



A-570-893
Changed Circumstances Review
Public Document
E&C/V: KJA

December 6, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

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

I. SUMMARY

We have analyzed the comments submitted for this final reconsideration of changed circumstances review ("CCR") in the antidumping duty ("AD") proceeding for certain frozen warmwater shrimp from the People's Republic of China ("PRC") and have not made changes to the Preliminary Reconsideration.¹ Accordingly, we continue to find that Hilltop International ("Hilltop")² is not the successor-in-interest to Yelin Enterprise Co. Hong Kong ("Yelin") and is properly considered to be part of the PRC-wide entity. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

II. BACKGROUND

On February 27, 2013, the Department of Commerce ("Department") published in the Federal Register the Preliminary Reconsideration of this CCR, wherein the original determination that Hilltop is the successor-in-interest to Yelin was reversed and Hilltop was preliminarily considered part of the PRC-wide entity, absent a determination of its own rate separate from the

¹ See Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Preliminary Reconsideration of Changed Circumstances Review, 78 FR 13324 (February 27, 2013) ("Preliminary Reconsideration").

² In the final results of the recently completed seventh administrative review, the Department noted that Hilltop, as in prior reviews, has reported that it is affiliated with Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd., Fuqing Yihua Aquatic Food Co., Ltd., Yelin Enterprise Co., Ltd., Ocean Beauty Corporation, Ever Hope International Co., Ltd., Ocean Duke Corporation and Kingston Foods Corporation. See Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results of Administrative Review; 2011-2012, 78 FR 56209, 56210 (September 12, 2013) ("PRC Shrimp AR7 Final").



PRC-wide entity.³ We also found that the application of facts available (“FA”) is appropriate because Hilltop: (A) withheld information requested by the Department; (B) failed to provide such information in a timely manner or in the form or manner requested; (C) significantly impeded the proceeding under the AD statute; and (D) provided information that cannot be verified. Further, because we found that Hilltop failed to cooperate to the best of its ability, the application of adverse facts available (“AFA”) with an adverse inference, pursuant to section 776(b) of the Tariff Act of 1930, as amended (the “Act”), was also warranted. Accordingly, as AFA we found that Hilltop is not the successor-in-interest to Yelin.

Hilltop and Petitioner⁴ submitted comments on the Preliminary Reconsideration on March 27, 2013,⁵ and rebuttal comments on April 1, 2013.⁶

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.⁷ Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. The revised deadline for the final reconsideration of this CCR is now December 11, 2013.⁸

Scope of the Order⁹

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,¹⁰ deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

³ See Preliminary Reconsideration.

⁴ Petitioner is the Ad Hoc Shrimp Trade Action Committee and its members.

⁵ See Letter to the Secretary of Commerce from Petitioner “Changed Circumstances Review for Certain Frozen Warmwater Shrimp from the People’s Republic of China: Case Brief” (March 27, 2013); Letter to the Secretary of Commerce from Hilltop “Administrative Case Brief for Hilltop International in the Reconsideration of Changed Circumstances Review: Certain Frozen Warmwater Shrimp from the People’s Republic of China” (March 27, 2013) (“Hilltop Prelim Comments”).

⁶ See Letter to the Secretary of Commerce from Petitioner “Changed Circumstances Review for Certain Frozen Warmwater Shrimp from the People’s Republic of China: Rebuttal Brief” (April 1, 2013) (“Petitioner Rebuttal Brief”); Letter to the Secretary of Commerce from Hilltop “Reply Brief for Hilltop International in the Reconsideration of Changed Circumstances Review: Certain Frozen Warmwater Shrimp from the People’s Republic of China” (April 1, 2013) (“Hilltop Rebuttal Brief”).

⁷ See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Shutdown of the Federal Government” (October 18, 2013).

⁸ We note that the original deadline for this final reconsideration was November 24, 2013, which was a Sunday. Accordingly, this final reconsideration has been extended 16 days from the following business day, November 25, 2013.

⁹ We note that on April 26, 2011, the Department amended the AD order to include dusted shrimp, pursuant to the U.S. Court of International Trade (“CIT”) decision in Ad Hoc Shrimp Trade Action Committee v. United States, 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission determination, which found the domestic like product to include dusted shrimp. See Certain Frozen Warmwater Shrimp From Brazil, India, the People’s Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision, 76 FR 23277 (April 26, 2011). The scope reproduced here is the scope that was in effect when the Department conducted this original CCR proceeding.

¹⁰ “Tails” in this context means the tail fan, which includes the telson and the uropods.

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

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

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

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

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

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

The Department has the inherent authority to cleanse its proceedings of potential fraud.¹¹ Where new evidence indicating possible fraud or misrepresentation comes to light after the completion of a proceeding, the Department may consider whether that information affected its determination.¹² In this case, new evidence came to light during the subsequent sixth administrative review (“AR6”) indicating that Hilltop made misrepresentations to the Department during this CCR. Based on this newly-discovered evidence, the Department finds it appropriate to reconsider the final results of this CCR.

IV. DISCUSSION OF THE ISSUES

Comment 1: Whether the Department Should Apply AFA to Hilltop

Petitioner's Case and Rebuttal Briefs:

- The Department has the authority, and the obligation, to protect the integrity of its proceedings from fraud.
- Record evidence establishes that Yelin, Hilltop, and their U.S. affiliate, Ocean Duke, repeatedly made material misrepresentations during the first administrative review (“AR1”) and this CCR regarding the existence of Ocean King and regarding To Kam Keung's role in Hilltop.
- Affiliations and organizational control are issues of relevance to the successor-in-interest analysis and consideration of record evidence suggesting transshipment is not necessary to conclude that Hilltop submitted material misrepresentations with respect to its affiliations.
- Hilltop recognized that affiliation identification was essential to the CCR when Hilltop's General Manager, To Kam Keung, falsely declared that there had been no investments or divestitures in any company since the conversion to Hilltop or the AD order was published.
- Hilltop cannot insulate itself from responsibility for its deception by claiming that the Department never asked about third country affiliations in this CCR because the record contains numerous instances of Hilltop's misrepresentations regarding its affiliation status.
- Hilltop's claim that the Department never initiated an inquiry into transshipment regarding shrimp from Cambodia is disingenuous in light of the Department's attempt to investigate the transshipment allegations in AR6 and Hilltop's refusal to respond to the Department's questions.
- The AR6 documentation demonstrates that the Department can and does investigate the concealment of subject merchandise in reviews and there is no statutory or Department practice prohibition on inquiring as to possible fraud.

¹¹ See Tokyo Kikai Seisakusho Ltd. v. United States, 529 F.3d 1352, 1360-61 (Fed. Cir. 2008) (“TKS”) (affirming the Department's authority to reconsider an administrative review when later discovered evidence of fraud indicated that the underlying proceeding had been tainted); Elkem Metals, Inc. v. United States, 193 F. Supp. 2d 1314, 1321 (CIT 2002).

¹² See Ad Hoc Shrimp Trade Action Comm. v. United States, 925 F. Supp. 2d 1315 (CIT 2013) (“AR5 Remand I Opinion”); TKS, 529 F.3d at 1360-61; Home Prods. Int'l v. United States, 633 F.3d 1369, 1378 (Fed. Cir. 2011).

- The record suggests the existence of additional undisclosed affiliates and missing information.
- Although Hilltop argues that the record of AR1 is not relevant to this CCR, in its CCR Request Hilltop expressly relied upon the verified AR1 findings in its successful effort to have the Department grant an expedited CCR.
- The requirements for FA are met because Hilltop failed to provide requested information, impeded the proceeding and provided information that cannot be verified.
- Hilltop did not act to the best of its ability resulting in a credibility deficit that renders all of its information unusable, an approach recently affirmed by the CIT in Changbao.¹³
- Although Hilltop claims that the Department cannot reject all of a respondent's information on the basis of deficiencies that do not undermine the reliability of the reported data, the CIT's decision in Changbao supported a decision to reject a respondent's information because the deception implicated the credibility and reliability of all of Changbao's submissions.
- Given that Hilltop has proven itself untrustworthy, and unrepentant once caught in its falsehoods, it would set a dangerous precedent for the Department to selectively accept certain information submitted by Hilltop.
- Because none of Hilltop's information is usable, there is a gap in the record as to whether Hilltop is separate from the PRC that must be filled through a reliance on the presumption of government control.
- AFA is appropriate because Hilltop, by not recalling and disclosing its affiliation with Ocean King, did not take reasonable steps to have familiarity with all of the relevant records.¹⁴
- The Department should apply AFA to Hilltop and reverse its decision that Hilltop is the successor to Yelin to deter future non-compliance and protect the integrity of its proceedings.

Hilltop's Case and Rebuttal Briefs:

- The Department's authority to reconsider determinations is limited to instances where information material to that determination is found to be tainted, and third country affiliations are not material to this successor-in-interest determination.
- The Department's successor-in-interest analysis is limited to examining changes in management, production facilities, supplier relationships and customer base.
- Third country affiliations are not relevant to the analysis because they would not influence the sourcing or sale of subject merchandise.
- Information from the AR1 record of this proceeding is not relevant to the successor in interest analysis and the Department cannot justify reversal of its original CCR finding on the basis of allegedly incomplete supplemental responses in a separate segment.
- Allegations that dumping margins in AR1 or the second administrative review ("AR2") might not be correct have no connection to whether Hilltop is the successor to Yelin.
- The Department's decision to apply AFA to Hilltop on the basis of allegedly "missing" information regarding Ocean King is arbitrary.

¹³ See Petitioner Rebuttal Brief at 18-19 (citing to Jiangsu Changbao Steel Tube Co. v. United States, 884 F. Supp. 2d 1295 (CIT 2012) ("Changbao").

¹⁴ Id. (citing to Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382 (Fed. Cir. 2003)).

- The Department’s assertion that To Kam Keung did not have operational control of Hilltop’s daily operations is without merit because the emails cited in support of that assertion do not discuss daily operations of Hilltop or any operations with respect to subject merchandise.
- There has never been a finding, nor has the Department initiated any inquiry, of transshipment of PRC shrimp through Cambodia, the Department never asked Hilltop any questions regarding transshipment in this CCR, and the Department has stated that it will not conduct a transshipment inquiry as part of a review proceeding.
- The “evidence” regarding transshipment from the AR6 documentation is speculative and cannot support a finding of transshipment.
- The transshipment allegations were rejected by the federal judge in Duke Lin’s trial as speculative and meritless and the Preliminary Reconsideration presents a misleading view of the Lins’ criminal investigation and fails to note evidence undermining the Department’s findings.
- The government did not bring any charges against Mr. Lin on shrimp transshipment and the only charges brought were related to potentially confusing labeling of a fish product.
- Petitioner’s allegations that Hilltop had another undisclosed affiliated in Indonesia, that Ocean Duke does not have a record of compliance with customs laws and that Ocean Duke paid a liability for crawfish imports that misidentified the exporter are unrelated to the issue of whether Hilltop is the successor-in-interest to Yelin.
- The use of FA is only appropriate to “fill gaps” in the record of missing information that is required and absent such a gap the Department cannot apply FA or AFA.
- The Department never asked Hilltop any questions regarding third country affiliates in this CCR and cannot claim that Hilltop “withheld” information or apply AFA for “missing” information that was never requested.
- Third country affiliations are not material to the successor-in-interest analysis and any “missing” information is now part of this CCR record.
- The Department has had ample time to consider the new information from AR6 and cannot claim that it was precluded from considering information regarding Ocean King.
- The claim that any information in this CCR cannot be verified is without merit.
- The Department cannot reject all of Hilltop’s information on the basis that Hilltop did not mention its affiliation with Ocean King because that information does not undermine the reliability of all reported data.

Department’s Position:

In the Preliminary Reconsideration, the Department laid out the facts of Hilltop’s misrepresentations to the Department in this CCR,¹⁵ in the underlying AR1 investigation and verification documentation with which Hilltop supported its claim to be the successor-in-interest to Yelin,¹⁶ and in the subsequent AR6, wherein the extent of Hilltop’s misrepresentations to the

¹⁵ See Preliminary Reconsideration, and accompanying Decision Memorandum at 10-11.

¹⁶ See CCR Request, at 2.

Department first came to light.¹⁷ We demonstrated that Hilltop misrepresented its corporate structure in at least three submissions to the Department during AR1, at both the verifications of Yelin and Ocean Duke in AR1, and in its CCR Request, particularly in a sworn affidavit signed by To Kam Keung, the General Manager of Hilltop.¹⁸ To Kam Keung is also the Hilltop official who was part owner and member of the Board of Directors of Ocean King (Cambodia) Co., Ltd. (“Ocean King”), despite Hilltop’s repeated misrepresentations to the contrary, from July 2005 and ending in September 2010.¹⁹ Each submission containing these misrepresentations was certified as accurate by To Kam Keung and officials of Hilltop’s U.S. reseller, Ocean Duke Corporation (“Ocean Duke”).

In the Preliminary Reconsideration, the Department also explained how the failure to disclose that a major supplier of merchandise meeting the physical description of the scope during AR1 and AR2 was an affiliated entity precluded the Department from considering whether Yelin underwent any shift in supplier relationships in the conversion to Hilltop,²⁰ a factor expressly examined in our original determination.²¹ In the Hilltop CCR Prelim, we explained that in a “changed circumstances review involving a successor-in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base.”²² Production facilities and supplier relationships are core factors in our analysis, and Ocean King was a supplier to Hilltop in AR1 and AR2 and a production/processing facility partially-owned by Hilltop, though to what extent Ocean King produced anything is unknown as a result of Hilltop’s refusal to provide any information about this facility. Further, the Hilltop CCR Prelim stated that the Department “**typically** examines several factors including, **but not limited to,**” changes in the aforementioned factors.²³ Thus, Hilltop’s suggestion that the Department is somehow held to strictly examining a narrow set of factors is baseless and Hilltop has not provided any statutory or regulatory grounds for this claim.²⁴

Although Hilltop contends that the factors focused on in a successor-in-interest analysis are those that affect the production and sale of subject merchandise, neither the record of this proceeding nor Hilltop’s submissions allow for such a definitive conclusion that Ocean King was not involved in the sale of subject merchandise from the PRC. As we have explained, the record of this proceeding contains absolutely no explanation as to how Ocean Duke was able to import

¹⁷ See Administrative Review of Certain Frozen Warmwater Shrimp From the People’s Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 77 FR 53856 (September 4, 2012) (“PRC Shrimp AR6 Final”); see also Memo to the File from Kabir Archuleta, International Trade Analyst, Office 9, “Placing Documents on the Record of Changed Circumstances Review” (December 17, 2012) (“AR1/AR6 BPI Documents”) at Attachment I “082712 Hilltop AFA Memo (BPI).pdf”.

¹⁸ See Preliminary Reconsideration, and accompanying Decision Memorandum at 10-11; CCR Request at Exhibit 4.

¹⁹ See Preliminary Reconsideration, and accompanying Decision Memorandum at 7-8.

²⁰ Id., at 13.

²¹ See Certain Frozen Warmwater Shrimp from the People’s Republic of China: Notice of Initiation and Preliminary Results of Changed Circumstances Review, 72 FR 24273, 24275 (May 2, 2007) (“Hilltop CCR Prelim”), unchanged in Certain Frozen Warmwater Shrimp from the People’s Republic of China: Notice of Final Results of Changed Circumstances Review, 72 FR 33447, 3348 (June 18, 2007).

²² See Hilltop CCR Prelim, 72 FR at 24274.

²³ Id.

²⁴ See Hilltop Prelim Comments, at 7-8.

more than 6.8 million kilograms (“kgs”) of shrimp from Cambodia between May 2004 and July 2005 when that country produced less than 185,000 kgs of shrimp in all of 2004 and 2005.²⁵ The record also demonstrates that Ocean Duke had 144 entries from Ocean King from October 20, 2005, through December 23, 2005.²⁶ A review of the import data on the record reveals that over a **seven-day period** from October 20, 2005, through October 27, 2005, Ocean Duke had 16 entries totaling **292,450 kgs of shrimp** from Ocean King declared as Cambodian country-of-origin,²⁷ exceeding the total production of Cambodia for the entirety of the years 2004 and 2005 by almost two-thirds.²⁸ Each of those 16 entries was reported containing 18 to 19 thousand kgs of shrimp.²⁹ Conservatively assuming a volume of 18,000 kgs and extending that volume across the 144 entries Ocean Duke sourced from Ocean King over a two-month period results in an estimated volume of 2,592,000 kgs.³⁰ Ocean Duke continued to make entries of shrimp sourced from Ocean King into the POR covering AR2,³¹ beginning in February 2006. Thus, the only conclusion that the Department is able to reach, absent any viable, alternative explanation or factual information from Hilltop, is that the vast majority of shrimp entered by Ocean Duke during this time frame, and declared and certified as Cambodian country-of-origin by a known affiliate of Hilltop, was extremely unlikely, if not impossible, to have been of Cambodian origin. Thus, we cannot conclude that Ocean King was not involved in supplying subject merchandise from the PRC to Hilltop and Ocean Duke.

The Department disagrees with Hilltop’s characterization of this reasoning as utterly baseless because there has never been a finding of transshipment, the claim the Department never asked any questions about transshipment, and the argument that the evidence of transshipment was rejected by a federal judge in Mr. Lin’s trial.³² In the PRC Shrimp AR6 Final, the Department addressed Hilltop’s arguments as to why the U.S. Department of Justice did not prosecute any transshipment allegations and why the sentencing Court refused to consider allegations of transshipment in the sentencing phase, at length.³³ Although the government chose not to bring

²⁵ See Preliminary Reconsideration, and accompanying Decision Memorandum at 9 (citing to Memo to the File from Kabir Archuleta, International Trade Analyst, Office 9, “Placing Documents on the Record of Changed Circumstances Review” (December 13, 2012) (“AR6 Public Documents”) at Attachment I “031212 Petitioner Pre-Verification Comments (PD).pdf”, at Exhibit 1 (“Sentencing Report”), at pg. 5 and Attachment 18). We note that the sentencing report contains two sources for the total production of Cambodia in 2004 and 2005: United Nations official yearbook statistics indicating that Cambodia produced in all of 2004 and 2005 approximately 175,000 kgs of farmed shrimp, and a signed and dated letter on letterhead from the Cambodian Fisheries Administration that listed Cambodia’s “Official production statistics for aquaculture” in 2004 and 2005 as 185,000 kgs. See Sentencing Report at Attachment 17 and Attachment 18, respectively. While the two sources do not report identical production volumes, we find the difference to be minimal such that these sources reasonably substantiate the volume of Cambodia’s actual production during 2004 and 2005.

²⁶ See Sentencing Report at Attachment 10.

²⁷ Id.

²⁸ Id. at Attachment 17 (The average of United Nations production data and Cambodian Fisheries Administration data noted above is 180,000 kgs for 2004 and 2005. Ocean Duke’s entries over a seven-day period exceeded that average production total for all of 2004 and 2005 by 112,450 kgs, or 62.47 percent of the production total).

²⁹ Id. at Attachment 10

³⁰ Id. (While the import data identifies three entries attributed to Ocean King with volumes less than 18,000 kgs, - 15,523 kgs, 15,523 kgs, and 16,689 kgs – the remaining 141 entries are between 18,000 and 20,000 kgs. Accordingly, we consider 18,000 kgs per shipment to be a conservative estimate of the amount of each shipment.)

³¹ Id. at Attachment 11.

³² See Hilltop Prelim Comments, at 10-11.

³³ See PRC Shrimp AR6 Final, and accompanying Issues and Decision Memorandum at Comment 1.

any charges on transshipment, Hilltop ignores record evidence explaining the procedural concerns that prevented the government from bringing such charges.³⁴ Nevertheless, we note that the Department has independently evaluated the information on the record in the context of our governing law, the Tariff Act of 1930, as amended, and finds that the information is relevant to our process, regardless of its treatment in a separate criminal proceeding. The fact that the Department has not initiated a formal inquiry or made a formal finding of transshipment does not negate the fact that Hilltop submitted material misrepresentations regarding its corporate structure and affiliations in this CCR and has refused to provide any explanation of its past trading activity and relationships with other entities and persons referenced in the Sentencing Report.

With respect to Hilltop's argument that the Department never asked Hilltop about third country affiliations, that claim is not supported by the record. In the Preliminary Reconsideration, we noted that Hilltop supported its statements in this CCR regarding Yelin and Hilltop's corporate structure and affiliations with citations to documents from the record of AR1 and, accordingly, we find it relevant to review these facts as constituting the CCR record as a whole.³⁵ Thus, the record contains numerous instances of the Department inquiring into Hilltop's third country affiliations, including statements made at the verifications of Ocean Duke and Hilltop claiming that the companies had no affiliates in Cambodia.³⁶ Notwithstanding those statements, Hilltop in its CCR Request stated in a sworn affidavit that there had been no "investments or divestitures in the way of mergers, acquisitions, share purchases or sale of assets in any company since . . . the antidumping duty order was published."³⁷ Hilltop's attempt to construe the Department's acceptance of this statement, and those made in AR1 and at verification, at face value as a tacit acknowledgement that third country affiliations are irrelevant to the successor-in-interest analysis is inappropriate. Rather, the Department believed that it had a complete and accurate picture of Hilltop's corporate structure through Hilltop's CCR request and information submitted in AR1, which we now know to be inaccurate. Indeed, numerous questions remain on this record which the Department attempted to resolve in AR6 but was prevented from doing so by Hilltop's refusal to cooperate:

- Hilltop's relationship with Lian Heng Investment Co., Ltd. ("Lian Heng"): The Sentencing Report shows significant quantities of shrimp imported from Cambodia by Ocean Duke in 2004 and early 2005 which were produced by Lian Heng.³⁸ In 2006, Lian Heng was found by the Department to be circumventing the order on fish fillets from Vietnam.³⁹ We asked Hilltop to explain and provide supporting documentation for

³⁴ See AR6 Public Documents at Attachment I "072312 Petitioner Rebuttal Brief Regarding Hilltop (PD).pdf", at 16-17.

³⁵ See Preliminary Reconsideration, and accompanying Decision Memorandum at 10.

³⁶ See AR1/AR6 BPI Documents, at Attachment I "053112 Hilltop Rebuttal Comments on CBP Import Data (BPI).pdf", at Exhibit 2 and Exhibit 3.

³⁷ See CCR Request, at Exhibit 4, pg. 5.

³⁸ See Sentencing Report, at Attachment 9 and 10.

³⁹ See Circumvention and Scope Inquiries on the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Partial Affirmative Final Determination of Circumvention of the Antidumping Duty Order, Partial Final Termination of Circumvention Inquiry and Final Rescission of Scope Inquiry, 71 FR 38608 (July 7, 2006).

the country of origin of shrimp exported by Lian Heng.⁴⁰ Hilltop refused to provide the documentation.⁴¹

- Country of Origin of shrimp from Cambodia: The Sentencing Report states that Ocean Duke imported over 15 million pounds of shrimp from Cambodia between May 2004 and July 2005 but Cambodian government data indicates that the country only produced an estimated 385,000 pounds of aquacultured shrimp in all of 2004 and 2005.⁴² We asked Hilltop to explain and provide supporting documentation for the country of origin of shrimp sourced from Cambodia.⁴³ Hilltop refused to provide the documentation.⁴⁴
- Relationship with Yelin Enterprise (Vietnam): Two U.S. Immigration and Customs Enforcement (“ICE”) documents included in the Sentencing Report provided details of an investigation into Yelin Enterprise (Vietnam) as to whether it was transshipping seafood products.⁴⁵ Hilltop has not declared an affiliate by the name of Yelin Enterprise (Vietnam) but the name bears a very close resemblance to Yelin Enterprise Co., Ltd., Hilltop’s Taiwanese affiliate, and Yelin Enterprise Co. Hong Kong, the company previously determined to be the predecessor to Hilltop, a finding under reconsideration. Further, email communication suggesting that Ocean Duke was transshipping Vietnamese shrimp through Cambodia listed an email address that appears to have come from Yelin Enterprise (Vietnam): yelin_vn@hcm.vnn.vn.⁴⁶ We asked Hilltop to explain whether Hilltop ever had any affiliation or business dealings with this company.⁴⁷ Hilltop provided a partial response indicating that after February 1, 2008, it had no affiliation or business dealings with Yelin Enterprise (Vietnam) but refused to provide any information prior to that date.⁴⁸ We note that this is the same response in which Hilltop denied any involvement with Ocean King and refused to provide any information regarding its purchases from that company.⁴⁹
- Relationship with Truong Trieu Truong: The ICE reports referenced above state that Truong Trieu Truong is the Director of Yelin Enterprise (Vietnam).⁵⁰ The Ocean King Email between To Kam Keung and Duke Lin reference a person by the name of “Truong.” We asked Hilltop whether it ever had any affiliation or business dealings with Truong Trieu Truong and whether this was the same “Truong” referenced in the

⁴⁰ See AR6 Public Documents at Attachment I “060112 Hilltop Supp6 Questionnaire (PD).pdf” (“Hilltop AR6 Sixth Supplemental Questionnaire”), at question 8; AR6 Public Documents at Attachment I “061912 Hilltop Supp7 Questionnaire (PD).pdf” (“Hilltop AR6 Seventh Supplemental Questionnaire”), at question 1.

⁴¹ See AR1/AR6 BPI Documents, at Attachment I “061512 Hilltop Supp 6 Response (BPI).pdf” (“Hilltop AR6 Sixth Supplemental Response”), at 19; AR1/AR6 BPI Documents at Attachment I “062712 Hilltop Supp7 Response (BPI).pdf” (“Hilltop AR6 Seventh Supplemental Response”), at 1.

⁴² See Sentencing Report, at 5.

⁴³ See Hilltop AR6 Sixth Supplemental Questionnaire, at question 6 and 8; Hilltop AR6 Seventh Supplemental Questionnaire, at question 1.

⁴⁴ See Hilltop AR6 Sixth Supplemental Response, at 17; Hilltop AR6 Seventh Supplemental Response, at 1.

⁴⁵ See Sentencing Report, at Attachment 24 and 26.

⁴⁶ Id. at Attachment 14.

⁴⁷ See Hilltop AR6 Sixth Supplemental Questionnaire, at question 9; Hilltop AR6 Seventh Supplemental Questionnaire, at question 1.

⁴⁸ See Hilltop AR6 Sixth Supplemental Response, at 20; Hilltop AR6 Seventh Supplemental Response, at 1.

⁴⁹ Id.

⁵⁰ See Sentencing Report, at Attachment 24 and 26.

Ocean King Email.⁵¹ Hilltop provided a partial response indicating that after February 1, 2008, it had no affiliation or business dealings with Truong Trieu Truong but refused to provide any information prior to that date.⁵² Again, we note that this is the same response in which Hilltop denied any involvement with Ocean King and refused to provide any information regarding its purchases from that company.⁵³

- Discrepancies between Import Data in Sentencing Report and CBP Data: Import data included in the Sentencing Report show 143 entries from Ocean King to Ocean Duke from October 20, 2005, through December 23, 2005.⁵⁴ We asked Hilltop whether any of its affiliates acted as the exporter of record for shipments sourced from Ocean King during AR1 and AR2 and to provide a listing of those sales.⁵⁵ Hilltop refused to provide the documentation.⁵⁶
- Additional Information Hilltop Refused to Address: In addition to the issues referenced above, the Department also asked Hilltop for information regarding a number of issues noted in the documentation accompanying the Sentencing Report, specifically: a description of the relationship between Hilltop and Mr. Kang Yu Meng in AR1 and AR2, identified as “the Cambodia Packer” in the Ocean King Email, how Yelin/Hilltop came to enter into a business relationship with him, and an explanation of his current relationship with Hilltop or its affiliated entities; an explanation as to why Duke Lin instructed To Kam Keung that Yelin HK cannot have any involvement or paper connection, apparently to the supplier of the Cambodia Factory; and whether Yelin/Hilltop and/or its affiliates exported any scope merchandise to Cambodia during AR1 and AR2.⁵⁷ Hilltop refused to provide a response to these questions.⁵⁸

Hilltop had multiple opportunities in AR6 to submit factual information in response to the unresolved questions on the record of this proceeding and refused to provide the information pursuant to its own analysis of what it deemed relevant to the Department’s analysis.⁵⁹ As a general matter, parties are required to respond to the Department’s inquiries and it is not up to a party to determine what it deems relevant in a proceeding.⁶⁰ In its AR5 Remand I Opinion, the CIT noted that rather than provide a reasonable explanation of its non-disclosure and subsequent denial of any affiliation with Ocean King, Hilltop “trivialized its prior misrepresentation . . . and continued to evade {the Department’s} requests for information regarding possible additional undisclosed affiliates.”⁶¹ The outstanding questions enumerated above reveal the extent to which

⁵¹ See Hilltop AR6 Sixth Supplemental Questionnaire, at question 9; Hilltop AR6 Seventh Supplemental Questionnaire, at question 1.

⁵² See Hilltop AR6 Sixth Supplemental Response, at 20-22; Hilltop AR6 Seventh Supplemental Response, at 1.

⁵³ Id.

⁵⁴ See Sentencing Report, at Attachment 10.

⁵⁵ See Hilltop AR6 Sixth Supplemental Questionnaire, at question 6; Hilltop AR6 Seventh Supplemental Questionnaire, at question 1.

⁵⁶ See Hilltop AR6 Sixth Supplemental Response, at 16-17; Hilltop AR6 Seventh Supplemental Response, at 1.

⁵⁷ See Hilltop AR6 Sixth Supplemental Questionnaire.

⁵⁸ See Hilltop AR6 Sixth Supplemental Response; Hilltop AR6 Seventh Supplemental Response.

⁵⁹ Id.

⁶⁰ See Mitsubishi Heavy Indus. v. United States, 833 F. Supp. 919, 921-22, 924-25 (CIT 1993) (holding that the Department properly resorted to use of the best information available because the respondent repeatedly failed to submit information requested by the Department and “unilaterally decided {what} data was irrelevant to the investigation”).

⁶¹ See AR5 Remand I Opinion, at 18-19.

the Department has attempted to illuminate the facts surrounding the allegations of transshipment and Hilltop's participation over the life of this proceeding, yet rather than provide the missing information, Hilltop continues to claim that the allegations have no merit and are based on speculation. If the allegations have no merit as Hilltop claims, it is incumbent upon Hilltop to provide a full account of its past activities and to substantively address the country-of-origin of the shrimp imported by Ocean Duke from Ocean King, which it has yet to offer in any segment of this proceeding. Contrary to Hilltop's claims that the allegations of additional undisclosed affiliates have no bearing on whether Hilltop is the successor-in-interest to Yelin, Hilltop's corporate structure and affiliations, supplier relationships and production facilities, are factors that are core, not tangential, to the Department's successor-in-interest analysis. Hilltop's failure to accurately represent the facts regarding these core factors allows the Department to disregard the totality of Hilltop's submissions.⁶² Thus, while the Department notes that a number of questions remain unanswered, the finding that Hilltop misrepresented its corporate structure and affiliations, in a segment with the express purpose of examining such factors, is itself grounds for reversal of our original successor-in-interest determination. Indeed, Hilltop's refusal to provide any explanation regarding its prior affiliations with certain people and entities that are referenced in the Sentencing Report raises questions regarding what other information is missing that could be relevant to the Department's proceeding.

We note that in current litigation at the CIT dealing with Hilltop's misrepresentations to the Department in this proceeding, the CIT upheld our decision to disregard the totality of Hilltop's submissions in AR5 because Hilltop failed to report its affiliation with Ocean King and refused to provide information requested by the Department.⁶³ In its AR5 Remand I Opinion, the CIT stated that "Hilltop's unexplained contradictions in representing its corporate structure in this review concern information that is core, not tangential, to Commerce's analysis because it goes to the heart of Hilltop's corporate ownership and control."⁶⁴ The CIT also stated that the Department's finding that Hilltop repeatedly withheld and misrepresented material information was supported by a reasonable reading of the record. This reasoning holds true in this segment as well because Hilltop's corporate structure and affiliations are of primary concern in a successor-in-interest analysis. Accordingly, we find that Hilltop submitted material misrepresentations in this CCR.

Hilltop's argument that the Department can only use FA to "fill gaps" in the record where required information is missing neglects the Department's explanation that the completeness and credibility of Hilltop's submissions are rendered fatally deficient by Hilltop's failure to cooperate and its repeated material misrepresentations.⁶⁵ Since the publication of the Preliminary Reconsideration, the CIT AR5 Remand I Opinion lends additional support to the determination that we are unable to rely upon any of Hilltop's submissions in this CCR. Specifically, the CIT stated that "Commerce reasonably determined to disregard the totality of Hilltop's representations in this review – including those previously used to support Hilltop's separate rate status – as inherently unreliable" because Hilltop's conduct raised questions regarding what other

⁶² See Shanghai Taoen Int'l Trading Co. v. United States, 360 F. Supp. 2d 1339, 1348 n.13 (CIT 2005).

⁶³ See AR5 Remand I Opinion.

⁶⁴ Id., at 19.

⁶⁵ See, e.g., Preliminary Reconsideration, and accompanying Decision Memorandum at 18.

relevant information is missing from the record.⁶⁶ The Department in this final reconsideration is not rejecting all of Hilltop's reported information based on deficiencies localized to a single portion of the record. Rather, we have provided a detailed explanation in our Preliminary Reconsideration as to why Hilltop's reported information is unusable overall based on the known deficiencies in its CCR Request and in the underlying AR1 documents cited to by Hilltop in support of its CCR Request, and the questionable degree of reliability that we can assign to information provided by Hilltop officials.

The CIT in Changbao stated that "the inference that a respondent's failure to disclose willful deception until faced with contradictory evidence implicates the reliability of that respondent's remaining representations is reasonable."⁶⁷ In order to apply an adverse inference the Department must either find a willful decision not to comply with a request or behavior below the standard for a reasonable respondent.⁶⁸ Here, the record demonstrates that Hilltop willfully decided not to comply with a request for information regarding its prior affiliations with certain people and entities that are referenced in the Sentencing Report⁶⁹ and that it provided misleading or inaccurate information regarding its affiliation with Ocean King in this review, demonstrating behavior below the standard for a reasonable respondent. Hilltop has yet to offer a substantive explanation for its failure to report its affiliation with Ocean King.⁷⁰

The length of time that has transpired since Hilltop's ultimate admission that it was affiliated with Ocean King does not negate the fact that Hilltop submitted material misrepresentations in this review. Hilltop's argument that the Department has had substantial time to analyze the effects of that affiliation⁷¹ is disingenuous in light of Hilltop's outright refusal to cooperate with the Department's requests for information regarding Hilltop's affiliations and prior selling activities in AR6.⁷² The mere fact that Hilltop eventually conceded in AR6 that an affiliation existed with Ocean King when faced with incontrovertible evidence⁷³ does not remedy the fact that Hilltop withheld information requested by the Department, which is itself a basis for the application of FA.⁷⁴

Although Hilltop argues that the Department's claim that any information within the CCR cannot be verified is without merit, Hilltop provides no further analysis and cites to a CIT decision that held that a "deliberate refusal to subject certain information to a verification procedure is not the

⁶⁶ See AR5 Remand I Opinion at 19.

⁶⁷ See Changbao, 884 F. Supp. 2d at 1306.

⁶⁸ See China Steel Corp. v. United States, 27 CIT 715, 735 (CIT 2003).

⁶⁹ See Hilltop AR6 Sixth Supplemental Response; Hilltop AR6 Seventh Supplemental Response.

⁷⁰ See AR6 Public Documents, at Attachment I "072312 Hilltop Rebuttal Brief (PD).pdf," at 9 ("... Mr. To Kam Keung's prior statements on affiliation may have been in error (e.g., due to his lack of operational involvement with Ocean King or for whatever reason) . . .").

⁷¹ See Hilltop Prelim Comments, at 18.

⁷² See Hilltop AR6 Sixth Supplemental Response; Hilltop AR6 Seventh Supplemental Response.

⁷³ See Hilltop Seventh Supplemental Response at 2.

⁷⁴ See 19 USC 1677e(a)(2)(B); see also Yantai Xinke Steel Structure Co. v. United States, 2012 CIT LEXIS 96, *32-33 (CIT 2012) ("The mere fact that Jiulong eventually provided Commerce with information that was responsive to earlier requests does not render Commerce's conclusion that this information was withheld unreasonable. Indeed, the untimely provision of requested information is, itself, a basis for the application of facts available.").

equivalent of a valid finding that . . . such information ‘cannot be verified.’”⁷⁵ Hilltop’s reliance on this precedent is improper. As explained in the Preliminary Reconsideration, Hilltop stated in its CCR Request that the pertinent facts regarding the conversion from Yelin to Hilltop are not in question because they were detailed on the record of AR1, were verified by Department officials shortly before Hilltop submitted its CCR request, and were supplemented by additional details in Hilltop’s CCR Request.⁷⁶ Those verification reports are now on the record of this CCR and demonstrate that Hilltop and Ocean Duke boldly presented false information regarding its corporate structure to Department officials at two verifications to the extent that the Department’s verification reports now contain material misrepresentations.⁷⁷ Hilltop’s suggestion that the Department cannot find its submissions unverifiable because the Department deliberately determined to refuse to subject the information to verification is, therefore, unreasonable. Further, Hilltop overlooks the Department’s position in the Preliminary Reconsideration that in order for the Department to use information in an AD or countervailing duty proceeding, it needs to be verifiable, and information that contains a material misrepresentation or omission would not be verifiable.⁷⁸

For the foregoing reasons and in accordance with the analysis set forth in the Preliminary Reconsideration, the Department continues to find that by failing to disclose its relationship with Ocean King, Hilltop withheld information, failed to provide information in a timely manner, and provided information that could not be verified. Accordingly, application of facts available is warranted pursuant to sections 776(a)(2)(A),(B), (C), and (D) of the Act.⁷⁹ Further, for the reasons outlined above and in the Preliminary Reconsideration, the Department finds, pursuant to section 776(b) of the Act, the application of AFA is warranted as the Department has determined that Hilltop has failed to cooperate by not acting to the best of its ability to comply with the Department’s requests for information. As a result of this determination, we reverse our previous successor-in-interest determination and find that Hilltop is not the successor-in-interest to Yelin.

Comment 2: Whether Hilltop is Part of the PRC-wide Entity

Petitioner’s Case and Rebuttal Briefs:

- Given the extent of Hilltop’s misrepresentations, the Department is not precluded from applying AFA merely because Hilltop was verified as a Hong Kong company.

⁷⁵ See Hilltop Prelim Comments, at 18 (citing to China Kingdom Imp. & Exp. Co. v. United States, 31 CIT 1329, 1340 (n.7) (2007)).

⁷⁶ See CCR Request, at 2.

⁷⁷ Id.

⁷⁸ See Preliminary Reconsideration, and accompanying Decision Memorandum at 16; see also Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule, 76 FR 7491, 7496 (February 10, 2012).

⁷⁹ See Carbazole Violet Pigment 23 from India: Preliminary Results of Antidumping Duty Changed Circumstances Review, 75 FR 52930 (August 30, 2010) (applying AFA in the context of a successor-in-interest changed circumstances review when a company refused to cooperate by failing to respond to the Department’s questionnaires), and Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Changed Circumstances Review, 75 FR 62765 (October 13, 2010) (affirming the preliminary finding).

Hilltop's Case and Rebuttal Briefs:

- The Department cannot find Hilltop to be part of the PRC-wide entity because it is a Hong Kong-based exporter and is not required to establish autonomy from the PRC government.

Department's Position:

Although Hilltop claims that it is a Hong Kong-based exporter and therefore placement in the PRC-wide entity is inappropriate,⁸⁰ the undisclosed affiliation, uncertainty with regard to other undisclosed affiliations, and unreliability of information on the record prevent us from determining with certainty the ownership and/or control of Hilltop. Because of the lack of reliable information relating to affiliation we cannot conclude that Hilltop's submission stating that it is located in Hong Kong alone confirms that it is not controlled by the PRC government. Hilltop's failure to disclose its affiliation with Ocean King, which lasted over the course of five years, calls into question the information presented during the CCR proceeding such that we are not able to make findings regarding ownership and control of Hilltop. We note that the CIT in its AR5 Remand I Opinion stated that the Department "reasonably decided that Hilltop's remaining representations regarding its structure and ownership – particularly those concerning the role of PRC government control in its pricing decisions – may be similarly incomplete and inaccurate."⁸¹ While this decision lends support to the determination that Hilltop should properly be considered part of the PRC-wide entity, we also note that standard Department practice dictates that when a company is found not to be the successor-in-interest to a company previously granted a separate rate, as is the case in this CCR, exports attributable to the company must be assigned the country-wide rate in effect because the company has never been assigned a rate of its own.⁸² Thus, while the determination that Hilltop is not the successor-in-interest to Yelin results in the application of the PRC-wide rate to Hilltop's exports, the rate has been determined as a result of the absence of separate, individually assigned rate for Hilltop, rather than an analysis of Hilltop's eligibility for a separate rate. We further note that in the recently completed seventh administrative review of this proceeding, Hilltop was found to be part of the PRC-wide entity and assigned the PRC-wide rate in effect.⁸³ Accordingly, the determination that Hilltop is not the successor-in-interest to Yelin will have no practical effect on the rate currently assigned to Hilltop.

⁸⁰ See Hilltop Prelim Comments at 19-20.

⁸¹ See AR5 Remand I Opinion at 19-20.

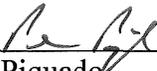
⁸² See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Changed Circumstances Review, 75 FR 46914, 46916 (August 4, 2010); Frozen Warmwater Shrimp from Vietnam: Notice of Final Results of Antidumping Duty Changed Circumstances Reviews, 74 FR 42050, 42051 (August 20, 2009).

⁸³ See PRC Shrimp AR7 Final, 78 FR at 56210.

Recommendation:

Based on our analysis of the comments received, and pursuant to sections 776(a)(2)(A),(B), (C), (D), and 776(b) of the Act, we recommend that the Department reverse its previous successor-in-interest determination, apply total AFA to Hilltop and find that Hilltop is not the successor-in-interest to Yelin. Accordingly, Hilltop is part of the PRC-wide entity and subject to the PRC-wide entity rate in effect, absent a showing that it received a separate, calculated rate in a particular proceeding.

AGREE ✓ DISAGREE _____



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

6 DECEMBER 2013
Date