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May 7, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Administrative Review of Honey from the People's Republic of China: Issues and Decision Memorandum for the Final Results

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SUMMARY

We have analyzed the case and rebuttal briefs submitted by Kunshan Xinlong Food Co., Ltd. ("Kunshan Xinlong") and Petitioners,[1] respectively, in the administrative review of honey from the People's Republic of China ("PRC"). As a result of our analysis, we have not made any changes since the Preliminary Results and continue to find Kunshan Xinlong part of the PRC-wide entity. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

BACKGROUND

The Department of Commerce ("Department") published the preliminary results of review on January 7, 2015.[2] The merchandise covered by the order is honey as described below. The period of review ("POR") is December 1, 2012, through November 30, 2013. In accordance with 19 CFR 351.309(c)(ii), we invited parties to comment on our Preliminary Results. On February 5, 2015, Kunshan Xinlong filed a case brief. On February 13, 2015, Petitioners filed a rebuttal brief.

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[1] Petitioners are the American Honey Producers Association and Sioux Honey Association.
[2] See Honey From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013, 80 FR 862 (January 7, 2015) and accompanying Preliminary Decision Memo ("Preliminary Results").

Scope of the Order

The products covered by this order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight and flavored honey. [3] The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this order is currently classifiable under subheadings 0409.00.00, 1702.90.90 and 2106.90.99 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Case Timeline

On February 28, 2014, the Department issued an antidumping duty questionnaire to Kunshan Xinlong.[4] The deadline we established for Section A of the questionnaire was March 18, 2014, and for Sections C and D of the questionnaire was April 3, 2014. On March 18, 2014, Kunshan Xinlong responded to Section A of the Department's questionnaire.[5] On April 3, 2014, Kunshan Xinlong responded to Sections C and D of the Department's questionnaire.[6]

On April 11, 2014, the Department issued a letter to all interested parties establishing the three deadlines to comment on: 1) the list of potential surrogate countries, 2) the selection of the primary surrogate country, and 3) surrogate value selection.[7] The first deadline was set to May 7, 2014, with rebuttal comments due May 12, 2014. The second deadline was set to May 20, 2014, with rebuttal comments due May 30, 2014. The third, and final, deadline was set to June 10, 2014, with rebuttal comments due June 20, 2014.

On May 6, 2014, Kunshan Xinlong requested an extension of the May 7, 2014, deadline to comment on the list of potential surrogate countries, which we granted until May 14, 2014, with rebuttal comments due May 19, 2014.[8] On May 14, 2014, Petitioners submitted their timely comments on the list of potential surrogate countries. As noted above, the deadline for rebuttal comments on the list of potential surrogate countries was May 19, 2014.

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[3] The Department determined that blends of honey and rice syrup, regardless of the percentage of honey they contain, from the PRC are later-developed merchandise within the meaning of section 781(d) of the Tariff Act of 1930, as amended ("the Act"), and are within the scope of the Order. See Honey From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order, 77 FR 50464 (August 21, 2012) ("Order").

[4] See Letter from Catherine Bertrand, Program Manager, Office V, to Kunshan Xinlong, "Honey from the People's Republic of China ("PRC"): Non-Market Economy Questionnaire," dated February 28, 2014.

[5] See Kunshan Xinlong's Section A Questionnaire Response, dated March 18, 2014.

[6] See Kunshan Xinlong's Sections C and D Questionnaire Response, dated April 3, 2014.

[7] See Letter from Catherine Bertrand, Program Manager, Office V, to All Interested Parties, "Twelfth Administrative Review of Honey from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information," dated April 11, 2014.

[8] See "Memorandum to the File from Kabir Archuletta, Analyst, Office V; Request for Extension of Comment Period on List of Countries at the Same Level of Economic Development," dated May 7, 2014.

On May 21, 2014, after close-of-business (6:37 pm), thus considered as filed the following business day, May 22, 2014, and three days after the May 19, 2014, rebuttal comments deadline, Kunshan Xinlong filed its untimely rebuttal comments to Petitioners May 14, 2014 comments.[9] As noted above, the Department notified all interested parties on May 7, 2014, that rebuttal comments for economic comparability arguments were due on May 19, 2014.[10]

On May 22, 2014, Petitioners filed a letter requesting that the Department reject Kunshan Xinlong's untimely rebuttal comments.[11] Citing to 19 CFR 351.302(c), Petitioners argued that "pursuant to the Department's regulations, a party must submit a written stand-alone extension request before the applicable time limit expires…Thus, Kunshan Xinlong's May 21, 2014, rebuttal comments are untimely and cannot be considered by the Department."[12] While the Department did not reject Kunshan Xinlong's untimely rebuttal, we issued a letter to Kunshan Xinlong on June 9, 2014, stating that:

> while we have determined that Kunshan Xinlong's comments were untimely, we do not find that rejection or acceptance of this submission would unfairly prejudice any interested party to this proceeding. Accordingly, we are not rejecting Kunshan Xinlong's untimely submission. However, we strongly advise Kunshan Xinlong to strictly adhere to the deadlines set by the Department for all future submissions in this proceeding.[13]

On June 18, 2014, Petitioners requested the Department to issue supplemental questions to Kunshan Xinlong regarding the bona fide nature of its sales and other questions regarding separate rate information including ultimate ownership.[14] Subsequently, we issued a supplemental Section A questionnaire on June 30, 2014.[15] In the first paragraph of the cover letter of the Department's supplemental questionnaire, we directed Kunshan Xinlong to "please file your supplemental response by 5:00 pm on July 7, 2014."[16]

On July 1, 2014, we also issued a supplemental Section C questionnaire ("SSCQ1"). In the first paragraph of the cover letter of our SSCQ1, we directed Kunshan Xinlong to "please file your

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[9] See Kunshan Xinlong's "Rebuttal Comments on Petitioners' Comments on List of Potential Surrogate Countries and Surrogate Country Selection," dated May 21, 2014 (Barcode: 3203338-01). The barcode upload superscript on the official record document shows following information regarding its ACCESS upload status: "Filed By: yxiao@leexiao.com, Filed Date: 5/21/14 6:37 PM, Submission Status: Approved." Because Kunshan Xinlong filed these comments after close-of-business on May 21, 2014, this submission is considered dated May 22, 2014.
[10] See "Memorandum to the File from Kabir Archuletta, Analyst, Office V; Request for Extension of Comment Period on List of Countries at the Same Level of Economic Development," dated May 7, 2014.
[11] See Petititioners' Letter dated May 22, 2014, wherein Petitioners' requested rejection of Kunshan Xinlong's May 21, 2014, rebuttal arguing that "without requesting a time extension, Kunshan Xinlong filed its rebuttal on May 21, 2014, two days after the deadline."
[12] Id.
[13] See "Memorandum to the File, from Kabir Archuletta, Analyst, re: Petitioner Request for Rejection of Comments by Kunshan Xinlong Food Co., Ltd.," dated June 9, 2014.
[14] Id., at pages 2-9.
[15] See the Department's Supplemental Questionnaire dated June 30, 2014 (Barcode: 3212348-01). The barcode upload superscript on the official record document shows following information regarding its ACCESS upload status: "Filed By: Frances Veith, Filed Date: 6/27/14 5:25 PM, Submission Status: Approved."
[16] Id.

response to this supplemental questionnaire, along with the appropriate summarization of proprietary data, as required by 19 CFR 351.304(c) by 5:00 pm on July 8, 2014."[17]

On July 2, 2014, Kunshan Xinlong, having received our supplemental Section A questionnaire dated June 30, 2014, filed a letter[18] on IA-ACCESS, requesting an extension of the established July 7, 2014, deadline, which we granted and extended to July 21, 2014.[19]

On July 2, 2014, the Department issued another supplemental questionnaire ("SSCQ2") containing questions for both Kunshan Xinlong and its U.S. importer. In the first paragraph of the cover letter of our July 2, 2014, SSCQ2, we directed Kunshan Xinlong to "please file your supplemental response by 5:00 pm on July 9, 2014."[20]

On July 7, 2014, nearing close-of-business, counsel for Kunshan Xinlong communicated with the Department that "she was encountering difficulties in the electronic filing of her client's surrogate value comments." The Department confirmed the issue and extended the deadline for submission of comments on the selection of surrogate values by one day, to 5:00 pm on July 8, 2014, with rebuttal comments due by 5:00 pm on July 18, 2014.[21] Because our memorandum was issued and uploaded after close-of-business on July 7, 2014, the one-day extension was not electronically disseminated via notification until July 8, 2014. In the meantime, on July 7, 2014, Kunshan Xinlong filed comments on the selection of surrogate values, in 15 parts, in the late evening.[22]

After close-of-business on July 8, 2014, Kunshan Xinlong filed a letter requesting an extension of the July 9, 2014, deadline to file its response with respect to the importer-specific questions

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[17] See the Department's Supplemental Questionnaire dated July 1, 2014 (Barcode: 3212911-01). The barcode upload superscript on the official record document shows following information regarding its ACCESS upload status: "Filed By: Frances Veith, Filed Date: 7/1/14 4:15 PM, Submission Status: Approved."

[18] See Kunshan Xinlong's letter dated July 2, 2014, re: "Request for Extension of Time to File Supplemental Questionnaire Response."

[19] See Letter from Catherine Bertrand, Program Manager, Office V, to Kunshan Xinlong, care of Yingchao Xiao, counsel, dated July 2, 2014 (Barcode:3213116-01). The barcode upload superscript on the official record document shows following information regarding its ACCESS upload status: "Filed By: Frances Veith, Filed Date: 7/2/14 3:08 PM, Submission Status: Approved."

[20] See the Department's importer questionnaire dated July 2, 2014 (Barcode: 3213163-01). The barcode upload superscript on the official record document shows following information regarding its ACCESS upload status: "Filed By: Frances Veith, Filed Date: 7/2/14 4:05 PM, Submission Status: Approved."

[21] See "Memorandum to the File, from Frances Veith, Analyst, re: Extension of Comment Period on Selection of Surrogate Values," dated July 7, 2014 (Barcode: 3214185-01). The barcode upload superscript on the official record document shows following information regarding its ACCESS upload status: "Filed By: Frances Veith, Filed Date: 7/7/14 5:12 PM, Submission Status: Approved."

[22] See Kunshan Xinlong's July 7, 2014, submission, re: "Comments on Surrogate Value Selection," (Barcode: 3214247-01). The barcode upload superscript on the official record document shows following information regarding its ACCESS upload status: "Filed By: yxiao@leexiao.com, Filed Date: 7/7/14 7:54 PM, Submission Status: Approved." This submission contained 15 parts, the last of which (Barcode: 3214261-01) was uploaded at 9:43 PM: "Filed By: yxiao@leexiao.com, Filed Date: 7/7/14 9:43 PM, Submission Status: Approved."

contained in our July 2, 2014, SSCQ2.[23] This extension request did not address the July 8, 2014, deadline for SSCQ1 response. This extension request was filed well after close-of-business on July 8, 2014. Nevertheless, on July 9, 2014, the Department granted Kunshan Xinlong's same-day request, extending the deadline to July 23, 2014.[24]

Despite having accessed other business proprietary documents from the IA-ACCESS[25] system before and after July 1, 2014, Kunshan Xinlong did not file an extension request by the July 8, 2014, deadline to respond to our July 1, 2014, SSCQ1.[26]

On July 9, 2014, Kunshan Xinlong filed a response to our July 2, 2014, SSCQ2, providing responses to the questions directed to Kunshan Xinlong. As noted above, we granted Kunshan Xinlong's extension request to submit the importer-specific responses for SSCQ2.

On July 11, 2014, the Department removed two documents from the record pertaining to Kunshan Xinlong's surrogate value comments submission attempted prior to close-of-business on July 7, 2014. Specifically, we stated that "these submissions pertaining to Kunshan Xinlong Food Co. Ltd…were incorrectly filed on the record pursuant to the technical problem."[27] Further, on July 11, 2014, we also issued a letter to Kunshan Xinlong, stating that {retained portions of} its surrogate value submission dated July 7, 2014, contained information that was "illegible, lacking translation, or missing completely."[28] We directed Kunshan Xinlong to "please resubmit the following in their entirety and ensure that all deficiencies noted below are corrected by 5:00 p.m. on July 18, 2014."[29] As a result, we rejected the following submissions and did not retain a copy of these documents on the official record of this administrative review:

• IA ACCESS Barcode 3214179-01 (Public Document): Surrogate Comments
• IA ACCESS Barcode 3214183-01 (Public Document): Exhibit Thailand 3 - 7

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[23] See Kunshan Xinlong's July 8, 2014, letter re: "Request for Extension of Time to File Supplemental Questionnaire Response," (Barcode: 3214694-01). The barcode upload superscript on the official record document shows following information regarding its ACCESS upload status: "Filed By: yxiao@leexiao.com, Filed Date: 7/8/14 9:43 PM, Submission Status: Approved." Because this extension request was filed and uploaded well after close-of-business, the extension request was considered to be filed on the same day as the deadline for the response.
[24] See "Memorandum to the File, from Carrie Bethea, Analyst, re: Request for Extension of the Deadline to File a Response to the Importer-Specific Supplemental Questionnaire for Kunshan Xinlong Food Co., Ltd.," dated July 9, 2014 (Barcode:3214760-01).
[25] On November 24, 2014, Enforcement and Compliance changed the name of Enforcement and Compliance's AD and CVD Centralized Electronic Service System ("IA ACCESS") to AD and CVD Centralized Electronic Service System ("ACCESS"). The website location was changed from http://iaaccess.trade.gov to http://access.trade.gov. The Final Rule changing the references to the Regulations can be found at 79 FR 69046 (November 20, 2014). For purposes of these final results, we make reference to IA-ACCESS rather than ACCESS because all of the documents on the record prior to the Preliminary Results refer to "IA-ACCESS." Documents in this POR which arrived before that date have an "IA ACCESS" reference and those after that date have "ACCESS."
[26] Business Proprietary documents are maintained in IA-ACCESS for two weeks after the upload date. Thus, our July 1, 2014, supplemental questionnaire was accessible on IA-ACCESS until July 15, 2014.
[27] See "Memorandum to the File, from Carrie Bethea, Analyst, re: Rejection of certain Kunshan Xinlong Surrogate Value Submissions," dated July 11, 2014 (Barcode: 3215147-01).
[28] See Letter to Kunshan Xinlong dated July 11, 2014, re: Supplemental Questionnaire {regarding deficiencies in surrogate value submission}(Barcode: 3215264-01).
[29] Id.

On July 10, 2014, and July 11, 2014, we issued two separate Section D questionnaires.[30] Because Kunshan Xinlong filed extension requests for both of these supplemental questionnaires,[31] record evidence indicates that Kunshan Xinlong accessed IA-ACCESS within the period when the SSCQ1 was still available and accessible on IA-ACCESS.

On July 22, 2014, Petitioners filed a letter noting that Kunshan Xinlong did not file its response to the Department's July 1, 2014, SSCQ1 by the established deadline of July 8, 2014.[32] Petitioners further noted that Kunshan Xinlong, likewise, did not file a request to extend the July 8, 2014, deadline.

On July 23, 2014, the Department issued a memorandum containing several attachments.[33] The IA-ACCESS Digest Memo contained the following:

- IA BPI Release Digest for Barcode 3212911-01 (Attachment 1)
- IA Public Release Digest for Barcode 3212912-01 (Attachment 2)
- Document Access Sheet for Barcode 3212911-01 (Attachment 3)
- Document Access Sheet for Barcode 3212912-01 (Attachment 4)
- APO Service List (Attachment 5)

Attachment 1 contained the electronic mail communication (Wednesday, July 02, 2014 12:06 PM) from the Department to counsel for Kunshan Xinlong regarding the release of the July 1, 2014, SSCQ1. Attachment 2 contained the electronic mail communication (Wednesday, July 02, 2014 12:06 PM) from the Department to counsel for Kunshan Xinlong regarding the release of the public version of the July 1, 2014, SSCQ1. Attachment 3 contained a barcode tracking result for Barcode 3212911-01 (the business proprietary version of the July 1, 2014, SSCQ1) showing that an interested party accessed the business proprietary document on July 2, 2014 at 1:29:49 PM, approximately one and a half hours after IA-ACCESS transmitted the document notification via electronic mail. Attachment 4 contained a barcode tracking result for Barcode 3212912-01 (the public version of the July 1, 2014, SSCQ1) showing that several interested parties accessed the public version between July 2, 2014, and July 21, 2014. Neither of these barcode tracking results show that Kunshan Xinlong accessed either of these documents. Attachment 5 contains the Administrative Protective Order Service List for this segment of the proceeding, where Kunshan Xinlong's counsel's contact information is clearly visible and activated for dissemination of documents placed on the record.

On July 23, 2014, Kunshan Xinlong filed its responses to the importer-specific questions contained in our July 2, 2014, SSCQ2.[34] On July 25, 2014, Kunshan Xinlong submitted its

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[30] See the Department's supplemental questionnaires dated July 10, 2014 (Barcode: 3214832-01) and July 11, 2014 (Barcode: 3215292-01).

[31] See Kunshan Xinlong's July 15, 2014, letter re: "Request for Extension of Time to Respond to Supplemental Questionnaire – Reconciliations," (Barcode: 3215906-01). See also Kunshan Xinlong's July 15, 2014, letter re: "Request for Extension to Respond to Section D Supplemental Questionnaire," (Barcode: 3215905-01).

[32] See Petitioners' July 22, 2014, submission re: "Comments on Kunshan Xinlong Section C Supplemental Questionnaire Response," (Barcode: 3217063-01).

[33] See "Memorandum to the File, from Ryan Fleer, Analyst Intern, re: Placing IA Access Digest, Document Access Sheets, and APO Service List On Record," dated July 23, 2014 (Barcode: 3217260-01) ("IA-ACCESS Digest Memo"). This memorandum contained the release details of the business proprietary information ("BPI") SSCQ1.

response to the Department's July 11, 2014, general supplemental Section D questionnaire. On July 25, 2014, Kunshan Xinlong also filed a letter requesting that the Department reissue its July 1, 2014, SSCQ1.[35] Kunshan Xinlong provided explanations, based on allegedly special circumstances, for its failure to timely file its response to the July 1, 2014, SSCQ1.[36]

On July 29, 2014, Petitioners filed a letter protesting Kunshan Xinlong's request for reissuance of the July 1, 2014, SSCQ1.[37] On August 2, 2014, Kunshan Xinlong filed a letter responding to Petitioners' July 29, 2014, letter and containing a second request for reissuance of our July 1, 2014, SSCQ1.[38]

On August 8, 2014, Petitioners filed a letter protesting Kunshan Xinlong's August 2, 2014, second request for the Department to reissue its SSCQ1.[39] On August 18, 2014, Kunshan Xinlong filed a letter responding to Petitioners' August 8, 2014, letter protesting Kunshan Xinlong's requests for reissuance of the SSCQ1.[40]

On January 7, 2014, the Department issued its Preliminary Results, wherein we applied adverse facts available to the PRC-wide entity, including Kunshan Xinlong. On February 5, 2014, Kunshan Xinlong filed its case brief and on February 13, 2014, Petitioners filed their rebuttal brief.

DISCUSSION OF THE ISSUES

Comment 1: Whether the Department's Rejection of Kunshan Xinlong's Post-Deadline Extension Requests Was Appropriate

Kunshan Xinlong's Argument:

- There is no evidence on the record showing that the Department notified interested parties that it issued a supplemental questionnaire on July 1, 2014. The Department's reference to the IA-ACCESS digest only shows that notification to parties should have occurred, not that it actually occurred.
- The Department's own evidence shows that Kunshan Xinlong's counsel did not log into the IA-ACCESS files for this supplemental questionnaire for several weeks subsequent to July 1, 2014, while counsel did log in for every single issuance of the Department's documents.
- Failure of notification delivery is an extraordinary circumstance and a good cause for granting an extension request under 19 CFR 351.302(c).

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[34] See Kunshan Xinlong's July 23, 2014, submission (Barcode: 3217290-01). Kunshan Xinlong reported that, despite its attempts to obtain responses from its U.S. importer, the U.S. importer declined to respond to the Department's questions.
[35] See Kunshan Xinlong's July 25, 2014, letter (Barcode: 3217747-01).
[36] Id.
[37] See Petitioners' July 29, 2014, submission re: "Comments on Kunshan Xinlong's July 25, 2014 Request," (Barcode: 3218326-01).
[38] See Kunshan Xinlong's August 2, 2014, letter (Barcode: 3219547-01).
[39] See Petitioners' August 8, 2014, submission re: "Comments on Kunshan Xinlong 's August 2 and 7, 2014 Requests," (Barcode: 3220792-01).
[40] See Kunshan Xinlong's August 18, 2014, letter (Barcode: 3222281-01).

- The Department:
  - failed to articulate how non-delivery of notice fails to meet standards for untimely extension, considering that counsel for Respondent provided two separate explanations in its July 25, 2014, and August 2, 2014, letters.
  - has not cited to the record indicating how counsel's non-receipt of the notice is a somehow a product of insufficient resources, inattentiveness, or the inability of counsel to access the Internet on the day on which the submission was due.
  - failed to articulate how Kunshan Xinlong's explanation that it did not receive the notice is not plausible and how substantial evidence on the case record supports its conclusion, or how its conclusion represents a reasonable interpretation of applicable law in light of evidence on the record as a whole.
- Unlike the previous system for issuance of documentation, in physical form, the Department's current system of electronic distribution lacks such proofs of a party's receipt of notice of the Department's release of documents such as the SSCQ1. There no longer appears to be any mechanism or policy for confirming the successful delivery of such notice.
- Fairness requires acceptance of submissions and resumption of review. Respondent requested this review, has provided (with the exception of the SSCQ1) timely responses to each of the Department's numerous questionnaires, has participated fully, and has met all reasonable expectations of cooperation.
- The untimeliness of surrogate country comments is irrelevant. The fact that Respondent did not timely file its response to this questionnaire is entirely the result of the non-delivery of notice and has nothing whatsoever to do with Respondent's counsel's adherence to deadlines for which she has been given proper notice.

Petitioners' Rebuttal:

- The Department's decision to not retroactively extend the SSCQ1 response deadline is supported by substantial evidence, and consistent with the Department's longstanding practice and case law.
- The Courts have repeatedly upheld the Department's authority and discretion to enforce its administrative deadlines, most recently in Dongtai Peak, in which Kunshan Xinlong's counsel also represented plaintiffs.[41]
- Kunshan Xinlong failed to demonstrate an "extraordinary circumstance" required for the Department to consider Kunshan Xinlong's untimely extension requests.
- Section 351.302(b) of the Department's regulations states that, the "good cause" standard is applicable only to timely extension requests. It is section 351.302(c) that defines the standard for granting untimely extension requests under the "extraordinary circumstances" rule.[42]
- The Department has defined the "extraordinary circumstances" rule as "unexpected event that: (1) could not have been prevented if reasonable measures had been taken and (2) precludes a party or its representative from timely filing an extension request through all

[41] See Petitioners' Rebuttal Brief dated February 13, 2015, at 15-16, citing to Dongtai Peak v. United States, 777 F. 3d 1343 (Fed. Cir. 2015) ("Dongtai Peak").
[42] See Petitioners' Rebuttal Brief, at 11, citing to Extension of Time Limits, 78 FR 57790, 57792-57793 (September 20, 2013).

reasonable means."[43] It is the requesting party's responsibility to demonstrate that an extraordinary circumstance exists.[44]

- The Department explained in Extension of Time Limits, "{e}xamples of extraordinary circumstances include a natural disaster, riot, war, force majeure, or medical emergency," while "{e}xamples that are unlikely to be considered extraordinary circumstances include insufficient resources, inattentiveness, or the inability of a party's representative to access the Internet on the day on which the submission was due."[45] The Department also stated that "a technical failure of IA ACCESS generally is not an extraordinary circumstance."[46]
- The printout of counsel's email inbox included in the August 2, 2014, letter is unreliable "evidence" because it does not represent that state of counsel's email inbox on the date of the issuance of the SSCQ1. There is no way for the Department to determine whether any changes were made to the inbox.
- Even if Kunshan Xinlong could demonstrate that its counsel did not receive the SSCQ1 electronic mail notice, the record demonstrates that its counsel had other notice of the SSCQ1 because all business proprietary documents released by the Department remain on IA-ACCESS for 15 days after they are released (while all public documents remain permanently on IA-ACCESS).
- The SSCQ1 was successfully uploaded and transmitted to IA-ACCESS because several interested parties viewed the document. The Department's SSCQ1 would have been visible on the list of documents available for downloading every time Kunshan Xinlong's counsel logged onto IA-ACCESS to access between July 2 and July 17. Kunshan Xinlong's counsel admits to accessing other documents on IA-ACCESS during this period, and therefore had notice of the SSCQ1 even if the e-mail notice was not received or opened.
- Kunshan Xinlong's counsel's failure to take the reasonable measure of opening the SSCQ1 and request an extension before the applicable deadline is not an "extraordinary circumstances" that would warrant the Department considering the untimely requests under 19 CFR 351.302(c). Kunshan Xinlong did not identify an unexpected event that caused it to timely submit the SSCQ1 response or an extension request; missing a Department deadline should be expected if one ignores Department e-mail notices and IA-ACCESS filings.
- Even if Kunshan Xinlong did experience some technical failure with IA-ACCESS that prevented it from accessing the SSCQ1—which record evidence does not indicate occurred—the Department explained in Extension of Time Limits that "'a technical failure of IA-ACCESS generally is not an extraordinary circumstance.' Although the Department's discussion of IA-ACCESS technical failures focused on parties' difficulty in *filing* submissions on IA-ACCESS, that general rule should apply equally to parties' difficulties *accessing* IA-ACCESS. This provides additional justification for the Department's finding that Kunshan Xinlong failed to demonstrate an "extraordinary circumstance."[47]
- The U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") upheld the Department's broad discretion to establish its own rules governing administrative procedures, including the establishment and enforcement of time limits, by upholding the Department's rejection of untimely filed factual information as within the Department's inherent authority

[43] Id., citing to Extension of Time Limits, 78 FR at 57793.
[44] Id.
[45] Id.
[46] Id.
[47] See Petitioners' Rebuttal Brief, at 14.

to implement and enforce procedures and deadlines.[48] It is not "arbitrary, capricious, or an abuse of discretion" for the Department to enforce its administrative deadlines.

- The Department's revised regulations now apply the heightened standard of requiring the showing of an "extraordinary circumstance" to consider untimely filed extension requests that apply to this review (versus the prior standard of "good cause" that applied to the prior segment at issue in Dongtai Peak—the tenth administrative review).
- Contrary to Kunshan Xinlong's arguments that the "reasonableness and fairness considerations also require that the Department grant extensions to the aforementioned deadlines,"[49] Kunshan Xinlong has not been treated unfairly because the Department provided Kunshan Xinlong repeated warnings that the timing of the review was critical and that timely submission of documents, including extension requests, would be required.
- Having participated in the tenth administrative review of this AD order and the subsequent litigation in Dongtai Peak, Kunshan Xinlong's counsel: 1) is well aware of the time-sensitive nature of the Department's administrative reviews, 2) had notice of the requirements as well as an opportunity to comply and be heard, and 3) cannot properly blame the Department for any lack of opportunity to be heard in this case.
- In Dongtai Peak, the Federal Circuit held that "Commerce's rejection of untimely-filed factual information does not violate a respondent's due process rights when the respondent had notice of the deadline and an opportunity to reply."[50]

Department's Position:

The Department disagrees with Kunshan Xinlong regarding its decision not to grant a post-deadline extension request to allow it to file its outstanding SSCQ1 response. The Department properly applied the appropriate regulations to the circumstances presented during the course of the review, citing to record evidence supporting our determination in accordance with the regulations and our practice.

Kunshan Xinlong argues that it did not receive notification of the uploaded July 1, 2014 SSCQ1,[51] and thus, had no knowledge of the existence of this supplemental questionnaire. However, the IA-ACCESS Digest Memo provides evidence that the auto-delivery of the notification had occurred.[52] Furthermore, other interested parties with APO privileges accessed the document.[53] Thus, contrary to Kunshan Xinlong's claims, there is no evidence on the record that IA-ACCESS suffered a technical failure in the auto-delivery of the electronic notification of the issuance of the July 1, 2014, SSCQ1. Rather, record evidence demonstrates that IA-ACCESS sent notification of the SSCQ1.

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[48] Id., at 15, citing to PSC VSMPO-Avisma Com, v. United States, 688 F.3d 751, 761 (Fed. Cir. 2012) ("PSC VSMPO"), et al.
[49] Id., at 17, citing to Kunshan Xinlong's Case Brief at 17.
[50] Id., at 18, citing to Dongtai Peak, 777 F. 3d at 1353 (citing PSC VSMPO, 688 F.3d at 761-62).
[51] See the Department's Supplemental Questionnaire dated July 1, 2014 (Barcode: 3212911-01). The barcode upload superscript on the official record document shows following information regarding its ACCESS upload status: "Filed By: Frances Veith, Filed Date: 7/1/14 4:15 PM, Submission Status: Approved."
[52] See IA-ACCESS Digest Memo at Attachments 1-5.
[53] Id.

To request an untimely extension, counsel for Kunshan Xinlong initially provided a "rushed, panicked attempt at conveying best guess reasons that Respondent's counsel was not aware of the issuance of the SSCQ1."[54] Thereafter, counsel for Kunshan Xinlong filed another letter with "an explanation of the truth ultimately discovered by Respondent's counsel."[55] Kunshan Xinlong's July 25, 2014, letter included the explanation that counsel was, first, unable to access the internet. This explanation was followed by the August 2, 2014, letter which then claimed that the Department allegedly failed to notify counsel of the issuance of the SSCQ1. However, neither of these explanations falls under the meaning of "extraordinary circumstances" as defined in Extension of Time Limits and noted in the Preliminary Results.[56] Specifically, Extension of Time Limits states that:

> examples that are unlikely to be considered extraordinary circumstances include insufficient resources, inattentiveness, or the inability of a party's representative to access the Internet on the day on which the submission was due…Concerning whether problems with IA ACCESS constitute "extraordinary circumstances," a technical failure of IA ACCESS generally is not an extraordinary circumstance.[57]

As we articulated in Extension of Time Limits, technical failures (even if one *had* occurred) generally do not qualify as an "extraordinary circumstance" to grant untimely extension requests.

Kunshan Xinlong's argument that its August 2, 2014, letter contained copies of the printout of counsel's email inbox page with inbox entries dated July 2, 2014, is inapposite because it does not represent the emails that Kunshan Xinlong's counsel received on July 2, 2014, the day of the notification of the SSCQ1 issuance. This also contradicts the Department's IA-ACCESS Digest Memo that shows confirmation that the IA-ACCESS electronic auto-delivery executed properly.

Kunshan Xinlong also argues that record evidence shows that its counsel "did not log into the IA-ACCESS files for this supplemental questionnaire for several weeks subsequent to July 1, 2014."[58] However on July 2, 2014, the Department issued another supplemental questionnaire[59] to Kunshan Xinlong. Kunshan Xinlong's counsel acknowledged receipt for the July 2, 2014, supplemental questionnaire because on July 8, 2014, counsel filed a deadline extension request for the July 2, 2014, SSCQ2.[60] When accessing the system to view the July 2, 2014, SSCQ2 (for which Kunshan Xinglong requested an extension of the deadline), the July 1, 2014, SSCQ1 was uploaded, available and accessible on IA-ACCESS,[61] along with the July 2, 2014, SSCQ2. Indeed, counsel for Kunshan Xinlong accessed IA-ACCESS multiple times before the two-week

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[54] See Kunshan Xinlong's Case Brief at 8, citing to its July 25, 2014, letter to the Department.
[55] Id., citing to its August 2, 2014, letter to the Department.
[56] See Preliminary Results, 80 FR 862 and Preliminary Decision Memo at 6.
[57] See Extension of Time Limits, 78 FR at 57793.
[58] See Kunshan Xinlong's Case Brief at 5.
[59] See the Department's importer questionnaire dated July 2, 2014 (Barcode: 3213163-01). The barcode upload superscript on the official record document shows following information regarding its ACCESS upload status: "Filed By: Frances Veith, Filed Date: 7/2/14 4:05 PM, Submission Status: Approved."
[60] See Kunshan Xinlong's July 8, 2014, letter re: "Request for Extension of Time to File Supplemental Questionnaire Response" – an extension request for a supplemental questionnaire we issued on July 2, 2014.
[61] The two-week availability period of the July 1, 2014, SSCQ1 ended on July 15, 2014.

accessibility period expired.[62] Thus, Kunshan Xinlong did not provide a plausible explanation for having missed a response deadline. As an initial matter, as demonstrated above, contrary to Kunshan Xinglong's arguments, the Department's IA-ACCESS system sent notification to Kunshan Xinglong of the issuance of the July 1, 2014, SSCQ1. Additionally, the SSCQ1 was available and viewable until July 15, 2014, along with other documents that counsel acknowledged receiving.[63] Kunshan Xinlong's counsel's inattentiveness to the information available on the record does not excuse the respondent from filing its responses by the established deadlines. Further, it is not the Department's responsibility to ensure that counsel monitors the IA-ACCESS system for updates or uploaded documents, when parties are sent e-mail notification of documents issued via IA-ACCESS and are capable of searching the IA-ACCESS system of their own volition.[64]

The IA-ACCESS system automatically disseminates electronic notifications of uploaded documents to interested parties with log-in access and, for BPI documents, appropriate authorization.[65] Thus, it stands to reason, and record evidence shows, that electronic notifications were sent to respondent's counsel, as noted in our IA-ACCESS Digest Memo, and to other interested parties with APO access.[66] The IA-ACCESS Digest Memo shows that other interested parties accessed the document subsequent to upload. The electronic notification informs parties that the Department has uploaded a document on the record for the interested parties to access, view, respond to, or comment on. The ultimate responsibility of accessing, viewing, and downloading the document remains with the respondent. Furthermore, Kunshan Xinlong's argument that the electronic notification system is not as reliable as the Department's former system of issuing paper BPI documents is of no consequence here. The Department began uploading BPI documents electronically to IA-ACCESS in August 2013, and counsel for Kunshan Xinlong, as an authorized external party with log-in capabilities to view BPI on IA-ACCESS, was aware and has been capable of accessing, viewing, and retrieving BPI documents (within the 14-day window) uploaded to IA-ACCESS since we instituted this technology. Moreover, all external parties with log-in capabilities were required to partake in IA-ACCESS training, and were provided with the IA-ACCESS handbook.[67] The handbook clearly states that "{r}epresentatives of a party are expected to log into ACCESS and download documents

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[62] See, e.g., Kunshan Xinlong's letter dated July 2, 2014, re: "Request for Extension of Time to File Supplemental Questionnaire Response" – an extension request for a supplemental questionnaire we issued on June 30, 2014; see also Kunshan Xinlong's July 8, 2014, letter re: "Request for Extension of Time to File Supplemental Questionnaire Response" – an extension request for a supplemental questionnaire we issued on July 2, 2014. On July 15, 2014, Kunshan Xinlong filed two letters (Barcoded 3215906-01 and 3215905-01) requesting deadline extensions for two supplemental questionnaires issued on July 10, and July 11, 2014, indicating that Kunshan Xinglong had viewed and downloadedthose supplemental questionnaires from IA-ACCESS.

[63] Id.

[64] See, e.g., Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 64746 (October 31, 2014) and accompanying Issues and Decision Memorandum at Comment 1, where the Department stated that the respondent "failed to explain why its counsel could not search the public record of the review of counsel's own volition, especially if, as counsel asserts, he was awaiting the Department's decision concerning the transferring of responses from one record to another."

[65] See IA-ACCESS Handbook at 20, available at: https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.

[66] See IA-ACCESS Digest Memo at Attachments 1 and 2.

[67] See IA-ACCESS handbook at 20, available at: https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.

containing their client's BPI as well as those documents containing third party BPI that are released under APO…It is the responsibility of the lead attorney or his or her Proxy to retrieve the BPI documents."[68]

The Federal Circuit also affirmed our stated practice that "inattentiveness, or the inability of a party's representative to access the Internet on the day on which the submission was due," is not an extraordinary circumstance.[69] In fact, in Dongtai Peak, a case concerning the tenth administrative review of the antidumping duty order on Honey from the PRC, the Federal Circuit addressed much of the same argument as presented in this case by Kunshan Xinlong. Specifically, the Federal Circuit affirmed that in the tenth administrative review the Department "properly exercised its discretion in rejecting Dongtai Peak's extension requests and Supplemental Responses because (1) the extension requests were submitted after the established deadline in violation of 19 C.F.R. § 351.302(c), and (2) Appellant failed to show 'good cause' for an extension as required by § 351.302(b).'"[70] In this case, the stricter "extraordinary circumstances" rather than "good cause" standard applied for parties seeking an out-of-time extension.[71] Further, the argument that the Department is required to justify denial of an extension request under the "good cause" rule was directly addressed and rejected by the Federal Circuit:

> Appellant misunderstands its obligation to submit a written extension request before the time limit specified by Commerce and to 'state the reasons for the request.' Id. § 351.302(c). That is, Commerce was not required to demonstrate good cause for rejecting Dongtai Peak's untimely submissions. As the Government notes, '{i}t is not for Dongtai Peak to establish Commerce's deadlines or to dictate to Commerce whether and when Commerce actually needs the requested information.[72]

The Federal Circuit also acknowledged that the Department had cautioned respondent Dongtai Peak against untimely extension requests, which supported the Department's rejection of untimely filed extension requests and untimely filed supplemental questionnaire responses.[73] Similarly, in this review, the Department cautioned the respondent to adhere to the deadlines in both filing extension requests and filing supplemental questionnaire responses.[74]

Contrary to Kunshan Xinlong's arguments, the Department has not treated Kunshan Xinlong unfairly. On the contrary, when Kunshan Xinlong filed its untimely surrogate country list rebuttal comments, the Department did not reject those comments, as we are entitled to do

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[68] Id., at 20.
[69] See Dongtai Peak, 777 F. 3d at 1351.
[70] Id., 777 F. 3d at 1351-1352.
[71] See Extension of Time Limits
[72] Id., 777 F. 3d at 1352.
[73] Id.
[74] See, e.g., "Memorandum to the File, from Kabir Archuletta, Analyst, re: Petitioner Request for Rejection of Comments by Kunshan Xinlong Food Co., Ltd.," dated June 9, 2014; the Department's Supplemental Questionnaire dated July 1, 2014. We have not only cautioned Kunshan Xinlong to adhere to deadlines, but also provided a statement in all questionnaire cover letters noting that failure to file timely responses could result in the application of adverse facts available.

pursuant to our regulations.[75] Rather, we accepted the submission, while also cautioning Kunshan Xinlong to adhere to the Department's established deadlines.[76] The Department provided Kunshan Xinlong with numerous opportunities, including: 1) to address deficiencies resulting from inadequate original responses received,[77] 2) a second opportunity to submit surrogate value comments, because the original submission was partially "illegible, lacking translation, or missing completely,"[78] and 3) granting numerous eleventh-hour extension requests filed the same day as the submission deadlines.[79] These are not examples of "unfair" treatment.

Finally, the Department disagrees with Kunshan Xinlong's argument that "untimeliness of surrogate country comments {are} irrelevant."[80] On the contrary, Kunshan Xinlong's untimely economic comparability rebuttal comments indicate a disregard for administrative deadlines. Despite receiving Petitioners' comments in advance of the May 19, 2014, rebuttal comment deadline, Kunshan Xinlong failed to adhere to this established deadline. Moreover, in addition to failing to file timely rebuttal comments, there is no record evidence that Kunshan Xinlong filed an extension request for the May 19, 2014, rebuttal deadline. Kunshan Xinlong simply filed its rebuttal comments three days late. Indeed, Kunshan Xinlong's rebuttal comments, filed after close-of-business on May 21, 2014, contained no explanation or justification for its late filing.

Kunshan Xinlong's counsel has practiced before the Department in prior antidumping proceedings and is experienced with Departmental procedures, having also represented respondent Dongtai Peak in the tenth administrative review of this Order. In other words, counsel for Kunshan Xinlong should be aware of the requirements regarding timely filings of requests and responses and IA-ACCESS procedures through our statements in our various cover letters as well as through experience representing parties in antidumping proceedings. The Department provided Kunshan Xinlong every opportunity to participate in the proceeding. However, Kunshan Xinlong's failures to request timely extensions or file timely responses, after having been cautioned of such, are examples of non-cooperation. Having repeatedly failed to provide timely extension requests (i.e., surrogate country list rebuttal comments, July 1, 2014, SSCQ1 and failing to respond to a request for information, as noted above, the Department was

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[75] See 19 CFR 351.302(d).

[76] See "Memorandum to the File, from Kabir Archuletta, Analyst, re: Petitioner Request for Rejection of Comments by Kunshan Xinlong Food Co., Ltd.," dated June 9, 2014.

[77] The Department had to issue five lengthy supplemental questionnaires addressing deficiencies in the original questionnaire responses.

[78] See Letter to Kunshan Xinlong dated July 11, 2014, re: Supplemental Questionnaire {regarding deficiencies in surrogate value submission}(Barcode:3215264-01).

[79] See, e.g., Kunshan Xinlong's July 15, 2014, letter re: "Request for Extension to Respond to Section D Supplemental Questionnaire," (Barcode: 3215905-01). The barcode upload superscript on the official record document shows following information regarding its ACCESS upload status: "Filed By: yxiao@leexiao.com, Filed Date: 7/15/14 11:19 PM, Submission Status: Approved." Because this document uploaded at 11:19 pm, well after close-of-business, the Department became aware of this request on July 16, 2014, at open-of-business. See also Kunshan Xinlong's July 8, 2014, letter re: "Request for Extension of Time to File Supplemental Questionnaire Response," (Barcode: 3214694-01). The barcode upload superscript on the official record document shows following information regarding its ACCESS upload status: "Filed By: yxiao@leexiao.com, Filed Date: 7/8/14 9:43 PM, Submission Status: Approved." This July 8, 2014, letter uploaded at 9:43 PM, requested a deadline extension for a response due on July 9, 2014. Because this request was uploaded at 9:43 PM, the Department did not see this letter until July 9, 2014, the same day as the deadline for the response.

[80] See Kunshan Xinlong's Case Brief at 19.

under no regulatory or statutory obligation to grant an untimely extension request for Kunshan Xinlong to submit a post-deadline supplemental questionnaire response. The Department has the discretion to extend deadlines for "good cause."[81] For untimely extension requests, parties must show that they meet the higher standard of "extraordinary circumstances" applicable in this administrative review rather than the "good cause" standard.[82]

Here, Kunshan Xinlong did not provide an adequate explanation demonstrating "extraordinary circumstance" that prevented it from filing timely extension requests. We have stated that "examples of extraordinary circumstances include a natural disaster, riot, war, force majeure, or medical emergency,"[83] none of which were cited by Kunshan Xinlong as their reason for failing to file timely extension requests (i.e., for the untimely-filed rebuttal comments or the July 1, 2014, SSCQ1). We have also stated that "examples that are *unlikely* to be considered extraordinary circumstances include insufficient resources, inattentiveness, or the inability of a party's representative to access the Internet on the day on which the submission was due…" and "a technical failure of IA ACCESS generally is not an extraordinary circumstance."[84]

Because Kunshan Xinlong did not demonstrate an "extraordinary circumstance" for its untimely extension request, we continue to decline to grant it. Thus, we have made no changes from the Preliminary Results with respect to Kunshan Xinlong's untimely request for a deadline extension.

Comment 2: Whether the Department Properly Disallowed Kunshan Xinlong to Submit a Supplemental Section C Questionnaire Response.

Kunshan Xinlong's Argument:

- Deadlines for the submission of factual information are governed by 19 CFR 351.301, which contains nothing requiring that the Department reject Respondent's request for an opportunity to submit its SSCQ1 response.
- The preliminary results and final results deadlines had not been extended when the SSCQ1 response was due, thus, there were no pressing deadlines that would have made acceptance and granting of the extension request rushed or difficult.
- The Department frequently extends the preliminary and final results deadlines in its administrative proceedings, including the administrative reviews of the AD Order on Honey from the PRC. The Department has offered no explanation as to how or why time pressures existed or exist in the present case to warrant its denial of the extension.
- The Department articulates no clear analysis, standard, or general criteria it considered in coming to the implicit conclusion that it did not have adequate time to fully consider the extension request or to grant the extension and complete the review proceeding; time was not an issue in the present case, and the Department articulates nothing to indicate otherwise or to distinguish the current segment from prior administrative reviews (i.e., the ninth administrative review).

[81] See 19 CFR 351.302(b).
[82] See Extension of Time Limits, 78 FR at 57793.
[83] Id.
[84] Id. (emphasis added)

- The Department has a long-standing policy to accept untimely filed documents if there is good case for doing so.[85]
- The Department has a long practice of extending deadlines even when requests for extensions are not submitted until after the involved deadline has passed, or are never submitted at all.[86]
- In Grobest,[87] the Court held it was an abuse of discretion for the Department to reject the involved submission, even though it was several months late, and even though the respondent did not request an extension to the deadline prior to its expiration, because the administrative burden to the Department was minor and was outweighed by the considerable potential harm to the respondent. It would be even more of an abuse of discretion for the Department to refuse to accept the SSCQ1 response here, as, among other mitigating factors, the administrative burden to the Department is far outweighed by the consequences to Respondent.
- The Department does not explain why the precedent established in Fischer v. United States[88] does not apply to the present case.
- In Glycine from Japan,[89] the Department was willing to grant a late-requested extension, giving the involved respondent an additional twenty-two days after the deadline to make its submission, even though it was for a full initial section A questionnaire response, whereas in the present case, a far shorter extension was being requested for a mere SSCQ1 response.
- Given the facts of the case, the Department should follow the precedent set in Glycine from Japan, considering the Department has not explained why this precedent does not apply to the present case, why it did not cause the Department to grant and accept its response, given that the notice of the SSCQ1 was not delivered to Respondent's counsel.

Petitioners' Rebuttal:

- Consistent with its general practice, the Department properly rejected and removed Kunshan Xinlong's untimely extension request from the record because Kunshan Xinlong failed to submit the extension request before passing of the existing deadline and failed to present "good cause" reasons for excusing the untimely extension request.
- The Department has no policy of accepting extension requests after existing deadlines without good cause demonstrated and Kunshan Xinlong provided no examples to the contrary.

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[85] See Kunshan Xinlong's Case Brief at 11, citing to Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from Ukraine, 66 FR 50401 (October 3, 2001) ("Ukrainian Hot-Rolled"), cited on page 447 of World Trade Organization "Dispute Settlement Reports 2004, Volume I, pages 1-568;" Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from South Africa, 66 FR 37002 (July 16, 2001) ("South African Hot-Rolled"), also cited on page 447 of the World Trade Organization "Dispute Settlement Reports 2004, Volume I, pages 1-568."

[86] See Kunshan Xinlong's Case Brief at 11, citing to Certain Pasta from Italy: Notice of Final Results of the Fourteenth Antidumping Duty Administrative Review, 76 FR 76937 (December 9, 2011) ("Pasta from Italy").

[87] See Kunshan Xinlong Case Brief at 12. While counsel for Kushan Xinlong did not provide a cite for its reference to Grobest, the Department believes counsel is referring to Grobest & I-Mei Industrial (Vietnam) Co., Ltd., v. United States, 815 F. Supp. 2d 1342, 1365 (CIT 2012) ("Grobest").

[88] See Fischer S.A. Comercio, Industria and Agricultura v. United States, 700 F. Supp. 2d 1364 (CIT 2010) ("Fischer").

[89] See Kunshan Xinlong Case Brief at 12-13, citing to Notice of Preliminary Determination of Sales at Less Than Fair Value: Glycine from Japan, 72 FR 52349, 52350 (September 13, 2007).

- The Federal Circuit also recently held in Dongtai Peak that the Department "should not be burdened by requiring acceptance of untimely filings close to the final deadline for the administrative review."[90]
- Further, the Federal Circuit found counsel's (same counsel as Kunshan Xinlong) argument regarding the Department's "long practice" of approving untimely extension requests unpersuasive.[91]

Department's Position:

The Department disagrees with Kunshan Xinlong regarding our decision not to grant a post-deadline extension to allow an untimely submission of the SSCQ1 response. As stated above in Comment 1, after having repeatedly failed to provide timely extension requests and failing to respond to a request for information, the Department was under no regulatory or statutory obligation to grant an untimely extension request for Kunshan Xinlong to submit a post-deadline supplemental questionnaire response.

In Dongtai Peak, the Federal Circuit rejected similar arguments that the Department has a long-standing practice of granting untimely filed extensions. Indeed, the Federal Circuit affirmed that "Commerce may grant extension requests if it determines the extension request provides good cause for extending the deadline."[92] Here, as we had done in Honey AR10,[93] the Department reviewed the information on the record and exercised our discretion to not grant an untimely extension request. In this administrative review, none of Kunshan Xinlong's explanations qualified as "extraordinary circumstances," as defined by 19 CFR 351.302 and discussed above in Comment 1. Accordingly, Kunshan Xinlong's cites to Ukraine Hot-Rolled, South African Hot-Rolled, and Pasta from Italy, are inapposite here because the stricter standard of "extraordinary circumstances," as related to untimely extension requests, is applicable here and no "extraordinary circumstances" exist in this case.

Kunshan Xinlong argues that because the preliminary and final results of the review had not been extended as of July 2014, the Department had more than adequate time to consider its extension request and that the Department had offered no explanation as to how or why time pressures existed in this proceeding. Kunshan Xinlong's argument that the Department had ample time in the review to grant untimely extension requests or accept untimely submissions is unpersuasive. In Dongtai Peak, the Federal Circuit stated that "Commerce should not be burdened by requiring acceptance of untimely filings closer to the final deadline for the administrative review."[94] Further, as stated in Extension of Time Limits, "it is the responsibility of the Department to set and manage the schedule of the segment of the proceeding, *not that of the parties to the proceeding*."[95] In other words, it is not Kunshan Xinlong's responsibility to

[90] See Petitioners' Rebuttal Brief, at 16, citing to Dongtai Peak, 777 F. 3d at 1352.
[91] Id., citing to Dongtai Peak, 777 F. 3d at 1352.
[92] Id.
[93] See Administrative Review of Honey From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 70417 (November 26, 2012) and accompanying Issues and Decision Memorandum ("Honey AR10").
[94] See Dongtai Peak, 777 F.3d at 1352.
[95] See Extension of Time Limits, 78 FR at 57793 (emphasis added).

evaluate how much time the Department requires to review and analyze the record in anticipation of a statutory deadline.

We also disagree with Kunshan Xinlong's reliance on Grobest, as justification for accepting untimely submissions. In Grobest, the CIT stated that: "1) Amanda Foods demonstrated its separate rate eligibility in all prior segments of the proceeding…' but for the untimeliness of its submission, Amanda Foods would have received a separate rate'; and (2) given the minimal analysis of the separate rate certifications Commerce undertook in previous review…'the burden of reviewing the {separate rate certification} would not be great."[96] In Grobest, Amanda Foods was not under individual examination, but was an exporter seeking non-compulsory separate rate status via a separate rate certification.[97] Unlike in Grobest, here Kunshan Xinglong was a mandatory respondent, required to respond to the Department's request for information, and was advised on several occasions of the Department's requirements regarding established deadlines. Kunshan Xinlong's failure to provide timely and relevant information in response to the Department's supplemental questionnaire request interfered with the Department's ability to calculate a rate for Kunshan Xinlong, and, thus, the facts are distinguishable from those in Grobest.

Nevertheless, the Department's ability to determine its own procedures for timely resolution of its proceedings has been upheld by the Federal Circuit.[98]

As we stated in Honey AR10:

> As noted by the CIT in Grobest, the Department has the discretion to 'set and enforce deadlines.' Furthermore, 19 CFR 351.302(d) states that the 'Secretary will not consider or retain in the official record' any 'untimely filed factual information, written argument, or other materials' that the Secretary rejects, otherwise any party would be allowed to provide the Department with information at the parties' leisure and expect the agency to review the information timely and issue a binding determination.[99]

The facts of this case also distinguish it from Fischer, also cited by Kunshan Xinlong. At issue in Fischer was the Department's rejection of a party's untimely submission of correction and clarification factual information, which is different from the Department's decision in this administrative review concerning Kunshan Xinglong's failure to respond to a supplemental questionnaire. In Fischer, the CIT distinguished the correction of factual information already on the record from cases where "plaintiffs…failed to respond to a questionnaire from Commerce" and "attempted to fill the gap caused by failure to provide a questionnaire response or evidence

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[96] See Dongtai Peak v. United States, 971 F. Supp.2d 1234, 1241 (CIT 2014), aff'd 777 F.3d 1343 (Fed. Cir. 2015), citing to Grobest, 815 F. Supp. 2d at 1365.
[97] See Grobest, 815 F. Supp. 2d at 1366.
[98] See Dongtai Peak, 777 F.3d 1343 (Fed. Cir. 2015).
[99] See Honey AR10 at Comment 2 citing to 19 CFR 351.302(b), (c), and (d); Grobest, 815 F. Supp 2d. at 1365; Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China, 69 FR 67313 (November 17, 2004) ("Wooden Bedroom Furniture LTFV") and accompanying Issues and Decision Memorandum at Comment 82.

requested during verification."[100] In these cases, the Department's ability to enforce its regulatory deadlines for factual information has been upheld.[101] Here, as the Department established above, Kunshan Xinlong failed to respond to a questionnaire when requested by the Department and thus, Fischer is distinguishable.

Similarly, we are unpersuaded by Kunshan Xinlong's reference to Japan Glycine. As we noted in Honey AR10:

> Japan Glycine similarly fails to demonstrate a longstanding practice of accepting submissions after established deadlines. In Japan Glycine, the Department provided a respondent *without* counsel, who was not familiar with the Department's filing requirements, the opportunity to correct filing deficiencies (i.e., not properly marked, not served to parties on the service list, lacking certifications of completeness and accuracy). In this instance, Peak has participated in previous reviews and is represented by counsel.[102]

Unlike Japan Glycine, where the Department provided a respondent without counsel, who was not familiar with the Department's filing requirements, the opportunity to correct filing deficiencies, here, Kunshan Xinlong is represented by counsel who has participated in prior proceedings and is familiar with our filing requirements, as discussed above in Comment 1. Moreover, Kunshan Xinlong had received notice of the importance to timely file documents and to adhere to the established deadlines in this case. Accordingly, the circumstances of Japan Glycine do not apply in this case and do not establish a Departmental practice of accepting submissions filed after the established deadline without a party having demonstrated extraordinary circumstances to extend the deadline.[103]

Moreover, as we stated in prior cases, "investigations typically involve products and industries which have not previously been analyzed by the Department and are therefore matters of first impression and therefore require significant additional research and analysis."[104] The particular circumstances in Japan Glycine, a less-than-fair-value investigation, do not apply here because this is the twelfth administrative review of an AD Order. Discretionary departures from our regulatory deadlines are done on a case-by-case basis, and dependent upon the particular facts of each case. We also disagree that Japan Glycine established a precedent that supplants the application of the Department's regulations under 19 CFR 351.302. Again, Kunshan Xinlong's

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[100] See Fischer at 1377.
[101] Id.
[102] See Honey AR10, at Comment 2, (emphasis added) citing to Notice of Preliminary Determination of Sales at Less Than Fair Value: Glycine from Japan, 72 FR 52349, 52350 (September 13, 2007) ("Japan Glycine"); Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 77 FR 46044, 46050 (August 2, 2012); Administrative Review of Honey from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review, In Part, 75 FR 24880, 24881 (May 6, 2010)
[103] See Honey AR10 at Comment 2.
[104] See Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013) and accompanying Issues and Decision Memorandum at Comment 2C.

representative has participated in prior administrative reviews of this AD Order, and thus, has experience with the Department's requirements and regulations.[105]

Further, as Kunshan Xinlong's counsel is aware, our standard questionnaire cover letters state that:

> If the Department does not receive either the requested information or a written extension request before 5 p.m. ET on the established deadline, we may conclude that your company has decided not to cooperate in this proceeding. The Department will not accept any requested information submitted after the deadline. As required by section 351.302(d) of our regulations, we will reject such submissions as untimely. Therefore, failure to properly request extensions for all or part of a questionnaire response may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.[106]

Kunshan Xinlong did not request an extension prior to the submission deadline pursuant to 19 CFR 351.302(c). Kunshan Xinlong also failed to submit the SSCQ1 response. Moreover, by the time the SSCQ1 response was due (July 8, 2014), we had already cautioned Kunshan Xinlong to adhere to established deadlines.[107] Thus, the Department's determination to not grant an untimely extension request for a late submission was in accordance with 19 CFR 302(b) and (c), as discussed above in Comment 1.

As we discussed above, Kunshan Xinlong's argument that it never received electronic notification of the issuance of the questionnaire is belied by Attachments 1 and 2 of the IA-ACCESS Digest Memo, which indicate that the electronic notification system executed properly. Furthermore, the July 1, 2014, SSCQ1 was uploaded, viewable and downloadable for the two-week period, during which Kunshan Xinlong logged in to IA-ACCESS multiple times. Despite having self-requested the administrative review and knowing that "it is the responsibility of the lead attorney or his or her Proxy to retrieve the BPI,"[108] Kunshan Xinlong "believes that the very purpose of such email notifications is to avoid the burdensome and time-consuming daily process to log onto IA-ACCESS *just to check whether they may have missed a document* when they do not see an email from IA ACCESS."[109] We disagree. Our expectation is that a respondent puts forth its maximum efforts to provide the Department with timely and complete responses to all inquiries.[110] As stated above, inattentiveness to the case record does not discharge a respondent from acting to the best of its ability.

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[105] See, e.g., Honey AR10 at Comment 2.
[106] See, e.g., The Department's Supplemental Questionnaire dated July 1, 2014 (Barcode: 3212911-01). The barcode upload superscript on the official record document shows following information regarding its ACCESS upload status: "Filed By: Frances Veith, Filed Date: 7/1/14 4:15 PM, Submission Status: Approved."
[107] See "Memorandum to the File, from Kabir Archuletta, Analyst, re: Petitioner Request for Rejection of Comments by Kunshan Xinlong Food Co., Ltd.," dated June 9, 2014.
[108] See IA-ACCESS Handbook at 20, available at: https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.
[109] See Kunshan Xinlong's Letter to the Department dated August 18, 2014, at 3-4 (emphasis added).
[110] See Dongtai Peak, 777 F. 3d at 1355, citing to Nippon Steel, 337 F.3d at 1382.

The Department considered Kunshan Xinlong's untimely extension requests and determined, per our discretion and our discussion in Extension of Time Limits, that Kunshan Xinlong did not demonstrate extraordinary circumstances for submitting its extension requests in an untimely manner.[111] Further, pursuant to 19 CFR 351.302(d), the Department is not required to accept or consider untimely filed factual information. Consequently, based on the foregoing, we continue to decline Kunshan Xinlong's requests to file an untimely response to our SSCQ1.

Comment 3: Whether the Adverse Inference is Appropriate

Kunshan Xinlong's Arguments:

- Given that it received neither a copy of the SSCQ1, nor timely notice of its issuance or existence, the Department has no basis for its conclusions that it willfully withheld information, failed through any fault of its own to provide requested information by the requested date, or in any way failed to cooperate by not acting to the best of its ability to provide requested information.
- According to 19 U.S.C. 1677e(b), in order to make an adverse inference, the Department must find that a respondent has failed to cooperate by not acting to the best of its ability. The Department has not validly done so here.
- The Department's explanation for applying AFA is incomplete and flawed. The Department has no basis for its decision to apply an AFA margin to the PRC-wide entity, using one no-fault instance to deny Kunshan Xinlong's willingness and action to cooperate. The record shows that Kunshan Xinlong cooperated with its very best effort in every single aspect, including trying to provide a complete response to the SSCQ1.
- The Department's treatment of Kunshan Xinlong is more a punishment than regulation and therefore is improper, unfair, and not in accordance with law.

Petitioners' Rebuttal:

- The Department properly relied upon section 776(a) of the Act to apply total AFA to the PRC-wide entity, including Kunshan Xinlong. The PRC-wide entity failed to cooperate by not acting to the best of its ability in providing requested information. This is consistent with the Department's longstanding practice.[112]
- Even if the Department had not applied AFA to the PRC-wide entity, the Department would have by necessity still assigned the PRC-wide entity—including Kunshan Xinlong—the PRC-wide rate. No other option was available to the Department.
- Although Kunshan Xinlong focuses only on its failure to timely respond to the Department's SSCQ1, the Department's preliminary finding included multiple instances of untimely submissions by Kunshan Xinlong.

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[111] See Preliminary Results, 80 FR at 862 and Preliminary Decision Memo at 6.

[112] See Petitioners' Rebuttal Brief, at 9, citing to Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 69546 (December 1, 2006) and accompanying Issues and Decision Memorandum at Comment 1; Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review, 72 FR 10689, 10692 (March 9, 2007) (decision to apply total AFA to the NME-wide entity), unchanged in Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the First Administrative Review and First New Shipper Review, 72 FR 52052 (September 12, 2007).

- The support for the Department's application of AFA in this segment is even stronger than in Dongtai Peak. Unlike the circumstances in the tenth administrative review and litigated in Dongtai Peak, Kunshan Xinlong never even submitted the supplemental questionnaire response in question (whereas Dongtai Peak did, albeit after the Department's deadline), and Kunshan Xinlong filed its first untimely extension request 17 days after the response was due, as compared to two days after the questionnaire response was due in the tenth administrative review.

Department's Position:

The Department continues to find that application of AFA is appropriate for the PRC-wide entity, which includes Kunshan Xinlong, in this administrative review.

Section 776(a)(2) of the Act states that if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadline, or in the form or manner requested; (C) significantly impedes a proceeding; or (D) provides such information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act of 1930, facts otherwise available in reaching the applicable determination.

If, after being notified by the Department of a deficiency, the party fails to provide a satisfactory response within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In the Preliminary Results, the Department stated that:

> {b}ecause the PRC-wide entity, including Kunshan Xinlong, (A) withheld information requested by the Department; (B) failed to provide requested information by the requested date; and (C) significantly impeded an antidumping proceeding, the Department finds that it must rely on the facts otherwise available to determine a margin for the PRC-wide entity in accordance with section 776(a) of the Act.[113]

Specifically, in the Preliminary Results, we further stated that:

> Notwithstanding our June 9, 2014, reminder to Kunshan Xinlong with respect to timely submission of responses and extension requests, Kunshan Xinlong continued not to adhere to our deadlines, particularly with respect to filing its response to the supplemental Section C questionnaire. The supplemental Section

[113] See Preliminary Results, 80 FR at 862 and Preliminary Decision Memo at 8.

> C questionnaire issued to Kunshan Xinlong stated that a response or extension request must be received by close of business on the day of the deadline or the Department may resort to the use of facts available. Kunshan Xinlong failed to respond to the supplemental Section C questionnaire by the established deadline…Furthermore, Kunshan Xinlong did not request a timely extension of that deadline.[114]

Pursuant to section 776(b) of the Act, the Department may use information that is adverse to the interest of that party when the party fails to cooperate by not acting to the best of its ability in responding to the Department's request for information.[115] Further, section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for adverse facts available, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[116]

The Department disagrees with Kunshan Xinlong's arguments that the Department lacks any basis for applying AFA to the PRC-wide entity, which includes Kunshan Xinlong. As emphasized by the Federal Circuit in Dongtai Peak,

> {c}ompliance with the 'best of its ability' standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries,' and '{w}hile the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.'[117]

We disagree with Kunshan Xinlong's argument that the record shows that Kunshan Xinlong cooperated with its very best effort in every single aspect, including trying to provide a complete response to the SSCQ1. In fact, as we stated in the Preliminary Results, and discussed above in Comments 1 and 2, the record shows that Kunshan Xinlong failed to cooperate to the best of its ability because it failed to respond to our July 1, 2014, SSCQ1.[118] Kunshan Xinlong only acknowledged its failure to file a response 17 days after the July 8, 2014, deadline and three days after Petitioners filed their July 22, 2014, letter noting that Kunshan Xinlong failed to respond to the July 1, 2014, SSCQ1.[119]

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[114] See Preliminary Results, 80 FR at 862 and Preliminary Decision Memo at 4; see also SSCQ1, dated July 1, 2014, at 2.

[115] See Nippon Steel Corp. v. United States, 118 F. Supp. 2d 1366, 1382 (CIT 2000), aff'd Nippon Steel Corp. v. United States, 337 F.3d 1373 (Fed. Cir. 2003) ("Nippon Steel") (where the Federal Circuit affirmed Commerce's determination that respondent did not cooperate to the best of its abilities).

[116] See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (February 23, 1998).

[117] See Dongtai Peak, 777 F.3d at 1355, citing to Nippon Steel, 337 F.3d at 1382.

[118] See Preliminary Results, 80 FR 862 and Preliminary Decision Memo at 4-8.

[119] See Petitioners' July 22, 2014, submission re: "Comments on Kunshan Xinlong Section C Supplemental Questionnaire Response," (Barcode: 3217063-01).

We also disagree with Kunshan Xinlong that the Department did not did not explain how Kunshan Xinlong failed to cooperate by not acting to the best of its ability. As stated above and in the Preliminary Results, Kunshan Xinlong was advised of the importance of meeting deadlines and the possible consequences should it not meet those deadlines.[120] As noted above and in the Preliminary Results,[121] after Kunshan Xinlong filed its untimely rebuttal comments to Petitioners' comments on the surrogate country list, the Department cautioned Kunshan Xinlong that we "strongly advise Kunshan Xinlong to strictly adhere to the deadlines set by the Department for all future submissions in this proceeding."[122] Despite the caution we issued to Kunshan Xinlong, it failed to respond to our July 1, 2014, SSCQ1, or request a timely extension of the response deadline for that questionnaire. Thus, pursuant to section 776(b) of the Act, the PRC-wide entity did not act to the best of its ability because, in addition to failing to respond to our request for information, it disregarded our notifications and reminders of potential application of adverse inferences for failure to comply with established deadlines.

Moreover, as we have already noted above, the Department's standard cover letter used for each supplemental questionnaire issued in this review to Kunshan Xinlong states that "failure to properly request extensions for all or part of a questionnaire response may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act."[123]

This statement, included in our supplemental questionnaire cover letters to respondents, has been a consistent notification to respondents regarding the requirement to submit timely responses or extension requests. Notwithstanding Kunshan Xinlong's explanation that it purportedly did not receive electronic notification of the issuance of the July 1, 2014, SSCQ1, information on the record demonstrates that notification properly executed and, beyond that, the SSCQ1 was available, viewable, and downloadable between July 1, 2014, and July 15, 2014. The record also shows that Kunshan Xinlong logged into the IA-ACCESS system within this two-week period,[124] such that any alleged ignorance of the existence of the July 1, 2014, SSCQ1, while in plain sight on IA-ACCESS for a two-week period, shows insufficient attention to its duties during this administrative review. In addition to the standard statement in the cover letters, the Department provided Kunshan Xinlong with a separate reminder to adhere to deadlines, after filing untimely rebuttal comments. The Department, thus, provided multiple opportunities for Kunshan Xinlong to cooperate to the best of its ability, which it failed to do.

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[120] Id.
[121] See Preliminary Results, 80 FR at 862 and Preliminary Decision Memo 6-8.
[122] See "Memorandum to the File, from Kabir Archuletta, Analyst, re: Petitioner Request for Rejection of Comments by Kunshan Xinlong Food Co., Ltd.," dated June 9, 2014.
[123] See, e.g., the Department's NME Questionnaire issued to Kunshan Xinlong, dated February 28, 2014; Letter from the Department to Kunshan Xinlong re: Twelfth Administrative Review of Honey from the People's Republic of China: Section A Supplemental Questionnaire, dated June 30, 2014; Letter from the Department to Kunshan Xinlong re: Twelfth Administrative Review of the Antidumping Duty Order on Honey from the People's Republic of China: Section C Supplemental Questionnaire, dated July 1, 2014; Letter from the Department to Kunshan Xinlong re: Twelfth Administrative Review of the Antidumping Duty Order on Honey from the People's Republic of China: Importer Questionnaire, dated July 2, 2014.
[124] As noted above, Kunshan Xinlong's counsel had to have logged into IA-ACCESS a number of times between July 1, 2014, and July 15, 2014, because counsel requested deadline extensions for supplemental questionnaires that we issued between June 30, 2014, and July 14, 2014. These other supplemental questionnaires were uploaded, viewable, and downloadable within the same time period, with some overlap, as the July 1, 2014, SSCQ1.

In Nippon Steel, the CIT stated that:

> At a minimum, Commerce must find that a respondent could comply, or would have had the capability of complying if it knowingly did not place itself in a condition where it could not comply. Commerce must also find either a willful decision not to comply or behavior below the standard for a reasonable respondent. Insufficient attention to statutory duties under the unfair trade laws is sufficient to warrant adverse treatment. It implies an unwillingness to comply or reckless disregard of compliance standards. Commerce must be in a position to compel meaningful attention to and compliance with its requests.[125]

The Department finds that the standard for a "reasonable respondent," as cited above, generally includes filing requests for extension before the Department's set deadline. Kunshan Xinlong failed to submit a timely extension request concerning the deadline for the SSCQ1 response. Additionally, Kunshan Xinlong's failure to comply with established deadlines, including untimely filed rebuttal comments and failure to submit its SSCQ1 response are examples of "reckless disregard for compliance standards" as described in Nippon Steel.[126]

Further, contrary to Kunshan Xinlong's assertions[127] that the application of AFA to the PRC-wide entity, which includes Kunshan Xinlong, is improper, unfair and not in accordance with law, the Department's application of AFA to Kunshan Xinlong is fair, equitable and has favored disclosure and cooperation. Kunshan Xinlong's right to fairness and equitable treatment entitled it "the right to notice and a meaningful opportunity to be heard."[128] As stated above, Kunshan Xinlong had already been cautioned about its untimely submission of rebuttal comments, well before the Department issued the SSCQ1. That counsel for Kunshan Xinlong seemingly overlooked the SSCQ1 because of unsubstantiated and unverifiable reasons (the electronic notification system allegedly failed, counsel could not log into email system, etc.)[129] does not overcome the requirement that a respondent must put forth the maximum effort to ensure compliance with the Department's requests for timely submissions.[130]

Counsel's oversight of the July 1, 2014, SSCQ1 does not excuse Kunshan Xinlong from submitting a timely extension request or a timely response to the Department's request for information, because Kunshan Xinlong's counsel could have, of its own volition, logged in to IA-ACCESS and retrieved the July 1, 2014, SSCQ1. We did not deprive Kunshan Xinlong of its due process or fairness because we informed it of its obligations to file timely requests and

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[125] See Nippon Steel, 118 F. Supp. 2d at 1379 (citations omitted).
[126] Id.
[127] See Kunshan Xinlong's Case Brief at 19.
[128] See PSC VSMPO, 688 F.3d at761-762, citing La Chance v. Erickson, 522 U.S. 262, 266 (1998).
[129] See Kunshan Xinlong's Letters to the Department dated July 25, 2014, and August 2, 2014.
[130] See Dongtai Peak, 777 F. 3d at 1355, citing to Nippon Steel, 337 F.3d at 1382. See also Certain Pasta From Italy: Final Results of Countervailing Duty Administrative Review; 2012, 80 FR 11172 (March 2, 2015) and accompanying Issues and Decision Memorandum at VII, where the Department applied an adverse inference because a party "did not submit a response to the Department's third supplemental questionnaire and did not timely request an extension of the deadline for that submission," despite its arguments that "it did not receive notification of the second and third supplemental questionnaires."

submissions. Thus, our application of an adverse inference to Kunshan Xinlong as part of the PRC-wide entity is in accordance with the law and our practice.

Kunshan Xinlong's instances of disregard for deadlines and inattentiveness to the administrative proceeding, such as 1) filing untimely rebuttal comments to Petitioners' economic comparability comments and 2) failing to file a response to the July 1, 2014, SSCQ1, is a record of its failure to act to the best of its ability. Kunshan Xinlong's failure to respond at all to the SSCQ1 was a continuation of this general inattentiveness and disregard for the administrative proceeding. Accordingly, because Kunshan Xinlong was aware of its responsibilities to meet established deadlines and the potential consequences of not meeting those deadlines, but nonetheless failed to submit its response in a timely manner, the Department determined that the PRC-wide entity, which includes Kunshan Xinlong, failed to cooperate by not acting to the best of its ability to comply with requests for information.[131] Therefore, for these final results, the Department continues to find the application of AFA to the PRC-wide entity, which includes Kunshan Xinlong, is supported by evidence on the record, and in accordance with the Department's practice and section 776(a) and (b) of the Act.

Comment 4: Whether the AFA Rate is Appropriate

Kunshan Xinlong's Arguments:

- Shakeproof states that the Department "is, within reason, legally required to apply the most accurate rates possible to individual respondents."[132]
- The Department violated this requirement because the AFA rate applied to Kunshan Xinlong is outdated information that has nothing to do with Respondent's prices or production costs during the current POR.

Petitioners' Rebuttal:

- Consistent with its longstanding practice that has been affirmed by the courts on numerous occasions, the Department properly selected as the AFA rate $2.63 per kilogram, the highest rate on the record of the proceeding and which was the AFA rate assigned to the PRC-wide entity in the tenth administrative review of this proceeding.[133]
- As the Federal Circuit explained in Dongtai Peak, Kunshan Xinlong's argument that the Department erred in choosing an AFA rate not based on Kunshan Xinlong's own sales and production data for the POR is meritless.[134]
- Because Kunshan Xinlong is part of the PRC-wide entity, which Kunshan Xinlong has not disputed, the Department was not required to calculate an AFA rate to apply to the sales and other unverified data that Kunshan Xinlong submitted during the review.[135]

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[131] See Preliminary Results, 80 FR at 862 and Preliminary Decision Memo at 6-8; see also, e.g., Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 69546 (December 1, 2006) and accompanying IDM at Comment 1, and Certain Lined Paper Products From the People's Republic of China: Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review, 77 FR 61390, 61392 (October 9, 2012) ("Paper Products from China").

[132] See Kunshan Xinlong Case Brief, at 17, citing to Shakeproof Assembly Components Div. of lll. Tool Works v. United States, 268 F.3d 1376, 1382 (Fed. Cir. 2001).

[133] See Petitioners' Rebuttal Brief at 18-19, citing to the Preliminary Decision Memorandum at 8.

[134] Id., at 19, citing to Dongtai Peak, 777 F. 3d at 1355-1356.

Department's Position:

The Department properly selected as the AFA rate the highest rate on the record of the proceeding which, to the extent practicable, can be corroborated. In the Preliminary Results, the Department selected a rate which was calculated for a respondent in the sixth administrative review as the adverse rate.[136] Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. To be considered corroborated, the Department must find the information has probative value, meaning that the information must be both reliable and relevant.[137] Secondary information is "{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 {of the Act} concerning the subject merchandise."[138] Unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated margins. Thus, in an administrative review, if the Department chooses, as AFA, a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin.[139]

The Department is applying AFA to the PRC-wide entity, including Kunshan Xinlong, because it has failed to cooperate to the best of its ability. In applying the AFA rate to the PRC-wide entity, which includes Kunshan Xinlong, the Department corroborated the AFA rate to the extent practicable in accordance with section 776(c) of the Act, and found it to be both reliable and relevant.[140] With respect to reliability, the AFA rate used in this segment was calculated for Anhui Native Produce Import & Export Corporation ("Anhui Native"), a respondent during the sixth administrative review[141] and this calculated rate was applied to the PRC-wide entity in that review. Moreover, the Department corroborated the AFA rate in Honey AR10,[142] and assigned

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[135] Id., at 19-20, citing to Dongtai Peak, 777 F. 3d at 1355-1356 and Peer Bearing Co.—Changshan v. United States, 587 F. Supp. 2d 1319, 1327 (CIT 2008).
[136] See Preliminary Results, 80 FR at 862 and Preliminary Decision Memo at 9-10.
[137] See SAA at 870; 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).
[138] See SAA, H.R. Doc. No. 103-316 at 870 (1994) and 19 CFR 351.308(d).
[139] See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews, Final Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not To Revoke in Part, 69 FR 55581 (September 15, 2004), and accompanying IDM at Comment 18.
[140] See Preliminary Results, 80 FR at 862 and Preliminary Decision Memo at 9-10; see also China Glycine, 74 FR at 41121 and Fujian Lianfu, 638 F. Supp. 2d at 1336 ("Commerce may, of course, begin its total AFA selection process by defaulting to the highest rate in any segment of the proceeding, but that selection must then be corroborated, to the extent practicable.").
[141] See Honey From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 796 (January 8, 2009) ("Honey AR6").
[142] See Honey AR10 at Comment 5.

it to the respondent in that case as part of the PRC-wide entity, and which, as noted above, the Federal Circuit recently affirmed in Dongtai Peak.[143]

The Department finds that this rate is reliable because it was calculated for a respondent in a prior administrative review of this order. No evidence was presented in this review that called into question the reliability of the AFA rate.[144] The CIT has held that where the Department "has found the respondent part of the PRC-wide entity based on adverse inferences, Commerce need not corroborate the PRC-wide rate with respect to the information specific to that respondent because there is 'no requirement that the PRC-wide entity rate based on AFA relate specifically to the individual company.'"[145] Kunshan Xinlong argues that the rate applied is improper because it reflects outdated price or production cost information.[146] We disagree with this argument. While Kunshan Xinlong argues that changing market conditions make the AFA rate inaccurate, it did not cite to any record evidence to support this assertion and there is no evidence on the record that supports it. In the Preliminary Results, the Department found this rate to be relevant because the AFA rate was assigned to the PRC-wide entity in a prior review which is based upon the calculated rate from Anhui Native's own questionnaire responses and accompanying data, and thus reflects the commercial reality of a another respondent in the same industry.[147] The CIT and the Federal Circuit have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions, where this rate has been applied to an exporter in a prior segment.[148] Here, we continue to find this rate to be relevant because we applied it to the PRC-wide entity in Honey AR6, Honey AR7, and Honey AR10.[149]

Moreover, because the PRC-wide entity, which includes Kunshan Xinlong, failed to cooperate to the best of its ability in this administrative review, the Department selected this AFA rate because its serves as an adequate deterrent in order to induce cooperation in the proceeding. The Federal Circuit held in KYD, that selecting the highest prior margin for an exporter and applying it to that exporter as AFA reflects "a common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the {responding party} knowing of the rule, would have produced *current* information showing the margin to be less."[150] Here, Kunshan Xinlong did not produce current information in a timely manner, as

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[143] See Dongtai Peak, 777 F. 3d at 1355-1356.
[144] See Preliminary Results, 80 FR at 862 and Preliminary Decision Memo at 9-10.
[145] See Watanabe Group v. United States, 33 Int'l Trade Rep. (BNA) 1012 (CIT 2010) ("Watanabe Group") (citing Peer Bearing Co.-Changshan v. United States, 587 F. Supp. 2d 1319, 1327 (CIT 2008); Shandong Mach. Imp. & Exp. Co. v. United States, 31 Int'l Trade Rep. (BNA) 1612 (CIT 2009) (Commerce has no obligation to corroborate the PRC-wide rate as to an individual party where that party has failed to qualify for a separate rate)).
[146] See Kunshan Xinlong's Case Brief at 17.
[147] See Preliminary Results, 80 FR at 862 and Preliminary Decision Memo at 9-10; see also Honey AR6 and Honey AR7, unchanged in Administrative Review of Honey from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Intent to Rescind, In Part, 75 FR 24880 (May 6, 2010).
[148] See, e.g., KYD, Inc. v United States, 607 F.3d 760, 766-767 (CAFC 2010) ("KYD"); see also NSK Ltd. v. United States, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (affirming a 73.55 percent total AFA rate, the highest available dumping margin calculated for a different respondent in the investigation).
[149] See Seventh Administrative Review of Honey from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind, In Part, 74 FR 68249, 68252 (December 23, 2009) ("Honey AR7").
[150] See KYD, 607 F.3d at 766, citing Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1190 (Fed. Cir. 1990).

On this basis, we find that selecting the highest calculated rate of this proceeding is sufficiently relevant to the commercial reality for the PRC-wide entity, which includes Kunshan Xinlong. Furthermore, there is no information on the record of this review that demonstrates that this rate is uncharacteristic of the industry, or otherwise inappropriate for use as AFA. Based upon the foregoing, we determine this rate to be relevant.

Therefore, because the AFA rate is both reliable and relevant, we determine that it has probative value and is corroborated to the extent practicable, in accordance with section 776(c) of the Act. Therefore, we have assigned this rate as AFA to exports of the subject merchandise by the PRC-wide entity, which includes Kunshan Xinlong.

RECOMMENDATION

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

AGREE ✓ DISAGREE_____

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

7 MAY 2015
Date