



A-570-893  
Administrative Review  
POR: 2/1/2018 – 1/31/2019  
**Public Document**  
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December 17, 2020

**MEMORANDUM TO:** Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Results of the  
Antidumping Duty Administrative Review of Certain Frozen  
Warmwater Shrimp from the People's Republic of China; 2018-  
2019

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## I. SUMMARY

The Department of Commerce (Commerce) has analyzed the case and rebuttal briefs submitted by interested parties and, consistent with the *Preliminary Results*, continues to find that Shantou Red Garden Food Processing Co., Ltd. (Shantou RGFP) is not the successor in interest (SII) to Red Garden Food Processing Co., Ltd. (RGFP), a company partially revoked from the antidumping duty (AD) *Order*<sup>1</sup> issued in this proceeding.<sup>2</sup> We also continue to find that Shantou RGFP and Shantou Red Garden Foodstuff Co., Ltd. (Shantou RGFS) should be collapsed as a single entity (collectively, Shantou Red Garden Foods).<sup>3</sup> Based on our analysis, we made certain changes to the final dumping margin calculated for Shantou Red Garden Foods.

We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of issues in this review for which we received comments from interested parties:

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<sup>1</sup> See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the People's Republic of China*, 70 FR 5149 (February 1, 2005) (*Order*).

<sup>2</sup> See *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018–2019*, 85 FR 12894 (March 5, 2020) (*Preliminary Results*); see also Memorandum, “Administrative Review of the Antidumping Duty Order of Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Successor-In-Interest Determination,” dated February 28, 2020 (SII Memo).

<sup>3</sup> See Memorandum, “Affiliation and Collapsing of Shantou Red Garden Food Processing Co., Ltd. with Shantou Red Garden Foodstuff Co., Ltd.,” dated April 29, 2020 (Collapsing Memo).

- Comment 1: Whether Commerce Should Consider Shantou Red Garden Foods' Ministerial Error Allegation
- Comment 2: Whether Commerce Should Apply Adverse Facts Available (AFA) to Shantou Red Garden Foods
- Comment 3: Whether Commerce Has the Authority to Conduct an SII Analysis Within the Context of an Administrative Review (AR)
- Comment 4: Whether Commerce's SII Analysis was Predicated on Erroneous Data
- Comment 5: Whether to Maintain the Existing Combination Rate
- Comment 6: Whether Truck Revenue Should Be Added to Gross Unit Price
- Comment 7: Whether Commerce Should Use Shantou Red Garden Foods' Revised Factors of Production (FOP) Database

## II. BACKGROUND

On March 5, 2020, Commerce published the *Preliminary Results* of this review in the *Federal Register*. At that time, we informed interested parties that Commerce intended to conduct verification of Shantou Red Garden Foods' questionnaire responses and that a briefing schedule would be released at a later date.<sup>4</sup> We also informed parties that, based on Shantou Red Garden Foods' questionnaire responses and the *Preliminary Results*, it may be appropriate to treat Shantou RGFP and Shantou RGFS as a single entity.<sup>5</sup>

In April 2020, Shantou Red Garden Foods timely submitted a supplemental questionnaire response,<sup>6</sup> and Commerce determined that Shantou RGFP and Shantou RGFS should be treated a single entity.<sup>7</sup> Commerce also tolled all deadlines for ARs by 50 days,<sup>8</sup> and we established a briefing schedule for issues related to the *Preliminary Results*.<sup>9</sup>

In May 2020, Commerce received a joint case brief from Shantou Red Garden Foods and Ocean Bistro Corporation (Ocean Bistro),<sup>10</sup> as well as a case brief from the American Shrimp Processors Association (ASPA).<sup>11</sup> Also in May 2020, Shantou Red Garden Foods and Ocean

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<sup>4</sup> See *Preliminary Results*, 85 FR at 12896.

<sup>5</sup> See SII Memo at 6.

<sup>6</sup> See Shantou Red Garden Foods' Letter, "Frozen Warmwater Shrimp from the People's Republic of China; Response to the First Supplemental Section D Questionnaire," dated April 8, 2020 (Shantou Red Garden Foods April 8, 2020 SQR).

<sup>7</sup> See Collapsing Memo.

<sup>8</sup> See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

<sup>9</sup> See Memorandum, "Briefing Schedule," dated April 29, 2020.

<sup>10</sup> See Shantou Red Garden Foods and Ocean Bistro's Case Brief, "Frozen Warmwater Shrimp from the People's Republic of China; Case Brief," dated May 14, 2020. Because this case brief contained untimely-filed new factual information (NFI), we rejected it. The parties subsequently refiled this brief. See Shantou Red Garden Foods and Ocean Bistro's Case Brief, "Frozen Warmwater Shrimp from the People's Republic of China; Redacted Case Brief," dated May 27, 2020 (Shantou Red Garden Foods Case Brief).

<sup>11</sup> See ASPA's Case Brief, "Certain Frozen Warmwater Shrimp from China: ASPA's Case Brief," dated May 13, 2020 (ASPA Case Brief).

Bistro; ASPA; and the Ad Hoc Shrimp Trade Action Committee (the petitioner) submitted rebuttal briefs.<sup>12</sup>

In July 2020, we cancelled verification due to the ongoing Global Level 4 travel advisory.<sup>13</sup> In addition, Commerce tolled all deadlines for ARs by an additional 60 days.<sup>14</sup> In October, Commerce further extended the deadline for the final results of this AR by 60 days, thereby extending the deadline for these results until December 21, 2020.<sup>15</sup>

### III. SCOPE OF THE *ORDER*

The scope of the *Order* includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,<sup>16</sup> deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the *Order*, regardless of definitions in the harmonized tariff schedule (HTS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

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

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<sup>12</sup> See Shantou Red Garden Foods and Ocean Bistro's Rebuttal Brief, "Frozen Warmwater Shrimp from the People's Republic of China; Rebuttal Brief," dated May 20, 2020 (Shantou Red Garden Foods Rebuttal Brief); ASPA's Rebuttal Brief, "Certain Frozen Warmwater Shrimp from China: ASPA's Rebuttal Brief," dated May 20, 2020; and Petitioner's Rebuttal Brief, "Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China (2018-2019): Rebuttal Brief," dated May 20, 2020. The rebuttal briefs of both ASPA and the petitioner also contained NFI and were rejected/subsequently refiled. See ASPA's Rebuttal Brief, "Certain Frozen Warmwater Shrimp from China: Resubmission of ASPA's Rebuttal Brief," dated May 26, 2020 (ASPA Rebuttal Brief); and Petitioner's Rebuttal Brief, "Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China (2018-2019): Revised Rebuttal Brief," dated May 26, 2020 (Petitioner Rebuttal Brief).

<sup>13</sup> See Memorandum, "Cancellation of Verification," dated July 2, 2020.

<sup>14</sup> See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated July 22, 2020.

<sup>15</sup> See Memorandum, "Frozen Warmwater Shrimp from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review, 2018-2019," dated October 2, 2020.

<sup>16</sup> "Tails" in this context means the tail fan, which includes the telson and the uropods.

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

Excluded from the scope are: (1) breaded shrimp and prawns (HTS subheading 1605.20.1020); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.0020 and 0306.23.0040); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.0510); (5) dried shrimp and prawns; (6) Lee Kum Kee’s shrimp sauce; (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.1040); and (8) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product’s total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (“IQF”) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this *Order* are currently classified under the following HTS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. These HTS subheadings are provided for convenience and for customs purposes only; the written description of the scope of this *Order* is dispositive.<sup>17</sup>

#### IV. CHANGES SINCE THE *PRELIMINARY RESULTS*

Based on a review of the record and comments received from interested parties, Commerce made two changes to the *Preliminary Results*. First, we relied on Shantou Red Garden Foods’ most recently submitted FOP database (*see* Comment 7). Second, we determined that the use of partial AFA, pursuant to sections 776(a)-(b) of the Tariff Act of 1930, as amended (the Act), is appropriate when determining the weighted-average distance of two of Shantou Red Garden Foods’ shrimp suppliers to its factory (*see* Comment 2). For a more detailed discussion of these changes, *see* the Final Analysis Memorandum.<sup>18</sup>

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<sup>17</sup> On April 26, 2011, Commerce amended the *Order* to include dusted shrimp, pursuant to the U.S. Court of International Trade (CIT) decision in *Ad Hoc Shrimp Trade Action Committee v. United States*, 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission (ITC) determination, which found the domestic like product to include dusted shrimp. *See Certain Frozen Warmwater Shrimp from Brazil, India, the People’s Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision*, 76 FR 23277 (April 26, 2011); *see also Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam* (Investigation Nos. 731-TA-1063, 1064, 1066-1068 (Review), USITC Publication 4221, March 2011).

<sup>18</sup> *See* Memorandum, “Final Analysis Memorandum for Shantou Red Garden Food Processing Co., Ltd. and Shantou Red Garden Foodstuff Co., Ltd.,” dated concurrently with, and hereby adopted by, this memorandum (Final Analysis Memorandum).

## V. DISCUSSION OF THE ISSUES

### Comment 1: Whether Commerce Should Consider Shantou Red Garden Foods' Ministerial Error Allegation

**Background:** Shantou Red Garden Foods argues that Commerce made a ministerial error in a section 129 proceeding conducted in 2013, by misidentifying “Shantou Red Garden Food Processing Co., Ltd.” as “Red Garden Food Processing Co., Ltd.” in an excluded exporter-producer combination. Shantou Red Garden Foods claims that, once Commerce corrects this ministerial error, Shantou RGFP would be excluded from the *Order* and, thus, Commerce would be unable to review its entries of shrimp during the period of review (POR).

#### *Shantou Red Garden Foods' Comments*<sup>19</sup>

- Commerce’s section 129 determination contained a clerical error because it misidentified “Shantou Red Garden Food Processing Co., Ltd.” as “Red Garden Food Processing Co., Ltd.”
- There is extensive evidence on the record of the less-than-fair value (LTFV) investigation that the correct company name under investigation was Shantou RGFP and not Red Garden Food Processing Co., and both Shantou Red Garden Foods and Commerce used that name. Additionally, Shantou RGFP’s business license demonstrates that its full name is Shantou RGFP, and Commerce verified the information in Shantou RGFP’s submissions. Thus, there is nothing on the record of the LTFV investigation regarding a company called “Red Garden Food Processing Co., Ltd.”<sup>20</sup>
- In multiple *Federal Register* notices after the LTFV investigation, Commerce consistently referred to the company as Shantou RGFP.<sup>21</sup>
- The *Federal Register* notice for Commerce’s section 129 proceeding determination is the first *Federal Register* notice where Commerce refers to Shantou RGFP as “Red Garden Food Processing Co., Ltd.”<sup>22</sup>
- Commerce should correct the company name in the section 129 determination so as to exclude Shantou RGFP from the *Order*. Once this error is resolved, the initiation with respect to Shantou RGFP is void *ab initio*, since Shantou RGFP cannot be subject to review.
- There is no statutory prohibition preventing Commerce from correcting its clerical error in the section 129 proceeding now. Indeed, the courts have encouraged agencies to reconsider their final determinations when such decisions are based on erroneous data.

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<sup>19</sup> See Shantou Red Garden Foods Case Brief at 4-10, 12-15; see also Shantou Red Garden Foods Rebuttal Brief at 10-11.

<sup>20</sup> See Shantou Red Garden Foods Case Brief at 1-2, 8 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People’s Republic of China*, 69 FR 70997 (December 8, 2004) (*LTFV Investigation*), and accompanying Issues and Decision Memorandum (IDM)).

<sup>21</sup> *Id.* at 5 (citing, e.g., *Certain Frozen Warmwater Shrimp from the People’s Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper*, 72 FR 52049 (September 12, 2007) (*2004/2006 Shrimp Final*)). For a complete list of *Federal Register* notices cited, see Shantou Red Garden Foods’ Letter, “Frozen Warmwater Shrimp from the People’s Republic of China; Response of Red Garden Companies to Domestic Producers’ Letter of September 6, 2019,” dated October 18, 2019 at Exhibit 6-8.

<sup>22</sup> *Id.* at 6.



Additionally, the courts have argued that agencies have an inherent authority to reconsider their decisions.<sup>23</sup>

- Commerce has had over 100 instances in the past few years where it made an error in a company's name. In these cases, Commerce corrected the mistakes. Commerce should do the same in this case. To do otherwise would be arbitrary, capricious, and an abuse of discretion.<sup>24</sup>
- ASPA's AFA arguments below (*see* Comment 2) implicitly acknowledge that Shantou RGFP existed during the investigation and was excluded from the *Order*.<sup>25</sup>

*Petitioner's Rebuttal Comments*<sup>26</sup>

- The *Initiation Notice* clearly stated that Commerce initiated this AR based on separate requests from the petitioner and ASPA. With respect to Shantou RGFP, Commerce did not limit the initiation of this AR only to entries of its shrimp which were exported and/or produced in the excluded exporter-producer combination specified in the section 129 finding. Instead, Commerce initiated the review with respect to all exports from Shantou RGFP. Of note, Commerce initiated this AR for Shantou RGFP in an identical manner in the tenth through fourteenth ARs of this *Order*, and Shantou Red Garden did not question this treatment then.
- Shantou Red Garden Foods submitted a no-shipment certification for both Shantou RGFP and Shantou RGFS in response to the initiation of this AR.<sup>27</sup> Shantou Red Garden Foods does not explain why it submitted no-shipment certifications, given its stance that the initiation was "void *ab initio*." Thus, Shantou Red Garden Foods implicitly acknowledged in its no-shipment certifications that the AR was properly initiated.
- It makes no difference whether the exporter-producer combination excluded in the section 129 proceeding referred to Shantou RGFP or "Red Garden Food Processing Co., Ltd." In either circumstance, Shantou RGFP as it exists now is not the SII to the entity that participated in the LTFV investigation and that was excluded from the *Order*.
- Shantou Red Garden Foods relies on *Tokyo Kikai* to establish Commerce's authority to re-open the section 129 proceeding to correct the alleged ministerial error. However, in that decision, the U.S. Court of Appeals for the Federal Circuit (CAFC) also explained that an agency's authority is not without limitation and that "any reconsideration must occur within a reasonable time."<sup>28</sup> The section 129 determination was made seven years ago. Shantou Red Garden Foods offers no explanation why its request for Commerce to reconsider its decision occurs within a reasonable time.
- Shantou Red Garden Foods cites over 100 instances where Commerce corrected a company's name. However, the list is comprised of AR initiation notices wherein Commerce corrected errors from a prior initiation notice during the course of that segment of a proceeding and not after that segment had concluded.

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<sup>23</sup> *Id.* at 8-10 (citing *Elkem Metals Co. v. United States*, 193 F. Supp.2d 1314, 1321 (CIT 2002) (*Elkem Metals*) and *Tokyo Kikai Seisakusho, Ltd. v. United States*, 529 F.3d 1352 (Fed. Cir. 2008) (*Tokyo Kikai*)).

<sup>24</sup> *Id.* at 3, 14-15, and Exhibit 2.

<sup>25</sup> *See* Shantou Red Garden Foods Rebuttal Brief at 10-11.

<sup>26</sup> *See* Petitioner Rebuttal Brief at 2-13, 26-29.

<sup>27</sup> *Id.* at 6-8 (citing Shantou Red Garden Foods' Letter, "Frozen Warm Water Shrimp from the People's Republic of China; Certification of No Sales," dated May 17, 2019).

<sup>28</sup> *Id.* at 27-28 (citing *Tokyo Kikai*, 529 F.3d at 1352, 1361).

*ASPA's Rebuttal Comments*<sup>29</sup>

- Shantou Red Garden Foods cites situations where agencies have found it necessary to correct major errors in decisions. However, Shantou Red Garden Foods ignores the additional considerations that are relevant when addressing ministerial errors. Thus, Shantou Red Garden Foods' citations are inappropriate in this instant review.
- Section 735(e) of the Act establishes procedures for the correction of ministerial errors "within a reasonable time after the determinations are issued." Further, the CAFC has held that "there is a strong interest in the finality of Commerce's decisions."<sup>30</sup>
- Pursuant to 19 CFR 351.224(c), parties must file ministerial error allegations within five days of the date Commerce released disclosure documents or held a disclosure meeting, whichever is earlier. The CAFC has recognized that meeting that deadline is a requisite to challenging a ministerial error allegation.<sup>31</sup>
- The CAFC has also held that Commerce is prohibited from reopening a record to correct ministerial errors after a final determination is no longer subject to judicial review.<sup>32</sup> Thus, the issue of finality outweighs the interest in correcting a ministerial error.
- Shantou Red Garden Foods argues that Commerce made a ministerial error in the section 129 proceeding's final determination,<sup>33</sup> However, ministerial error allegations can only be made pursuant to 19 CFR 351.224(c), which has strict time limits. Because Shantou Red Garden Foods failed to timely raise this issue, and the time for judicial review is past, Commerce is unable to revise that determination through the ministerial error regulation.
- Shantou Red Garden Foods citations to instances where Commerce corrected a company's name are inapposite because there was no issue of finality in those cases.

**Commerce Position:** We disagree with Shantou Red Garden Foods that Commerce improperly initiated a review of Shantou RGFP. On February 8, 2019, Commerce published in the *Federal Register* a notice of opportunity to request a review of the *Order* for the period February 1, 2018 through January 31, 2019.<sup>34</sup> Commerce received timely requests for review, in accordance with 19 CFR 351.213(b).<sup>35</sup> Accordingly, on May 2, 2019, Commerce initiated an AR of the *Order*

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<sup>29</sup> See ASPA Rebuttal Brief at 1-8.

<sup>30</sup> *Id.* at 2 (citing *Alloy Piping Products, Inc. v. Kanzen Tetsu Sdn. Bhd.*, 334 F.3d 1284, 1292 (Fed. Cir. 2003) (*Alloy Piping*)).

<sup>31</sup> *Id.* at 2-3 (citing *Alloy Piping*, 334 F.3d at 1293).

<sup>32</sup> *Id.* at 3-4 (citing *American Signature, Inc. v. United States*, 598 F.3d 816, 828 (Fed. Cir. 2010) (*American Signature*)).

<sup>33</sup> *Id.* at 4 (citing Shantou Red Garden Foods Case Brief at 1-3 and 8).

<sup>34</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 2816 (February 8, 2019).

<sup>35</sup> See Petitioner's Letter, "Certain Frozen Warmwater Shrimp from the People's Republic of China: Request for Administrative Reviews," dated February 25, 2019; see also ASPA's Letter, "Administrative Review of the Antidumping Duty Order Covering Frozen Warmwater Shrimp from the People's Republic of China (POR 14: 02/01/18-01/31/19): American Shrimp Processors Association's Request for an Administrative Review," dated February 27, 2019.

with respect to 102 companies, including Shantou RGFP and Shantou RGFS (but only where the exports of this latter company were of merchandise not produced by particular companies).<sup>36</sup>

Shantou Red Garden Foods argues that Commerce erred in initiating this AR with respect to Shantou RGFP.<sup>37</sup> Its argument is premised on an allegation that Commerce made a ministerial error in the section 129 proceeding when it excluded from the *Order* entries of shrimp made by a company called “Red Garden Food Processing Co., Ltd.” instead of by Shantou RGFP.<sup>38</sup> Shantou Red Garden Foods argues that, when Commerce corrects this error, it will appropriately exclude Shantou RGFP’s entries of shrimp from the *Order* and, thus, the initiation of this review of Shantou RGFP will be void *ab initio*.<sup>39</sup>

We find it inappropriate to address the merits of Shantou Red Garden Foods’ allegation in this review for three reasons. First, Shantou Red Garden Foods’ allegation relates to a different segment of the proceeding, *i.e.*, the section 129 inquiry, in which the final determination was published on March 28, 2013.<sup>40</sup> As required by its regulations, Commerce considers each AR or other type of inquiry (such as changed circumstances reviews, scope inquiries, *etc.*) a separate segment of a proceeding, with each segment having its own unique facts.<sup>41</sup> Because Commerce considers each segment of a proceeding separately, any ministerial error allegation related to that segment is limited to that segment, and any determinations made in the section 129 inquiry are no longer subject to judicial review.

Second, even if Commerce agreed that Shantou Red Garden Foods could make the allegation in question within this AR, this allegation is untimely. Pursuant to 19 CFR 351.224(c)(2), comments concerning ministerial errors must be filed within five days after Commerce has released disclosure documents or held a disclosure meeting. Commerce released the signed, unpublished *Federal Register* notice to which the alleged ministerial error pertains to parties on March 25, 2013, and this notice published on March 28, 2013; thus, the deadline for any ministerial error allegation in that inquiry was April 1, 2013.<sup>42</sup> Parties to the proceeding were on notice at that time and were aware of how Commerce had implemented its determination by

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<sup>36</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 18777 (May 2, 2019) (*Initiation Notice*) (stating, in part, that Commerce was initiating this review for Shantou RGFS only with respect to subject merchandise produced by entities other than the following producers: Red Garden Food Processing Co., Ltd.; Chaoyang Jindu Hengchang Aquatic Products Enterprise Co., Ltd.; Raoping County Longfa Seafoods Co., Ltd., Meizhou Aquatic Products Quick-Frozen Industry Co., Ltd.; Shantou Jinyuan District Mingfeng Quick-Frozen Factory; and Shantou Long Feng Foodstuffs Co., Ltd.).

<sup>37</sup> See Shantou Red Garden Foods Case Brief at 4-10, 12-15.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> See *Certain Frozen Warmwater Shrimp from the People’s Republic of China and Diamond Sawblades and Parts Thereof from the People’s Republic of China: Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders*, 78 FR 18958 (March 28, 2013) (*Exclusion Notice*).

<sup>41</sup> See 19 CFR 351.102(b)(47); see also *Shandong Huarong Machinery Co. v. United States*, 29 CIT 484, 491 (CIT 2005).

<sup>42</sup> *Id.* Because the signed notice was disclosed to parties on March 25, 2013, the deadline for ministerial error allegations was March 30, 2013, which is a Sunday. Commerce’s practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day, *i.e.*, April 1, 2013. See *Notice of Clarification: Application of “Next Business Day” Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).



March 25, 2013. In short, interested parties should have discovered and alleged a ministerial error in the section 129 inquiry during the time period specified by our regulations. Therefore, consistent with our regulations, Shantou Red Garden Foods' ministerial error allegation claim is untimely.<sup>43</sup>

Finally, and in any event, accepting Shantou Red Garden's ministerial error claim here would have no effect on this instant review. Irrespective of whether Commerce changed the company name from "Red Garden Food Processing Co., Ltd." to "Shantou Red Garden Food Processing Co., Ltd." in the excluded exporter-producer combination, that combination is only valid if Shantou RGFP, as it currently exists, is the same company as RGFP (by whatever name) as it existed at the time of the LTVF investigation. However, for the reasons explained in detail in the SII Memo and Comment 4 below, the excluded producer/exporter RGFP no longer exists.<sup>44</sup> Thus, Shantou Red Garden Foods' entries of shrimp during this POR fall within the *Order*, and Commerce has the authority to review them, pursuant to section 751 of the Act.

We find Shantou Red Garden Foods' arguments unpersuasive in this matter. Shantou Red Garden Foods cites *Elkem Metals* for the proposition that there is no statutory prohibition for Commerce to correct this alleged ministerial error.<sup>45</sup> However, the facts in *Elkem Metals* are distinct from those here. In *Elkem Metals*, the CIT held that the ITC had the authority to reconsider a final determination after receiving allegations of fraud in the data used to make that decision.<sup>46</sup> There is no similar allegation of fraud in this proceeding, but merely a claim that Commerce made a simple ministerial error seven years ago.

Further, while we agree that Commerce has an inherent authority to reconsider its decisions,<sup>47</sup> that authority is not unbounded. As CAFC explained in *Tokyo Kikai*,

An agency's inherent authority to reconsider its decisions is not without limitation, however. An agency cannot, for example, exercise its inherent authority in a manner that is contrary to a statute ... Thus, an agency obviously lacks power to reconsider where a statute forbids the exercise of such power. Similarly, in situations where a statute does expressly provide for reconsideration of decisions, the agency is obligated to follow the procedures for reconsideration set forth in the statute.<sup>48</sup>

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<sup>43</sup> See 19 CFR 351.224(c)(2); see also *QVD Food Co., Ltd. v. United States*, 658 F.3d 1318, 1328 (Fed. Cir. 2011) ("Even if the error alleged by QVD were ministerial in nature, Commerce's failure to correct it would not constitute an abuse of discretion because QVD did not raise the issue in a timely fashion ... Commerce's refusal to make a ministerial correction is not reversible error when the alleged mistake was discoverable during earlier proceedings but was not pointed out to Commerce during the time period specified by regulation"); *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1376-77 (Fed. Cir. 2010); and *Stanley Works (Langfang) Fastening Systems Co., Ltd. v. United States*, 964 F. Supp. 2d 1311, 1341 (CIT 2013).

<sup>44</sup> In addition, as discussed further in Comment 2 and by Shantou Red Gardens' own admission, none of the other producers in the excluded combination continue to exist either.

<sup>45</sup> See Shantou Red Garden Foods Case Brief at 3, 15, and Exhibit 2.

<sup>46</sup> See *Elkem Metals*, 193 F. Supp.2d at 1319-21. For legal precedent, *Elkem Metals* cites to another case where fraud was perpetrated and a case where the determination was based on erroneous data; see *Alberta Gas Chemicals, Ltd. v. Celanese Corp.*, 650 F.2d 9, 12-14 (U.S. Cts of App. 1981); and *Borlem S.A.-Empreedimentos Industrials v. United States*, 913 F.2d 933, 938-39 (Fed. Cir. 1990).

<sup>47</sup> See *Elkem Metals*, 193 F. Supp.2d at 1319-20, 1322; see also *Tokyo Kikai*, 529 F.3d at 1360-61.

<sup>48</sup> See *Tokyo Kikai*, 529 F.3d at 1361.

Thus, we find that Shantou Red Garden Foods' reliance on this case is similarly misplaced. Indeed, given that the "procedures for reconsideration set forth in the statute" are the filing of timely ministerial error claims in the segment in which the alleged error occurred, *Tokyo Kikai* undermines Shantou Red Garden Foods' argument instead of supporting it.

Additionally, pursuant to section 516A of the Act and 28 USC 2636(c), interested parties have 30 days in which to commence legal action against Commerce after we have issued our final determination in an investigation (or a section 129 determination), and pursuant to 28 USC 2636(i), interested parties have a two-year opportunity to challenge U.S. Customs and Border Protection's (CBP's) implementation of liquidation instructions. Commerce published the *Federal Register* notice in question over seven years ago,<sup>49</sup> and no party timely challenged the identification of the revoked companies as "Red Garden Food Processing Co., Ltd." and "Shantou Red Garden Foodstuff Co., Ltd." The time for both administrative and judicial "remedies" to this issue have long since passed under the relevant statutes.

Our determination in the instant review is supported by CAFC decisions. For instance, in *Alloy Piping*, the CAFC held that "there is a strong interest in the finality of Commerce's decisions" and that:

the respondent is required to exhaust its administrative remedies ... this means applying to Commerce to correct the error within five days of the release of the final calculations or, if an extension is granted, within five days after the publication of the final determination.<sup>50</sup>

Moreover, in *American Signature*, the CAFC examined whether Commerce had the authority to correct a ministerial error after the time limits set forth in our regulations. It held that, because the error was not corrected before the time for judicial review had expired, the error could not be corrected to protect the interest of finality.<sup>51</sup> In accordance with *American Signature*, because the time for judicial review has passed, Commerce cannot consider the alleged ministerial error here.

Lastly, we disagree that Shantou Red Garden Foods' list of 100 instances showing the correction of company names is applicable in this instant review. In those instances, Commerce made corrections in the ongoing segments of those proceedings. In none of those cases was the question of finality an issue. Additionally, even if Commerce were to consider the merits of the claim, we would have no authority to make this correction for the reasons stated above.

At the heart of Commerce's SII analysis is the question of whether Shantou RGFP as it currently exists is the successor to the company that existed during the LTFV investigation (*i.e.*, "Red Garden Food Processing Co., Ltd." or as Shantou Red Garden Foods asserts, "Shantou Red Garden Food Processing Co., Ltd."). Shantou Red Garden Foods argues that ASPA implicitly acknowledges that Shantou RGFP existed during the investigation. That, however, is not

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<sup>49</sup> See *Exclusion Notice*, 78 FR at 18958.

<sup>50</sup> See *Alloy Piping*, 334 F.3d at 1292-93; see also *QVD*.

<sup>51</sup> See *American Signature*, 598 F.3d at 828.

accurate. What ASPA is implicitly acknowledging, and what Commerce's position asserts, is that the company that existed at the time of the LTFV investigation is materially dissimilar from, and not the SII to, the company as it exists during this review (*see* Comment 4). Whether this company is referred to as Shantou RGFP or RGFP is irrelevant to the SII analysis itself.

Commerce has a long-standing history of conducting SII analyses to determine whether particular companies are the successors to companies excluded or revoked from AD orders, and, thus, whether they are eligible for the same treatment under the AD order as the predecessor.<sup>52</sup> Shantou Red Garden Foods fails to provide any explanation or cite to any precedent that suggests that Commerce lacks the authority to conduct a review or an SII analysis on excluded or revoked companies (*see* Comment 3). Thus, in line with Commerce's long-standing practice, we have concluded that Commerce has the authority to review Shantou RGFP's entries of shrimp during the POR, and we properly initiated an AR of this company.

## Comment 2: Whether Commerce Should Apply AFA to Shantou Red Garden Foods

### *ASPA's Comments*<sup>53</sup>

- Shantou Red Garden Foods has repeatedly sought to misinform and mislead Commerce regarding its status and company history in an attempt to illegitimately use an excluded exporter-producer combination.
- Section 776 of the Act allows Commerce to apply AFA when an interested party failed to cooperate to the best of its ability. Shantou Red Garden Foods failed to fully cooperate in responding to Commerce's questions regarding its ownership, control, and history.<sup>54</sup> Thus, Shantou Red Garden Foods has not acted to the best of its ability in this review.
- First, Shantou Red Garden Foods failed to respond to several of Commerce's inquiries, stating, "TO BE SUBMITTED."<sup>55</sup> One factor for application of AFA under section 776 of the Act is a failure to provide information by the set deadline. Thus, Shantou Red Garden Foods' failure to respond by the deadline is cause for the application of AFA.
- In addition, Shantou Red Garden Foods failed to provide a capital verification report and audited financial statements as requested by Commerce. The Courts have defined the "best of its ability" standard to include taking "reasonable steps to keep and maintain full and complete records documenting the information that a reasonable importer should anticipate being called upon to produce."<sup>56</sup>

<sup>52</sup> See, e.g., *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews*, 64 FR 66880 (November 30, 1999); *Notice of Final Results of Changed Circumstances Antidumping Duty Review: Fresh Atlantic Salmon from Chile*, 66 FR 42506 (August 13, 2001), and accompanying IDM at Issue 1; *Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand: Final Results of Changed-Circumstances Antidumping Duty Review*, 74 FR 8904 (February 27, 2009), and accompanying IDM; and *Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 82 FR 26777 (June 9, 2017) (*Pasta from Italy*), and accompanying IDM.

<sup>53</sup> See ASPA Case Brief at 3-19.

<sup>54</sup> *Id.* at 4 (citing Shantou Red Garden Foods' Letter "Frozen Warmwater Shrimp from the People's Republic of China; Response to the Supplemental Sections A and C Questionnaire," dated January 23, 2020 (Shantou Red Garden Foods January 23, 2020 SQR) at 5).

<sup>55</sup> *Id.* at 15 (citing Shantou Red Garden Foods January 23, 2020 SQR at 30-31).

<sup>56</sup> *Id.* at 3-4, 12 (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*); and *Diamond Sawblades Manufacturers' Coalition v. United States*, 415 F. Supp.3d 1365, 1372 (CIT 2019) (*Diamond Sawblades*)).

- Finally, Shantou Red Garden Foods failed to respond to discrepancies pointed out by Commerce in its sales reconciliation. Thus, Shantou Red Garden Foods failed to provide reconcilable sales information.
- Because Shantou Red Garden Foods failed to cooperate fully in responding to Commerce's questions regarding its ownership, control, and history, Commerce should find that the other information Shantou Red Garden Foods provided is unreliable and determine, as AFA, that Shantou Red Garden Foods is ineligible for a separate rate. If Commerce grants separate rate status to Shantou Red Garden Foods, Commerce should apply total AFA in determining Shantou Red Garden Foods' dumping rate.

*Shantou Red Garden Foods' Rebuttal Comments*<sup>57</sup>

- Shantou Red Garden Foods has not willfully refused to provide full information for this POR. ASPA takes issue with information not provided which is outside this POR. However, Shantou Red Garden Foods has provided all information regarding Shantou RGFP as requested.
- Commerce informed interested parties that it intended to verify the information submitted by Shantou Red Garden Foods. Thus, there are no outstanding questions from Commerce. If ASPA's arguments were valid, Commerce would have applied AFA in the *Preliminary Results*.
- Shantou Red Garden Foods submitted a list of farms in the POR that it thought was complete. As ASPA notes, at least one company was left off that list.<sup>58</sup> However, the names of these farms are on the record, which ASPA cited to, and, thus, the record is not missing any information.
- In *Diamond Sawblades*, the CIT held that companies must keep records "that refer or relate to the imports in question to the full extent of the importer's ability to do so."<sup>59</sup> Shantou Red Garden Foods did not submit the requested capital verification report because it could not be found. This report is approximately 15 years old. No law in China requires companies to maintain records for that long. Even the U.S. Internal Revenue Service requires companies to maintain records for only seven years. Thus, Shantou Red Garden Foods has acted to the best of its ability.

**Commerce Position:** We determine that the application of total AFA is not appropriate in this review. While we agree with ASPA that, in a few situations, Shantou Red Garden Foods did not provide a limited amount of information, none of Shantou Red Garden Foods' missing information, singly or in the aggregate, rendered its entire response unusable.

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by Commerce; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall use,

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<sup>57</sup> See Shantou Red Garden Foods Rebuttal Brief at 2-3, 6-9.

<sup>58</sup> ASPA identifies more than one company was omitted, but Shantou Red Garden Foods only acknowledges that at least one was left out.

<sup>59</sup> *Id.* at 8 (citing *Diamond Sawblades*, 415 F. Supp.3d at 1372).

subject to section 782(d) of the Act, facts otherwise available (AFA) in reaching the applicable determination.

Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information in the form and manner requested upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information.

Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (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.

Further, section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, it may use an inference that is adverse to the interest of that party in selecting from the facts otherwise available. The “best of its ability” standard of section 776(b) of the Act means to put forth maximum effort to provide full and complete answers to all inquiries.<sup>60</sup> In *Nippon Steel*, the CAFC clarified that, for Commerce to determine that a respondent did not act to the best of its ability, Commerce must demonstrate:

(1) an objective showing that a reasonable and responsible importer would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations and

(2) that the respondent under investigation not only has failed to promptly produce the requested information, but further that the failure to fully respond is the result of the respondent’s lack of cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records.<sup>61</sup>

ASPA alleges Shantou Red Garden Foods failed to provide requested documentation and/or information which it should have maintained, including: (1) audited financial statements and information related to Shantou Red Garden Foods’ sales reconciliation; (2) a capital verification report and other information related to the Shantou RGFP’s corporate structure and history; and (3) documentation related to its suppliers. With the exception of the missing supplier data, we disagree that the information highlighted by ASPA is critical to our analysis or that AFA is warranted here for the reasons set forth below.

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<sup>60</sup> See *Nippon Steel*, 337 F.3d at 1373, 1382-83 (“Compliance with the ‘best of the 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 in an investigation. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping”).

<sup>61</sup> *Id.*, 337 F.3d at 1382-83.



With respect to ASPA's first point, we agree that Shantou Red Garden Foods reported "TO BE SUBMITTED" for three questions asked in a supplemental questionnaire.<sup>62</sup> However, due to the nature of the questions asked, we do not find that facts available are needed to reach our determination. In our first question, we asked Shantou RGFP to indicate when it stopped preparing audited financial statements and to provide an explanation and documentation supporting its rationale for no longer requiring that its financial statements be audited; this question sought clarification of Shantou RGFP's business operations and the type of documentation that Shantou Red Garden Food maintains during the normal course of business.<sup>63</sup> Although Shantou Red Garden did not provide this date/explanation, it had previously provided all the information it maintains regarding the financial statements applicable to the POR,<sup>64</sup> and, thus, we find no necessary information is missing from the record.

The remaining two questions related to minor discrepancies between the monthly U.S. sales quantities reflected on a worksheet supporting Shantou Red Garden Foods' sales reconciliation and the quantities on the sales reconciliation itself.<sup>65</sup> Because the aggregate sales figures in each source were the same, it appears that the differences related simply to either timing or data entry mistakes, and we attempted to clarify this before conducting verification.<sup>66</sup> Despite this missing clarification, we disagree that Shantou Red Garden Foods' sales reconciliation is fatally flawed. For this reason, ASPA's cite to *Rebar from Mexico* is inapposite.<sup>67</sup> In that proceeding, unlike here, Commerce was unable to reconcile the respondent's reported sales information to its accounting system, in part because the respondent only made Commerce aware of the issue on the last day of verification.<sup>68</sup> In the instant review, as noted above, the difference is minor and does not call into question the total volume or value of Shantou Red Garden Foods' U.S. sales. Therefore, while Shantou Red Garden Foods did fail to provide a limited amount of information by the established deadline, pursuant to section 776(a)(1) of the Act, we find that this information is not necessary to our overall analysis and there is no basis for facts available, much less AFA, as a result.

We similarly find that Shantou Red Garden Foods' inability to provide a requested capital verification report does not undermine Shantou Red Garden Foods' questionnaire responses. The report in question was from 2007, more than a decade prior to the start of this POR.

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<sup>62</sup> See Shantou Red Garden Foods January 23, 2020 SQR at 27-28, 30-31.

<sup>63</sup> *Id.* at 28-29.

<sup>64</sup> See Shantou Red Garden Foods' Letter, "Frozen Warmwater Shrimp from the People's Republic of China; Response to the First Supplemental Section A Questionnaire," dated December 23, 2019 (Shantou Red Garden Foods December 23, 2019 SQR) at 31-32. While Shantou Red Garden Foods provided unaudited financial statements, we were able to tie the sales shown on these statements to an outside source using Shantou Red Garden Foods' Value Added Tax returns; see Shantou Red Garden Foods' Letter, "Frozen Warmwater Shrimp from the People's Republic of China; Response to the Section C & D Questionnaire," dated November 26, 2019 (Shantou Red Garden Foods November 26, 2019 CDQR) at Exhibit 6.

<sup>65</sup> See Shantou Red Garden Foods January 23, 2020 SQR at 30-31.

<sup>66</sup> See *Preliminary Results*, 85 FR at 12896.

<sup>67</sup> See *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014) (*Rebar from Mexico*), and accompanying IDM at Comment 6.

<sup>68</sup> *Id.*

Although Shantou Red Garden Foods attempted to provide this report,<sup>69</sup> the company was unable to locate it. Given that the report was prepared over a decade earlier, Shantou Red Garden Foods had no reason to keep it for AD purposes. Thus, we find Shantou Red Garden Foods was responsive to our request, in that it made an effort to obtain the information and fully explained the reasons for its inability to provide it (*i.e.*, the company does not retain records over that time period). In addition, we requested the report for use in our SII analysis, and ASPA has not argued that we should make a different SII finding here.

ASPA also alleges that Shantou Red Garden Foods failed to: (1) detail all changes in Shantou RGFP's ownership, management, control and operations; (2) provide a detailed explanation of the role Red Chamber Co. played in the operation of Shantou RGFP before it withdrew from a joint-venture; and (3) accurately detail the reasons behind the name changes.<sup>70</sup> However, to demonstrate that Shantou Red Garden Foods failed to provide the information above, ASPA cites to the record to illustrate where this information was provided.<sup>71</sup> Thus, the record demonstrates that all the information that ASPA claims is missing or that Shantou Red Garden Foods should have provided is on the record to some degree. For instance, in response to our question regarding changes in Shantou RGFP's management, Shantou Red Garden Foods responded, "the general manger is the only person with decision-making authority. He is the same person who founded the company. Thus, no change to management."<sup>72</sup> ASPA cites to the record and the SII Memo to show that, during the LTFV investigation, Shantou RGFP also had a vice manager. Although ASPA claims that Shantou Red Garden Foods failed to mention a "vice manager in the current review and has nowhere addressed this change in management,"<sup>73</sup> we disagree that Shantou Red Garden Foods' answer was unresponsive to our question.

As another example of its request for the application of AFA, ASPA argues that Shantou Red Garden Foods failed to provide full information by responding with a one-sentence statement. ASPA's following sentence belies its claim. ASPA states "evidence on the record shows {that there is more business proprietary information (BPI) than that single sentence}" citing to Shantou Red Garden Foods LTFV questionnaire responses and the SII Memo.

While Shantou Red Garden Foods could have explained its company information in more detail, for purposes of the SII analysis and AD calculation, Commerce concludes there is sufficient information on the record and that this information was considered. Additionally, for nearly every example ASPA provided, we found that the information on the record weighed in favor of finding that Shantou RGFP was not the SII to the original company. With the exception of the missing supplier information discussed below, each example that ASPA cited follows a similar fact pattern *i.e.*, Shantou Red Garden did not detail certain information in its narrative responses to questionnaires issued during the POR, but the relevant information can be found in its LTFV investigation questionnaire responses which were submitted on the record of this instant review.<sup>74</sup> ASPA cites the differing degree of information between the responses as "missing"

<sup>69</sup> See Shantou Red Garden Foods January 23, 2020 at 19.

<sup>70</sup> See ASPA Case Brief at 4-12, 15.

<sup>71</sup> *Id.* at 3-19.

<sup>72</sup> See Shantou Red Garden Foods January 23, 2020 SQR at 7-8.

<sup>73</sup> *Id.* at 4-5.

<sup>74</sup> See Shantou Red Garden Foods December 23, 2019 SQR at Exhibit SA-28, SA-29, and SA-30.

information. The LTFV investigation questionnaire responses were cited in depth for the *Preliminary Results*, and, as a result, not only is the information not missing, but it was considered. Additionally, the information ASPA refers to is only relevant in relation to Commerce's SII analysis, and we continue to find that Shantou RGFP is not the SII to RGFP, a conclusion with which ASPA agrees. The provision of additional information ASPA would not alter our SII decision. Therefore, we disagree that Shantou Red Garden Foods has not acted to the best of its ability such that the application of total AFA is warranted.

Finally, ASPA claims that Shantou Red Garden Foods should have been able to provide additional information related to how its suppliers have changed since the LTFV investigation, and it also failed to identify certain suppliers in its distance calculation.<sup>75</sup> With respect to the former concern, Shantou Red Garden Foods' response to our requests for information was that Shantou Red Garden Foods does "not keep records for the farms prior to the POR."<sup>76</sup> As an initial matter, we note that Shantou Red Garden Foods does provide information on its suppliers during the POR,<sup>77</sup> and, again, while the pre-POR information may have supplemented our SII analysis, our SII conclusion remains unchanged regardless of whether Shantou Red Garden was able to provide historical information.

Regarding ASPA's claim that Shantou Red Garden Foods failed to identify certain suppliers in its distance calculation, we agree;<sup>78</sup> in fact, Shantou Red Garden Foods acknowledges as much in its rebuttal brief. We requested that Shantou Red Garden Foods provide this information on two occasions – once in the initial questionnaire,<sup>79</sup> and again in a supplemental questionnaire, where we requested Shantou Red Garden Foods "identify any other locations of farms and facilities used by Shantou RGFP, as well as any affiliates that produced and/or processed shrimp during the POR and submit documentation to support {its} response."<sup>80</sup> Shantou Red Garden Foods did not provide this information in response to either request. Indeed, Shantou Red Garden Foods stated that it reported all the farms it utilized during the POR,<sup>81</sup> before acknowledging that, while all the names of the farms it used were on the record, not all farms it used were included in its supplier distance worksheet.<sup>82</sup> As a result of Shantou Red Garden Foods' failure to provide complete information from these suppliers, despite two opportunities to provide such information, Commerce determines that certain necessary information is missing to calculate an accurate dumping margin. Therefore, the use of facts available is warranted, in accordance with sections 776(a)(1) and 776(a)(2)(B)-(C) of the Act. Further, because Shantou Red Garden Foods had that information in its possession, it did not act to the best of its ability to comply with our request for information, in accordance with sections 776(a) and (b) of the Act; therefore, we have concluded that the use of partial facts otherwise available with an adverse inference is appropriate with respect to the missing information. As partial AFA, we have added these suppliers into the calculation of the average distance between Shantou Red Garden Foods

<sup>75</sup> See ASPA Case Brief at 14 (citing Shantou Red Garden Foods January 23, 2020 SQR at 10-11).

<sup>76</sup> See Shantou Red Garden Foods December 23, 2019 SQR at 17-18.

<sup>77</sup> See Shantou Red Garden Foods November 26, 2019 SQR at Exhibit D-7.

<sup>78</sup> See Shantou Red Garden Foods December 23, 2019 SQR at Exhibit SA-16; *see also* Shantou Red Garden Foods November 26, 2019 SQR at Exhibit D-7.

<sup>79</sup> See Shantou Red Garden Foods November 26, 2019 SQR at 11-14 and Exhibit D-7.

<sup>80</sup> See Shantou Red Garden Foods January 23, 2020 SQR at 11-12.

<sup>81</sup> *Id.*

<sup>82</sup> See Shantou Red Garden Foods Rebuttal Brief at 8.

and its shrimp suppliers using: (1) the distance between Shantou Red Garden Foods and the closest port (*i.e.*, the “Sigma cap” distance); and (2) the quantity of shrimp purchased from Shantou Red Garden Foods’ largest supplier; *see* the Final Analysis Memorandum for the specifics of our application of partial AFA.

**Comment 3: Whether Commerce Has the Authority to Conduct an SII Analysis Within the Context of an AR**

*Shantou Red Garden Foods’ Comments*<sup>83</sup>

- Shantou Red Garden Foods did not request that Commerce conduct a changed circumstance review (CCR), and Commerce has no authority to self-initiate one. Commerce cited to no statutory provision, regulation, court case, or statement in the Statement of Administrative Action to support its decision to conduct a self-initiated CCR.

*Petitioner’s Rebuttal Comments*<sup>84</sup>

- Shantou Red Garden Foods’ claim that Commerce has no legal authority to conduct an SII analysis is false and Shantou Red Garden Foods provides no legal support for its argument. On the contrary, as Commerce explained in the SII memo, section 751(b)(1) of the Act and 19 CFR 351.216(d) allow Commerce to conduct a CCR whenever it receives information concerning an order which shows changed circumstances sufficient to warrant such a review. Commerce also cited three determinations which demonstrate that Commerce has broad discretion to evaluate the impact of name changes through an SII analysis.<sup>85</sup>
- In this instant review, Shantou Red Garden Foods acknowledged that Shantou RGFP changed its name to Shantou Jin Cheng Food Co., Ltd. (Shantou JCF) and then back to Shantou RGFP.<sup>86</sup> Thus, this information is sufficient to warrant Commerce’s conducting an SII analysis.
- In *East Seafoods*, the CIT upheld Commerce’s exercise of discretion to conduct an SII analysis in the course of an AR and ruled that Commerce had the legal authority to do so. The CIT cited *Brass Sheet*, which was published in 1992, to support its decision.<sup>87</sup> This further erodes Shantou Red Garden Foods’ claims that Commerce lacks the legal authority to conduct an SII analysis in the context of an AR.

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<sup>83</sup> See Shantou Red Garden Foods Case Brief at 12.

<sup>84</sup> See Petitioner Rebuttal Brief at 13-19.

<sup>85</sup> *Id.* at 13-14 (citing SII Memo at 5 (footnote omitted)).

<sup>86</sup> *Id.* at 10-11 (citing Shantou Red Garden Foods’ Letter, “Frozen Warmwater Shrimp from the People’s Republic of China; Response of Red Garden Companies to Domestic Producers’ Letter of September 6, 2019,” dated October 21, 2019 (Shantou Red Garden Foods October 21 Letter) at 2, 8, 9-12, and 13).

<sup>87</sup> *Id.* at 17 (citing *East Sea Seafoods LLC v. United States*, 703 F. Supp.2d 1336, 1350-53 (CIT 2010) (*East Seafoods*) (citing *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992) (*Brass Sheet*))).

*ASPA's Rebuttal Comments*<sup>88</sup>

- Commerce has a long-standing practice of conducting an SII analysis within an AR when the need arises.<sup>89</sup> The CIT has upheld Commerce's practice and authority to do so.<sup>90</sup>
- Section 751(b)(1) of the Act also grants Commerce the authority to conduct a CCR whenever it receives information concerning an order which shows changed circumstances sufficient to warrant such a review. The event that notified Commerce an SII analysis was necessary was Shantou Red Garden Foods' own admission that it changed its name.
- Section 751(b)(1) of the Act states that a request for a CCR may come from an interested party. ASPA requested "Commerce to find that {Shantou RGFP} is subject to the *Order* as it is not the same entity for which the *Order* was previously revoked."<sup>91</sup> Thus, while Shantou Red Garden Foods may not have requested a CCR itself, ASPA, as an interested party, did. Therefore, to the extent that a request was needed for Commerce to conduct an SII analysis, one was requested on the record.

**Commerce Position:** Shantou Red Garden Foods argues that Commerce lacks the authority to self-initiate a CCR. However, this argument is not on point because we did not initiate, nor have we conducted, a CCR. Instead, as we explained in the SII Memo, we conducted an SII analysis within the context of an AR pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(d).<sup>92</sup>

That said, both the Act and Commerce's regulations make clear that whenever Commerce receives information concerning changed circumstances sufficient to warrant a review of an order, Commerce shall conduct a review of the determination based on those changed circumstances. Thus, a request for a CCR is unnecessary in order for Commerce to conduct such an analysis.

In the instant review, Commerce conducted an SII analysis because Shantou Red Garden Foods admitted that Shantou RGFP changed its name since the underlying investigation:

{Shantou RGFP} changed its name to Shantou Jin Cheng Food Co., Ltd. A new business license was issued on October 26, 2007... Accordingly, the name was changed back to {Shantou RGFP}, January 20, 2013.<sup>93</sup>

No party disputes that the name changes took place. In prior proceedings, Commerce concluded that a name change is sufficient to warrant an SII analysis, and that this analysis could occur in an AR.<sup>94</sup> Additionally, as explained above in Comment 1, Commerce has conducted an SII

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<sup>88</sup> See ASPA Rebuttal Brief at 8-11.

<sup>89</sup> *Id.* at 8-9 (citing *Brass Sheet*, 57 FR at 20460-61).

<sup>90</sup> *Id.* at 9 (citing *East Seafoods*, 703 F. Supp.2d at 1336, 1352).

<sup>91</sup> *Id.* at 11 (citing ASPA's Letter, "Administrative Review of the Antidumping Duty Order Covering Frozen Warmwater Shrimp from the People's Republic of China: ASPA's Response to Red Garden," dated October 24, 2019 at 8).

<sup>92</sup> See SII Memo at 5.

<sup>93</sup> See Shantou Red Garden Foods October 21 Letter at 9-11.

<sup>94</sup> See, e.g., *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 5417 (February 21, 2019)), and accompanying



analysis with respect to companies excluded from an order in the past. While we acknowledge that SII determinations are typically made in CCRs in accordance with 19 CFR 351.216, we note that Commerce has a long-standing practice of also conducting SII analyses within the context of ARs<sup>95</sup> and that this practice has been upheld by the CIT. For example, in *East Seafoods*, the CIT upheld Commerce’s decision to find that the respondent was not the SII to a predecessor company within the context of an AR.<sup>96</sup> To support its decision, the CIT cited *Brass Sheet* where Commerce explained that “the purpose of conducting a {SII} analysis during an {AR} is to determine the appropriate rate to be assigned to entities affected by.... some.... change which raises the questions of the company’s status in the proceeding.”<sup>97</sup> Thus, Commerce has the authority to conduct an SII analysis within the context of an AR, and we properly did so in this AR.

#### **Comment 4: Whether Commerce’s SII Analysis was Predicated on Erroneous Data**

##### *Shantou Red Garden Foods’ Comments*<sup>98</sup>

- Commerce’s SII analysis is flawed because “Red Garden Food Processing Co., Ltd.” does not exist. Therefore, it is impossible for Shantou RGFP to have been the SII to a fictitious company.
- Shantou RGFP has not changed because it has: (1) the same name; (2) same address; (3) same business license; (4) same general manager; (5) same business methodology; and (6) same U.S. customer as it did in the LTFV investigation.
- Companies change as a normal part of doing business. Commerce cannot expect Shantou RGFP to be exactly the same as it was 15 years ago. Commerce abused its discretion by holding such expectations, and, as a result, its decision was arbitrary and capricious.
- A change in ownership is not a valid criterion for denying an SII claim. On the contrary, the primary reason companies request a CCR is because of a change in ownership. In several cases, Commerce found a respondent to be an SII after a change in ownership.<sup>99</sup> Commerce must follow its own precedent.

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Preliminary Decision Memorandum, unchanged in *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 44845 (August 27, 2019) (*CWP from the UAE Final*); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015– 2016*, 83 FR 35616 (July 27, 2018) (*Solar Cells from China*), and accompanying IDM at Comment 12.

<sup>95</sup> See, e.g., *CWP from the UAE Final* IDM at 1; *Solar Cells from China* IDM at Comment 12; *Stainless Steel Bar from Spain: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 63081 (October 22, 2014), and accompanying IDM at 6; and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People’s Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review and Rescission of Administrative Review, in Part*, 77 FR 2271 (January 12, 2012), and accompanying IDM at Comment 4.

<sup>96</sup> See *East Seafoods*, 703 F. Supp.2d at 1351 (citing *Brass Sheet*, 57 FR at 20460-61).

<sup>97</sup> *Id.*

<sup>98</sup> See Shantou Red Garden Foods Case Brief at 10-11, 14-15; see also Shantou Red Garden Foods Rebuttal Brief at 3-7.

<sup>99</sup> See Shantou Red Garden Foods Rebuttal Brief at 5-6 (citing *Preliminary Results of Antidumping Duty Changed Circumstances Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 75229 (December 14, 2006), unchanged in *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 72 FR 15102 (March 30, 2007); *Stainless Steel Sheet and Strip in Coils*

- In prior comments, ASPA did not argue that Shantou RGFP's general manager has changed, the factory has changed, the factory has moved, or that Shantou RGFP sells to different U.S. customers. Thus, the record indicates that Shantou RGFP has not substantially changed since the LTFV investigation.
- Shantou RGFP's business license number has not changed due to any name changes. Thus, the Chinese government has continued to treat Shantou RGFP as the same company since the LTFV investigation. Commerce has no authority to undermine that treatment.

*Petitioner's Rebuttal Comments*<sup>100</sup>

- Commerce reasonably reviewed the totality of circumstances using its well-established SII analysis to determine that Shantou RGFP as it currently exists is not the successor to Shantou RGFP as it existed during the LTFV investigation.
- Commerce evaluated Shantou RGFP based on Commerce's four traditional factors and additional factors that supported its conclusion to determine that Shantou RGFP was not the successor company. Shantou Red Garden Foods did not refute or address any of the facts that Commerce relied on in its *Preliminary Results*.
- Shantou Red Garden Foods argues that Shantou RGFP is the same entity based on its own criteria. However, it provides no explanation why its criteria for comparing the two entities should supplant the methodology applied by Commerce, which is consistent with Commerce's long-standing practice.
- Shantou Red Garden Foods asserts that any differences between Shantou RGFP during the LTFV investigation and the current POR are due to normal business considerations. However, it failed to offer any support for this assertion.

*ASPA's Rebuttal Comments*<sup>101</sup>

- In the LTFV investigation, Shantou Red Garden Foods repeatedly dropped the "Shantou" part of its name. Commerce excluded "Red Garden Food Processing Co., Ltd." in the section 129 inquiry without "Shantou" in the company name, and Shantou Red Garden Foods did not argue that this was incorrect. Thus, Commerce did not compare Shantou Red Garden Foods to some fictitious company when making its SII finding, as Shantou Red Garden Foods claims.
- Shantou Red Garden Foods fails to address or rebut the facts that Commerce relied upon in making its SII determination. Instead, Shantou Red Garden Foods claims that it is the same entity based on other factors.

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*from Japan: Initiation of Expedited Changed Circumstances Review, and Preliminary Results of Changed Circumstances Review*, 78 FR 79667 (December 31, 2013), unchanged in *Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Antidumping Duty Changed Circumstances Review*, 79 FR 10096 (February 24, 2014); and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of the Changed Circumstances Review*, 80 FR 63743 (October 21, 2015), unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Changed Circumstances Review*, 81 FR 91909 (December 19, 2016).

<sup>100</sup> See Petitioner Rebuttal Brief at 19-26.

<sup>101</sup> See ASPA Rebuttal Brief at 5-7, 11-13.

**Commerce Position:** As Commerce explained in the SII Memo, in evaluating successorship issues, we generally consider a company to be the successor to another company for AD cash deposit purposes if the operations of the successor are not materially dissimilar from those of its predecessor. In making this determination for purposes of applying the AD law, Commerce examines a number of factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base.<sup>102</sup> Although no single factor, or even several of these factors, will necessarily provide a dispositive indication of succession,<sup>103</sup> generally if the “totality of the circumstances” demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, Commerce will assign the new company the cash deposit rate of its predecessor.<sup>104</sup>

For the *Preliminary Results*, we examined each of these factors and determined that, together, they weighed in favor of finding that Shantou RGFP is not the SII to RGFP. Specifically, regarding the first factor, management, we found that there was significant change in ownership, control, and management between RGFP (as it existed at the time of the LTFV investigation) and Shantou RGFP (the company under review). During the LTFV investigation, RGFP was a Sino-foreign joint venture and was controlled by a board of directors (which in turn controlled the company). Shantou RGFP is fully owned by Chinese entities/individuals.<sup>105</sup>

For the second factor, production facilities and product line, we acknowledged in the SII Memo that the production facilities and address remained the same for both companies.<sup>106</sup> However, with respect to products, we found there was a material difference. During the LTFV investigation, RGFP processed and sold subject merchandise to the United States.<sup>107</sup> When the company changed its name to Shantou JCF (2007 – 2013), it did not ship subject merchandise to the United States, and instead shipped only non-subject merchandise to the United States (*i.e.*, shrimp that was excluded from the *Order*: breaded shrimp and, before 2011, when it was added to the *Order*, dusted shrimp).<sup>108</sup> As Shantou RGFP, the company processed and sold subject merchandise to the United States.

Regarding the third factor, supplier relationships, there was limited information available on the record for Commerce to examine. Shantou Red Garden Foods stated that the suppliers changed many times over the past 15 years.<sup>109</sup> Although we requested more specific information regarding the suppliers, Shantou Red Garden Foods claimed that it did not keep records for suppliers prior to the POR because there was no business reason for it to maintain this information.<sup>110</sup> Based on this limited information provided by Shantou Red Garden Foods, we

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<sup>102</sup> See, e.g., *Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review*, 75 FR 34688 (June 18, 2010), and accompanying IDM at Comment 1.

<sup>103</sup> See, e.g., *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999) (*Salmon from Norway*).

<sup>104</sup> See, e.g., *Salmon from Norway*, 64 FR at 9980, and *Brass Sheet*, 57 FR at 20460-61.

<sup>105</sup> See SII Memo at 6-8.

<sup>106</sup> *Id.* at 8.

<sup>107</sup> See Shantou Red Garden Foods December 23, 2019 SQR at Exhibit SA-28 (at A-4).

<sup>108</sup> *Id.* at 20.

<sup>109</sup> See Shantou Red Garden Foods January 23, 2020 SQR at 8.

<sup>110</sup> *Id.* at 10, 17-18.

found that there was no evidence on the record that supports Shantou Red Garden Foods' claim that Shantou RGFP continues to operate as RGFP.

Regarding the fourth factor, customer base, we found that there was only one customer which both Shantou RGFP and RGFP shared. As we explained in the SII Memo, RGFP sold to two affiliated customers located in the United States and one customer in Canada. Shantou JCF sold to customers in the United States, Canada, Chile, Mexico, and Malaysia. Additionally, record evidence indicated that there was a significant increase in the customer base between Shantou RGFP and RGFP, such that Shantou RGFP now sells to a number of new companies, none of which it is affiliated with, which is a marked contrast to the situation during the period examined in the LTFV investigation.<sup>111</sup>

In addition to these four factors, we detailed other factors that further supported Commerce's preliminary decision to find that Shantou RGFP was not the SII to RGFP. First, we found that Shantou Red Garden Foods' explanation for the name changes was not supported by the record. Shantou Red Garden Foods claimed that Shantou RGFP changed its name to Shantou JCF in 2007 in response to harassment from the prior landlord's creditors because of similar names between Shantou RGFP and its landlord, Shantou Longhu Hong Yuan Quick Frozen Factory.<sup>112</sup> However, record evidence indicated that, by the date of the first name change, the prior landlord's creditors had already reached an agreement with the prior landlord; that agreement had been recognized by the Shantou Intermediate People's Court of Guangdong Province; and that the prior landlord sold the property to Shen Rui Jie (a part owner of the current Shantou RGFP and wife of the majority owner).<sup>113</sup> Additionally, Shantou Red Garden Foods claims the second name change occurred in 2013 after "a separate third party bought the master lease from the prior leaseholder."<sup>114</sup> Yet, the record indicated that the master lease was bought in 2007.<sup>115</sup> When asked about this discrepancy, Shantou Red Garden Foods responded that, even after the real estate transfer, the company was still bothered by debt collectors, and, therefore, it changed its name to address this issue.<sup>116</sup> Yet, despite our request for such evidence, Shantou Red Garden Foods submitted no documentation to support this claim.<sup>117</sup>

Instead, record evidence indicated that the name changes occurred to claim another company's cash deposit rate. Shantou Red Garden Foods stated,

Since the name Shantou Red Garden Food Processing had well known *{sic}* reputation in the seafood industry and also had separate *{sic}* anti-dumping rate case in USA... they changed the name from Shantou JCF back to Shantou RGFP.<sup>118</sup>

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<sup>111</sup> Much of the information related to Shantou RGFP's customers is BPI; for further discussion, *see* SII Memo at 9-10.

<sup>112</sup> *See* Shantou Red Garden Foods' Letter, "Frozen Warmwater Shrimp from the People's Republic of China; Response to the Section A Questionnaire," dated November 12, 2019 (Shantou Red Garden Foods November 12, 2019 AQR) at 12-13.

<sup>113</sup> *See* SII Memo at 10-11 (citations omitted).

<sup>114</sup> *See* Shantou Red Garden Foods November 12, 2019 AQR at 14.

<sup>115</sup> *Id.*

<sup>116</sup> *See* Shantou Red Garden Foods January 23, 2020 SQR at 16-17.

<sup>117</sup> *Id.*

<sup>118</sup> *See* Shantou Red Garden Foods December 23, 2019 SQR at 23.

In other words, the second name change (from Shantou JCF to Shantou RGFP) occurred because RGFP had its own separate antidumping duty rate (albeit *via* an exclusion), whereas Shantou JCF was considered part of the China-wide entity.<sup>119</sup> This conclusion is further supported by the timeline of the name changes and the changes in the cash deposit rates:

- June 25, 2003: RGFP was established.<sup>120</sup>
- September 12, 2007: Shantou Red Garden Foods was assigned a cash deposit rate of 112.81 percent.<sup>121</sup>
- December 26, 2007: RGFP changed its name to Shantou JCF.<sup>122</sup>
- December 7, 2012: Commerce announced the preliminary results of its section 129 determination and preliminarily calculated a cash deposit rate of 0.00 percent for Shantou Red Garden Foods.<sup>123</sup> Commerce used the same identifying exclusion language in the section 129 determination that it used in the *Order*, identifying the excluded merchandise as that produced and exported by “Red Garden Food Processing Co., Ltd.”
- January 20, 2013: Shantou JCF changed its name to Shantou RGFP.<sup>124</sup>
- March 4, 2013: Commerce announced the final results of its section 129 determination which found that, because the weighted-average margin for the single entity RGFP/Shantou RGFS was 0.00 percent and the determination related to the LTFV investigation, RGFP/Shantou RGFS should be revoked from the *Order* (when it exported goods produced by itself or other specific producers).<sup>125</sup>
- March 28, 2013: The revocation notice is published in the *Federal Register*.<sup>126</sup>

Above is a general explanation of the reasoning for Commerce’s SII analysis. Many of the specific details are BPI. For a complete discussion, *see* the SII Memo.

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<sup>119</sup> We note that Commerce had on multiple occasions found that Shantou JCF was subject to the order as part of the China-wide entity. *See, e.g., Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 79 FR 75787 (December 19, 2014); *see also Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57872 (September 26, 2014); *Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 56209 (September 12, 2013); *Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 77 FR 53856 (September 4, 2012); and *Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 51940 (August 19, 2011). In each of these cases, Shantou JCF failed to participate in the review.

<sup>120</sup> *See* Shantou Red Garden Foods December 23, 2019 SQR at Exhibit SA-28 (at Exhibit A-3).

<sup>121</sup> *See 2004/2006 Shrimp Final*.

<sup>122</sup> *See* Shantou Red Garden Foods November 12, 2019 AQR at 12.

<sup>123</sup> *See* Memorandum, “Preliminary Results Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Frozen and Canned Warmwater Shrimp from the People’s Republic of China,” dated December 7, 2019.

<sup>124</sup> *See* Shantou Red Garden Foods November 12, 2019 AQR at 14.

<sup>125</sup> *See* Memorandum, “Final Results of the Proceeding Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Frozen and Canned Warmwater Shrimp from the People’s Republic of China,” dated March 4, 2013.

<sup>126</sup> *See Exclusion Notice*, 78 FR at 18958.



Shantou Red Garden Foods failed to address or refute any of the facts relied on in making the SII determination. Instead, Shantou Red Garden Foods argues that “Red Garden Food Processing Co., Ltd.” does not exist, and, therefore, it is impossible for Shantou RGFP to have been the SII to a fictitious company. This is a gross misinterpretation of our analysis. As we explained above, at the heart of Commerce’s SII analysis in the instant review was the question of whether Shantou RGFP as it currently exists is the successor to the company that existed during the LTFV investigation (*i.e.*, “Red Garden Food Processing Co., Ltd.” or, as Shantou Red Garden Foods asserts, Shantou RGFP); *see* Comment 1). Thus, we are not comparing Shantou RGFP to some non-existent company, but to the company that was reviewed in the LTFV investigation. This becomes abundantly clear through our citations in the SII Memo, which cites information that Shantou Red Garden Foods provided for the company that existed during the LTFV investigation. To take one example, to establish the corporate structure of RGFP during the LTFV investigation, we cited to Shantou RGFS’ section A questionnaire response from the LTFV investigation.<sup>127</sup> And throughout the SII Memo, we continuously cite to this questionnaire response in reference to company information related to RGFP.<sup>128</sup> Thus, there is little doubt that, despite any disagreement over naming, Commerce’s analysis was solely focused on the company in the LTFV investigation.

Shantou Red Garden Foods claims Shantou RGFP should be the successor to RGFP because it has the: (1) same name; (2) same address; (3) same business license; (4) same general manager (who is also the same general manager as Shantou RGFS’ general manager in the investigation); and (5) same U.S. customer.<sup>129</sup> As an initial matter, Shantou Red Garden Foods merely lists these examples without providing any explanation how these facts fit with Commerce’s successorship analysis or how these facts demonstrate that the operations of the successor are not materially dissimilar. As we explained above, while the general manager may be the same, there were significant ownership and organizational changes that indicated that the operations of Shantou RGFP and RGFP are materially dissimilar. We acknowledge that the companies share the same address, but this fact does not support that the companies have similar operations. As we noted above, between 2007 and 2013, there was a complete change in the product line, switching from subject merchandise to non-subject merchandise, which would indicate that the operations are materially dissimilar, even if those different products were produced at the same location. Shantou Red Garden Foods does not refute that its production line changed over this time and provided no evidence to indicate that the different production lines were similar. Again, we acknowledged that Shantou RGFP and RGFP shared one customer; however, we noted that Shantou RGFP has significantly increased its customer base, such that it now sells to a number of new companies, which is a marked contrast to the situation during the period examined in the LTFV investigation. Shantou Red Garden Foods does not refute or address any of these concerns.

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<sup>127</sup> *See* SII Memo at 6 (citing Shantou RGFP December 23, 2019 SQR at Exhibit SA-28 (at Exhibit A-3). Exhibit SA-28 is the complete section A questionnaire response of Shantou RGFS from the LTFV investigation. Shantou RGFS was one of the mandatory respondents in the LTFV investigation. RGFP explained that RGFP was an affiliate of Shantou RGFS, as well as why information for RGFP was included in Shantou RGFS’ questionnaire response).

<sup>128</sup> *See* SII Memo generally.

<sup>129</sup> *See* Shantou Red Garden Foods Case Brief at 15.

Shantou Red Garden Foods also argues that any company change is a part of doing business and that Commerce cannot expect Shantou RGFP to be exactly the same as it was 15 years ago.<sup>130</sup> To be clear, while we considered the totality of circumstances, our findings and conclusions do not rest on the company's changes that are minor, incremental, or routine. In this analysis, and in every other proceeding involving the issue of successorship, the central question before Commerce is whether the "new" company operates in a manner such that it remains essentially the same business entity as the predecessor company with respect to the production and sale of subject merchandise, and thus whether it is entitled to the predecessor's cash deposit rate.<sup>131</sup> Where the predecessor company was revoked or excluded from an AD order, the question before Commerce is whether the "new" company should also be accorded the revoked or excluded status.<sup>132</sup>

In *TRBs from China*, in answering the question as to whether a "new" company was entitled to the predecessor's cash deposit rate, Commerce began with the respondent "as it existed at the time of revocation, because this company is the entity that was revoked from the AD order."<sup>133</sup> Consistent with Commerce's practice, the starting point of the SII analysis in this review should also be the original respondent, *i.e.*, RGFP as it existed during the LTFV investigation, because that is the entity that was excluded from the *Order*.<sup>134</sup>

As we detailed above, Shantou RGFP underwent significant corporate changes with respect to ownership, management, production lines, suppliers, customers, and other factors, demonstrating it was not the successor to RGFP. Shantou Red Garden Foods does not dispute these changes considered by Commerce in reaching our determination. Nor does Shantou Red Garden Foods explain how these significant changes could be considered minor changes that occur during a company's normal business operations. Instead, it lists six facts that have not changed without explaining how they relate to Commerce's SII analysis or why these facts would outweigh Commerce's long-standing methodology regarding successorship. As such, we continue to find that Shantou RGFP is not the SII and is not entitled to the predecessor's cash deposit rate.

### **Comment 5: Whether to Maintain the Existing Combination Rate**

#### *Shantou Red Garden Foods' Comments*<sup>135</sup>

- In the final determination of the LTFV investigation, Commerce did not establish any exporter-producer combination rates,<sup>136</sup> nor did it publish any combination rates in the *Order*. Commerce's use of combination rates in the section 129 proceeding is an error and not in line with Commerce's prior decision.

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<sup>130</sup> *Id.*

<sup>131</sup> See, e.g., *Pasta from Italy* IDM at 6; and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Notice of Final Results of Changed Circumstances Review*, 80 FR 19070 (April 9, 2015) (*TRBs from China*), and accompanying IDM at Comment 1.

<sup>132</sup> See, e.g., *TRBs from China* IDM at Comment 1; and *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil*, 71 FR 2183 (January 13, 2006), and accompanying IDM at Comment 3.

<sup>133</sup> See *TRBs from China* IDM at Comment 1.

<sup>134</sup> See *Exclusion Notice*, 78 FR at 18959.

<sup>135</sup> See Shantou Red Garden Foods Case Brief at 6; see also Shantou Red Garden Foods Rebuttal Brief at 10.

<sup>136</sup> See Shantou Red Garden Foods Case Brief at 6 (citing *LTFV Investigation* IDM at Comment 3).

- Because the section 129 proceeding contained an alleged ministerial error, the exclusion remains valid for Shantou RGFP and Shantou RGFS. Additionally, if any of the other suppliers listed in the excluded combination become operational again, Shantou RGFP is entitled to export subject merchandise produced by these suppliers under that exclusion.

*ASPA's Comments*<sup>137</sup>

- Shantou Red Garden Foods misunderstands how exclusions work when it previously claimed that “revocation was not limited to only those situations where it used the same subcontractors after revocation as in the POI”<sup>138</sup> and “{Commerce} is well aware, beginning the second POR (*sic*), there is no limit on who an exporter can select as its subcontractors.”<sup>139</sup> Shantou Red Garden Foods cites no evidence for these claims.
- In 19 CFR 351.204(e)(3) and *Policy Bulletin 05.1*, Commerce explicitly states that exclusions are linked to specific exporter-producer combinations.<sup>140</sup> Commerce implemented this policy in this proceeding,<sup>141</sup> as well as in orders in other cases.<sup>142</sup>
- Shantou Red Garden Foods admits that all other producers listed in the exclusion no longer exist.<sup>143</sup> Thus, if Commerce’s preliminary decision remains unchanged, no company would be eligible for the exclusion.
- Commerce should inform CBP that all companies in the excluded exporter-producer combination are defunct to prevent any further attempts to misuse this exclusion. Commerce should also inform CBP that Shantou Red Garden Foods has knowingly used this exclusion combination illegitimately for years.

**Commerce Position:** We agree with ASPA that it is appropriate to deactivate the following excluded exporter-producer combination:

**Manufacturers:** Red Garden Food Processing Co., Ltd.; Chaoyang Jindu Hengchang Aquatic Products Enterprise Co., Ltd.; Raoping County Longfa Seafoods Co., Ltd.; Meizhou Aquatic Products Quick-Frozen Industry Co., Ltd.; Shantou Jinyuan District Mingfeng Quick-Frozen Factory; Shantou Long Feng Foodstuffs Co., Ltd.

**Exporters:** Shantou Red Garden Foodstuff Co., Ltd.; Red Garden Food Processing Co., Ltd.

Further, when Commerce issues the cash deposit instructions for this AR to CBP, we will set up a new company case number for Shantou Red Garden Foods in CBP’s Automated Commercial Environment and we will require Shantou Red Garden Foods to provide cash deposits at the rate established in these final results. Our decision to deactivate this company case number is

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<sup>137</sup> See ASPA Case Brief at 19-22.

<sup>138</sup> *Id.* at 19 (citing Shantou Red Garden Foods January 23, 2020 SQR at 8).

<sup>139</sup> *Id.* (citing Shantou Red Garden Foods January 23, 2020 SQR at 10).

<sup>140</sup> *Id.* at 20 (citing Import Administration *Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries* (April 5, 2005) (*Policy Bulletin 05.1*) at 6).

<sup>141</sup> See *LTFV Investigation* IDM at Comment 3.

<sup>142</sup> *Id.* (citing *Stainless Steel Bar from Italy: Final Results of Antidumping Duty Administrative Review*, 69 FR 32984 (June 14, 2004), and accompanying IDM at Comment 7).

<sup>143</sup> *Id.* at 21 (citing Shantou Red Garden Foods January 23, 2020 SQR at 9).

premised on the fact that no companies in the excluded exporter-producer chain are still active.<sup>144</sup>

Shantou Red Garden Foods appears to misunderstand Commerce's exclusion practice. For example, Shantou Red Garden Foods claimed:

{the} revocation was not limited to only those situations where it used the same sub-contractors after revocation as in the POI... the dumping order only limits which companies can be sub-contractors through the first year after the order. As {Commerce} is well aware, beginning the second POR {sic}, there is no limit on who an exporter can select as its subcontractors.<sup>145</sup>

In other words, it appears that Shantou Red Garden Foods' understanding of the exclusion is that, after the first AR, it could use any sub-contractor (*i.e.*, producer) and continue to be eligible for the exclusion. This is incorrect. Our decision in the section 129 proceeding makes clear that Commerce revoked the *Order* with respect to U.S. entries of subject merchandise related to the following exporter/producer combinations:

Revocation for Red Garden is specific to: merchandise *manufactured by* Red Garden Food Processing Co., Ltd., or Chaoyang Jindu Hengchang Aquatic Products Enterprise Co., Ltd., or Raoping County Longfa Seafoods Co., Ltd., or Meizhou Aquatic Products Quick-Frozen Industry Co., Ltd., or Shantou Jinyuan District Mingfeng Quick-Frozen Factory, or Shantou Long Feng Foodstuffs Co., Ltd., *and exported by* Shantou Red Garden Foodstuff Co., Ltd. or Red Garden Food Processing Co., Ltd.<sup>146</sup>

Because Commerce's practice is to exclude entries made by specific exporter-producer combinations only,<sup>147</sup> any entries made outside this combination would be subject to the *Order*.

While we agree that Commerce generally determined not to use exporter-producer combination rates in the LTFV investigation,<sup>148</sup> Shantou Red Garden Foods materially mischaracterizes that determination. Commerce's practice at the time was to assign exporter-specific rates unless it met one of three exceptions,<sup>149</sup> one of which related to exclusions (as is the case here). That practice is in accordance with Commerce's regulations.<sup>150</sup>

Finally, Shantou Red Garden Foods claims that the exclusion is:

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<sup>144</sup> See Shantou Red Garden Foods January 23, 2020 SQR at 9.

<sup>145</sup> *Id.* at 8-9.

<sup>146</sup> See *Exclusion Notice*, 78 FR at 18959 (emphasis added).

<sup>147</sup> *Id.*

<sup>148</sup> See Shantou Red Garden Foods Case Brief (citing *LTFV Investigation* IDM at Comment 3).

<sup>149</sup> See *LTFV Investigation* IDM at Comment 3; see also *Separate-Rates Practice in Antidumping Proceedings involving Non-Market Economy Countries*, 69 FR 77722, 77725 (December 28, 2004) (*Separate Rates Practice*); and *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China*, 66 FR 49345 (September 27, 2001) at Comment 2.

<sup>150</sup> See, e.g., 19 CFR 351.204(e)(3); *Policy Bulletin 05.1* generally; and *Separate-Rates Practice*, 69 FR at 77722.

still valid regarding {Shantou Red Garden Foods} when exporting subject merchandise produced by their producers in the investigation. If any of their suppliers become operational again, {Shantou Red Garden Foods} can export subject merchandise produced by them or by Shantou RGFP.<sup>151</sup>

According to Shantou Red Garden Foods' questionnaire responses, all of the other producers listed in the excluded combination are no longer in business.<sup>152</sup> Further, we have determined that Shantou RGFP is not the same entity as the company of the same name in the LTFV investigation. Based on this information, we find that the producer/exporter combination excluded from the *Order* no longer exists. As a result, Commerce finds it necessary and appropriate to inform CBP that the exclusion for this exporter-producer combination is no longer active.

### **Comment 6: Whether Truck Revenue Should Be Added to Gross Unit Price**

**Background:** Shantou Red Garden Foods included a field called "Truck Revenue: Reduction of ocean freight expense" (TRUCKRVNU) in its U.S. sales listing, and it explained that the amounts that it reported that the amounts in this field represented a "reduction of the transportation expense."<sup>153</sup> Based on the sales terms, Shantou Red Garden Foods was responsible for delivering the merchandise to the customers cold storage facility. Its service provider could only deliver to the U.S. port. As such, the customer handled and paid for U.S. movement expenses from the U.S. port to the cold storage facility. To compensate the customer, Shantou Red Garden Foods deducted an amount from the invoice. TRUCKRVNU represents the amount Shantou Red Garden Foods deducted from the invoice.

#### *Shantou Red Garden Foods' Comments*<sup>154</sup>

- TRUCKRVNU contained negative values because it is revenue to Shantou RGFP. Thus, Commerce should have added these values, not subtracted them, from gross unit price. Commerce should correct the calculations for these final results and add TRUCKRVNU to gross unit price.

#### *Petitioner's Rebuttal Comments*<sup>155</sup>

- Shantou Red Garden Foods' arguments are unsupported by the record and Commerce should continue to employ its methodology from the *Preliminary Results*.
- Shantou Red Garden Foods' assertion that it reported negative numbers in this field makes no sense in the context of its description of this field. Shantou Red Garden Foods refers to this field as "Truck Revenue: Reduction of ocean freight expense" and reports TRUCKRVNU as a positive value of "0.014841" in the public version of its U.S. sales database. There is no indication that the values reported in this field are negative.<sup>156</sup>

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<sup>151</sup> See Shantou Red Garden Foods Rebuttal Brief at 10.

<sup>152</sup> See Shantou Red Garden Foods January 23, 2020 SQR at 9.

<sup>153</sup> *Id.* at 24.

<sup>154</sup> See Shantou Red Garden Foods Case Brief at 15-16.

<sup>155</sup> See Petitioner Rebuttal Brief at 29-31.

<sup>156</sup> *Id.* at 29 (citing Shantou Red Garden Foods January 23, 2020 SQR at Exhibit SSA-16-17).



- Shantou Red Garden Foods has not established that the TRUCKRVNU adjustment is a revenue offset to gross unit price. Because Shantou Red Garden Foods made all of its sales during the POR on a “cost and freight” basis (CNF) basis, the cost of freight was included in the price.<sup>157</sup> Therefore, a reduction to the “transportation expense” that Shantou Red Garden Foods does not incur equates to a deduction from gross unit price, not an increase. Commerce correctly deducted this field from gross unit price, and Shantou Red Garden Foods has provided no explanation or evidence to the contrary.

**Commerce Position:** We disagree that the amounts that Shantou Red Garden Foods reported in the field TRUCKRVNU should be added to gross unit price. In the *Preliminary Results*, we subtracted these amounts from the gross unit price because the record indicated they related to a reduction to gross unit price for “truck fees.”

Pursuant to 19 CFR 351.401(c), Commerce is directed to calculate U.S. price net of any price adjustments that are reasonably attributable to the subject merchandise. The term “price adjustments” is defined under 19 CFR 102(b)(38) as a “change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser’s net outlay.” In this case, Shantou Red Garden deducted the truck fees in question from the total invoice price, and the customer paid Shantou Red Garden this net amount.<sup>158</sup>

Shantou Red Garden Foods reported that all of its sales of subject merchandise to the United States during the POR were made on a CNF basis and shipped to a cold storage facility located in the United States.<sup>159</sup> As Shantou Red Garden Foods explained, under these delivery terms, it was responsible for delivering the products to the cold storage facility. Therefore, based on the shipping term of CNF, and Shantou Red Garden Foods’ own explanation, the expense for trucking the goods from the U.S. port to this facility was part of the invoice price.<sup>160</sup>

Shantou Red Garden Foods reported that its international freight provider typically provides door-to-door service at an all-inclusive ocean freight price (*i.e.*, from Shantou Red Garden Foods’ factory to the cold storage facility in the United States).<sup>161</sup> However, Shantou Red Garden Foods also stated that, during the POR, its freight provider was unable to provide freight services from the U.S. port to the cold storage facility on certain shipments, and, instead, Shantou Red Garden Foods’ U.S. customer arranged and paid for that freight.<sup>162</sup> In compensation, Shantou Red Garden Foods deducted the cost of the trucking expenses paid by its

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<sup>157</sup> *Id.* at 30 (citing Shantou Red Garden Foods November 26, 2019 CDQR at 19).

<sup>158</sup> *See, e.g.*, Shantou Red Garden Foods November 12, 2019 AQR at Exhibit 8. Shantou Red Garden reported the per-unit prices on the invoice in the gross unit price field in the U.S. sales database; therefore, in order to arrive at the net outlay to the purchaser, it is necessary to deduct the reported per-unit truck fees from those gross unit prices.

<sup>159</sup> *See* Shantou Red Garden Foods’ Letter, “Frozen Warmwater Shrimp from the People’s Republic of China; Response to the First Supplemental Sections C and D Questionnaire,” dated January 9, 2020 (Shantou Red Garden Foods January 9, 2020 SQR) at 2, 16-17; *see also* Shantou Red Garden Foods November 12, 2019 AQR at 23; and Shantou Red Garden Foods January 23, 2020 SQR at 23-24.

<sup>160</sup> *See* Shantou Red Garden Foods January 23, 2020 SQR at 23-24; *see also* Shantou Red Garden Foods November 12, 2019 AQR at Exhibit 8

<sup>161</sup> *See* Shantou Red Garden Foods January 9, 2020 SQR at 16-17; *see also* Shantou Red Garden Foods January 23, 2020 SQR at 23-24.

<sup>162</sup> *Id.*

U.S. customer from the invoiced price (which included U.S. inland freight expense that Shantou Red Garden Foods did not provide).<sup>163</sup> Thus, based on the record information, this adjustment is properly considered as a deduction to the gross unit price,<sup>164</sup> and we have treated it as such.

For example, reviewing Shantou Red Garden Foods' invoice contained in its section A response, one can see that in its commercial invoice there are three lines for shrimp products and a separate line for "DEDUCT TRUCK FEE."<sup>165</sup> In other words, Shantou Red Garden Foods was not receiving a freight revenue, but was reducing the invoice value, and thereby reducing gross unit price. Thus, for these final results, we continue to treat this as a price adjustment and deduct the amounts in this field from gross unit price.

### **Comment 7: Whether Commerce Should Use Shantou Red Garden Foods Revised FOP Database**

#### *Shantou Red Garden Foods' Comments*<sup>166</sup>

- Commerce erred by not using Shantou Red Garden Foods' latest FOP database in the *Preliminary Results*. For the final results, Commerce should use the most recently-submitted FOP database (RGN13FP02) as it contains corrected data.

#### *Petitioner's Rebuttal Comments*<sup>167</sup>

- Shantou Red Garden Foods submitted a revised FOP database on April 8, 2020,<sup>168</sup> over one month after the *Preliminary Results*. Thus, it was not possible for Commerce to have erred in the *Preliminary Results* by failing to use information that had not been submitted.
- If Commerce elects to use this revised database, Commerce should explain that it was originally due on January 22, 2020, but after receiving five extensions of this deadline, Shantou Red Garden Foods submitted it after the *Preliminary Results*.

**Commerce Position:** We disagree that Commerce made an error in the *Preliminary Results*. Instead, we used the most recently-submitted FOP database on the record when calculating Shantou Red Garden Foods' preliminary dumping margin. Although we issued a supplemental questionnaire to Shantou Red Garden Foods on January 15, 2020, well before the February 28, 2020, deadline for the *Preliminary Results*,<sup>169</sup> Shantou Red Garden Foods did not timely respond to this supplemental questionnaire until April 8, 2020.<sup>170</sup> Thus, it would have been impossible for Commerce to have used the April 8 FOP database in our preliminary calculations.

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<sup>163</sup> *Id.*

<sup>164</sup> Many of the details are BPI. For a complete discussion, see Final Analysis Memorandum. We note that, contrary to its assertion, Shantou Red Garden Foods reported the amounts in the TRUCKRVNU field as positive amounts.

<sup>165</sup> See Shantou Red Garden Foods November 12, 2019 AQR at Exhibit 8.

<sup>166</sup> See Shantou Red Garden Foods Case Brief at 16.

<sup>167</sup> See Petitioner Rebuttal Brief at 31-33.

<sup>168</sup> *Id.* at 31 (citing Shantou Red Garden Foods April 8, 2020 SQR).

<sup>169</sup> See Commerce's Letter, "Administrative Review of the Antidumping Duty Order on Frozen Warmwater Shrimp from the People's Republic of China: Supplemental Questionnaire Response," dated January 15, 2020.

<sup>170</sup> See Shantou Red Garden Foods April 8, 2020 SQR.

That said, we agree with Shantou Red Garden Foods that it is appropriate to rely on the April 8, 2020 FOP database (RGN13FP02) for these final results, and we have done so.

**V. RECOMMENDATION**

Based on our analysis of the comments received, we recommend adopting the positions set forth above. If this recommendation is accepted, we will publish the final results of the administrative review in the *Federal Register*.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

12/17/2020

X



Signed by: JEFFREY KESSLER

\_\_\_\_\_  
Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance