading Co., Ltd.  
Guangdong Gourmet Aquatic Products Co., Ltd.  
Guangdong Jinhang Foods Co., Ltd.  
Guangdong Shunxin Sea Fishery Co., Ltd.  
Guangdong Wanshida Holding Corp.  
Guangdong Wanya Foods Fty. Co., Ltd.  
Hai Li Aquatic Co., Ltd.  
Hainan Brich Aquatic Products Co., Ltd.  
Hainan Golden Spring Foods Co., Ltd.  
Hainan Hailisheng Food Co., Ltd.  
Hainan Xiangtai Fishery Co., Ltd.  
Haizhou Aquatic Products Co., Ltd.  
Hangzhou Tianhai Aquatic Products Co., Ltd.  
Hilltop International  
Hua Yang (Dalian) International Transportation Service Co.  
Leizhou Beibuwan Sea Products Co., Ltd.  
Longhai Gelin Seafoods Co., Ltd.  
Longheng (Fuqing) Imp. & Exp. Co., Ltd.  
Longsheng Aquatic Co., Ltd.  
Maoming Xinzhou Seafood Co., Ltd.  
Olanya (Germany) Ltd.

Qingdao Yuanqiang Foods Co., Ltd.  
Rizhao Smart Foods Company Limited  
Rizhao Xinghe Foodstuff Co., Ltd.  
Rui'an Huasheng Aquatic Products Co., Ltd.  
Savvy Seafood Inc.  
Shandong Meijia Group Co., Ltd.  
Shanghai Linghai Fisheries Trading Co.,Ltd.  
Shanghai Lingpu Aquatic Products Co., Ltd.  
Shanghai Smiling Food Co., Ltd.  
Shanghai Zhoulian Foods Co., Ltd.  
Shantou Haiyou Aquatic Product Foodstuff Co., Ltd.  
Shantou Jiazhou Foods Industry Co., Ltd.  
Shantou Jin Cheng Food Co., Ltd.  
Shantou Jintai Aquatic Product Industrial Co., Ltd.  
Shantou Longsheng Aquatic Product Foodstuff Co., Ltd.  
Shantou Ruiyuan Industry Company Ltd.  
Shantou Wanya Foods Fty. Co., Ltd.  
Shantou Yuexing Enterprises Co.  
Shenzen Allied Aquatic Produce Development Ltd.  
Shenzhen Yudayuan Trade Ltd.  
Thai Royal Frozen Food Zhanjiang Co., Ltd.  
Xiamen Granda Import & Export Co., Ltd.  
Yancheng Hi-king Agriculture Developing Co., Ltd.  
Yanfeng Aquatic Product Foodstuff  
Yangjiang Anyang Food Co., Ltd.  
Yangjiang Wanshida Seafood Co., Ltd.  
Yelin Enterprise Co., Ltd.  
Zhangzhou Xinwanya Aquatic Product Co., Ltd.  
Zhangzhou Yanfeng Aquatic Product  
Zhanjiang Bo Bo Go Ocean Co., Ltd.  
Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd.  
Zhanjiang Fuchang Aquatic Products Co., Ltd.  
Zhanjiang Go Harvest Aquatic Products Co., Ltd.  
Zhanjiang Haizhou Aquatic Product Co., Ltd.  
Zhanjiang Hengrun Aquatic Co., Ltd.  
Zhanjiang Jinguo Marine Foods Co., Ltd.  
Zhanjiang Join Wealth Aquatic Products Co., Ltd.  
Zhanjiang Longwei Aquatic Products Industry Co., Ltd.  
Zhanjiang Newpro Foods Co., Ltd.  
Zhanjiang Rainbow Aquatic Development  
Zhanjiang Universal Seafood Corp.  
Zhejiang Daishan Baofa Aquatic Products Co., Ltd.  
Zhejiang Evernew Seafood Co., Ltd.  
Zhejiang Xinwang Foodstuffs Co., Ltd.  
Zhejiang Zhoufu Food Co., Ltd.  
Zhoushan Corporation

Zhoushan Genho Food Co., Ltd.  
Zhoushan Haiwang Seafood Co., Ltd.