

Pakfood Public Company Limited, et al. v. United States
Court No. 09-00 430

**FINAL RESULTS
PURSUANT TO COURT REMAND**

SUMMARY

The Department of Commerce (the Department) has prepared these final results pursuant to the remand order of the U.S. Court of International Trade (CIT or the Court) in Pakfood Public Company Limited, et al. v. United States, Slip Op. 10-99 (CIT September 1, 2010) (CIT Opinion). Specifically, the CIT instructed the Department to provide an adequately reasoned explanation on the issue of the methodology used to select mandatory respondents in the 2007 – 2008 antidumping duty administrative review of frozen warmwater shrimp (shrimp) from Thailand, distinguishing this case from apparently similar cases in which the Department has employed and continues to employ a materially different methodology, or else apply a methodology consistent with those similarly situated cases.

In accordance with the Court's instructions, the Department has further explained the basis for its respondent selection methodology in this review, and how the methodology applied in this review is distinguishable from the different methodology applied in apparently similar cases.

A. Background

On April 7, 2008, the Department initiated the administrative review of the antidumping duty order on certain frozen warmwater shrimp from Thailand covering the period February 1, 2007, through January 31, 2008. See Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India and Thailand; Notice of Initiation of Administrative Reviews, 73 FR 18754, 18765-18766 (April 7, 2008) (Initiation Notice). In the Initiation Notice, the Department notified all interested parties that, due to the large number of firms requested for this administrative review and the resulting administrative burden to review each company for which a request had been made, the Department was exercising its authority to limit the number of respondents selected for individual examination, in accordance with section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act), and that the Department intended to select respondents based on U.S. Customs and Border Protection (CBP) data for entries of the subject merchandise during the period of review (POR).

The Department issued a memorandum on May 27, 2008, to explain its selection of respondents for this review. See Memorandum entitled "Selection of Respondents for Individual Review," dated May 27, 2008 (Respondent Selection Memo). In this memorandum, the Department stated that it selected the two largest exporters/producers of the subject merchandise during the POR, according to CBP data, as mandatory respondents for this review. In their case brief before the Department, the Domestic Producers argued that the Department impermissibly relied on CBP data for purposes of selecting mandatory respondents in this administrative review. Specifically,

Domestic Producers contend that CBP data is inaccurate and the Department's practice is to issue quantity and value (Q&V) questionnaires to respondents in order to determine which respondents to select for mandatory review. On September 16, 2009, the Department published the final results of the administrative review. See Certain Frozen Warmwater Shrimp from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47551 (September 16, 2009) (Final Results). The Department affirmed its methodology of selecting respondents for this administrative review based on the largest exporters/producers, according to CBP data, for entries of the subject merchandise during the POR. We stated that the Domestic Producers did not present any evidence demonstrating that inaccuracies existed in the CBP data at issue here. We also stated that, while the Department has selected respondents based upon Q&V questionnaire responses in certain proceedings based on case-specific facts, the Department's current practice is to select respondents using CBP data.

On October 16, 2009, Ad Hoc Shrimp Trade Action Committee (Ad Hoc) filed its complaint with the Court challenging, inter alia, the Department's determination to rely upon CBP data in selecting the largest exporters/producers by volume that it could practicably examine. In its complaint, Ad Hoc alleged that the Department's decision was not supported by substantial evidence because it was inconsistent with the Department's practice of relying upon Q&V questionnaires to select the largest exporters/producers for individual examination. On September 1, 2010, the Court found that the Department's use of CBP data in some reviews and Q&V data in others, without more adequate explanation, is "apparently" arbitrary and inconsistent. See CIT Opinion at 13. The Court also expressed concern that, because the CBP entry data does not contain information with respect to company affiliations, domestic interested parties face a higher burden to discover and correct any inaccuracies with regard to such affiliations and to determine how they may impact quantity and value data. Consequently, the Court issued a remand ordering the Department to provide an adequately reasoned explanation distinguishing the present case from apparently similar cases in which the Department has employed and continues to employ a materially different methodology for selecting respondents, or else apply a methodology consistent with those similarly situated cases that complies with the statute. See id. at 14.

On October 6, 2010, the Department issued its Draft Results Pursuant to Court Remand (Draft Results). Ad Hoc and the Rubicon Group¹ submitted comments on the Draft Results on October 12, 2010.

Pursuant to the Court's remand order, the Department has further explained the basis for its respondent selection methodology in the 2007 – 2008 antidumping duty administrative review of

¹ This group is comprised of the following companies: Andaman Seafood Co., Ltd., Chanthaburi Frozen Food Co., Ltd., Chanthaburi Seafoods Co., Ltd., Phatthana Seafood Co., Ltd., Phatthana Frozen Food Co., Ltd., Thailand Fishery Cold Storage Public Co., Ltd., Thai International Seafood Co., Ltd., and Rubicon Resources, LLC (collectively, the Rubicon Group).

shrimp from Thailand, and how the methodology applied in this review is distinguishable from the different methodology applied in apparently similar cases.

B. Analysis

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter/producer of the subject merchandise. However, where it is not practicable to examine all known exporters/producers of subject merchandise, section 777A(c)(2) of the Act permits the Department to determine margins for a reasonable number of exporters/producers by limiting its examination through either the use of a statistically valid sample or selecting the largest exporters/producers of subject merchandise by volume. Regarding selection based upon the largest exporters/producers, the statute is silent as to how the Department is permitted to determine which exporters/producers account for the largest volume of subject merchandise. Accordingly, the Department has discretion to choose which particular method to use in determining which respondents account for the largest volume of the subject merchandise.

The Department advised the parties to the proceeding at the commencement of this review that it intended to select respondents based on CBP data for entries of the subject merchandise during the POR. See Initiation Notice, 73 FR at 18765-18766. The Department further explained its determination to use CBP data in the Respondent Selection Memo, where it selected the two largest exporters/producers, based on CBP data, as mandatory respondents for this administrative review. As noted in the Final Results, “{W}hile the Department has selected respondents based upon Q&V questionnaire responses in certain proceedings based on case-specific facts, the Department’s current practice is to select respondents using CBP data, which in this case we determine accurately identifies the two producers/exporters accounting for the largest volume of imports of subject merchandise that could reasonably be examined in this review” (*footnotes omitted*). See Final Results at Comment 2 (citing a number of administrative reviews initiated subsequent to the instant review in which the Department advised parties that, in the event it were to limit the number of respondents selected for individual review, it intended to select respondents based on CBP data. See, e.g., Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 73 FR 37409 (July 1, 2008).

The Department developed the practice of using CBP data based upon its experience with Q&V questionnaires for respondent selection purposes in several cases, including prior administrative reviews of shrimp from Thailand. In those cases, because of the difficulty and resources involved in obtaining proper responses from the large numbers of companies for which a review was requested, reliance upon Q&V data resulted in delays in the ability of the Department to select respondents and issue questionnaires. For example, in the two previous reviews of shrimp from Thailand, the Department was unable to make its respondent selections and issue antidumping duty questionnaires until mid-July of each year – over three months after the initiation of the respective antidumping duty reviews. See Certain Frozen Warmwater Shrimp From Thailand: Preliminary Results and Partial Rescission of Antidumping Duty Administrative

Review, 72 FR 10669, 10670 (March 9, 2007); and Certain Frozen Warmwater Shrimp From Thailand: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review, 73 FR 12088, 12089 (March 6, 2008).

Given these experiences with Q&V questionnaires in other cases, including the previous two reviews of shrimp from Thailand, the Department sought to improve the efficiency of the respondent selection process. Thus, as Commerce explained in the Final Results at Comment 2, “selecting respondents from CBP data provides an alternative that is much more administratively practicable, given that relying on Q&V responses in this proceeding requires significant resources to send and track the delivery of numerous Q&V questionnaires and responses, and to aggregate and analyze the numerous responses.” As a result, the Department’s use of CBP data in this review allowed for respondent selection and antidumping duty questionnaire issuance in half the time of the previous reviews; for this review, the Respondent Selection Memo and the questionnaires were issued at the end of May, while as noted above, in the prior two reviews, these events did not take place until mid-July.

At the time of the initiation of this review, the Department had begun relying on CBP data for respondent selection in a number of cases. See, e.g., Certain Cased Pencils from the People’s Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 673, January 7, 2009;² Sixth Administrative Review of Honey From the People’s Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 66221, (November 7, 2008) (“On April 2, 2008...the Department selected Cheng Du Wai and Anhui Native as mandatory respondents in this review, since they were the two largest exporters by volume during the POR, based on CBP data of U.S. imports”); Notice of Initiation of Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture From the People’s Republic of China, 73 FR 12387, 12392 (March 7, 2008) (“For this administrative review, the Department intends to select respondents based on U.S. Customs and Border Protection (“CBP”) data for U.S. imports during the period of review...”);³ Lemon Juice from Argentina: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances, 72 FR 20820, 20821 (April 26, 2007);⁴ and Notice of Preliminary Determination of Sales at Less Than Fair

² See also Memorandum entitled “Selection of Respondents for the Antidumping Duty Review of Certain Cased Pencils from the People’s Republic of China,” dated June 17, 2008, included for the Judicial Record in the Memorandum to the File entitled “Respondent Selection Memoranda from Other Proceedings,” dated October 6, 2010 (hereafter “Other Memoranda”) at Attachment 1.

³ See also the preliminary results of this review: Wooden Bedroom Furniture From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of Review, 74 FR 6372, 6373 (February 9, 2009) (“The Department also stated in the AR Initiation Notice its intention to select respondents based on CBP data for U.S. imports for the POR. For this administrative review, the Department determined to use value of exports instead of volume of exports in selecting the largest exporters. The Department based this determination on the fact that CBP data for volume of imports were reported in differing units of measure (e.g., pieces, cubic meters, etc.) across the exporters and the Department did not have the information to convert the data into an equivalent unit of measure for all relevant imports.”)

⁴ See also Memorandum entitled “Antidumping Duty Investigation on Lemon Juice from Argentina -

Value: Prestressed Concrete Steel Wire Strand From the Republic of Korea, 68 FR 42393, 42394 (July 17, 2003).

The Department acknowledges that, at the time the respondent selection was made in this review, the Department's practice to rely upon CBP data for determining the largest exporters of subject merchandise was relatively new and thus not articulated as clearly as it was subsequently. However, the Department's reliance on CBP data for respondent selection as the norm is more evident in the exception, where the Department turns to issuing Q&V questionnaires or other sources of information when the CBP data for the subject merchandise in question does not provide sufficient or adequate data for the Department's respondent selection purposes. While other, contemporaneous reviews may at first glance appear to be similar to this review with respect to the large number of companies to be reviewed and the need to limit the number of mandatory respondents, the specific facts of those reviews and the CBP data as they relate to the merchandise covered by those reviews distinguish them from this review. For example, in selecting respondents for the 2007-2008 administrative reviews of ball bearings from various countries the Department explained that:

With respect to administrative reviews of these orders, however, our experience with these specific proceedings strongly suggests that use of U.S. Customs and Border Protection (CBP) data would be unreliable for the purpose of selecting respondents for individual examination.... Based upon our experience with these bearings proceedings, the significant volume of resold merchandise, and the cash-deposit hierarchy, due to the unique nature of the ball-bearings industry the respondent-selection process may be distorted significantly if we rely on CBP data to select respondents for individual examination.

In addition, these proceedings are characterized by the fact that the scope of the orders includes parts of bearings and not just finished bearings. A bearing is comprised of numerous parts, such as rolling elements, cages, inner rings, and outer rings, among other parts.... This experience indicates that the CBP volume data will reflect the commingling of parts and finished bearings which may affect the reliability of CBP data for use in the respondent-selection decisions for these reviews of the orders on ball bearings.... Because of the large number of parts likely to have been imported but for which specific information is not yet available, especially in combination with the situation we face in these proceedings as a result of the Department's cash-deposit hierarchy, we cannot reasonably rely on CBP data for purposes of respondent selection in the ball-bearings proceedings.

(Citations omitted) See Memorandum dated July 3, 2008, entitled "Ball Bearings and Parts Thereof from Various Countries – Data for Selection of Respondents," included for the Judicial Record in Other Memoranda at Attachment 3. Thus, in that case, based upon its experience in

Respondent Selection" dated November 7, 2006, at page 2 ("We obtained information through a query of U.S. Customs and Border Protection (CBP) data on the quantity and value of lemon juice imported from Argentina into the United States in the period of investigation (POI). Having analyzed the CBP data, we found that two of the producers/exporters identified in the petition accounted for the overwhelming majority of U.S. imports of lemon juice from Argentina during the POI."), included for the Judicial Record in Other Memoranda at Attachment 2.

prior administrative reviews of the ball bearings orders, the Department determined that it would not be appropriate to rely upon CBP data.

As noted above, the Department relied on CBP data to select respondents in the 2007-2008 administrative review of wooden bedroom furniture from the PRC. However, the Department determined in the subsequent review that CBP data was not adequate for that purpose for that specific merchandise. Accordingly, in a memorandum, the Department articulated why the normal practice of using CBP data was not appropriate for selecting respondents who exported that particular merchandise:

Although the Department used CBP data to select respondents in the third administrative review of this proceeding, it did so using import value, rather than volume, because CBP data did not allow the selection of respondents based on volume (*i.e.*, quantity). This was the case because the units used to measure import quantities are not consistent for the three U.S. Harmonized Tariff Schedule categories identified in the instant scope. After further consideration, we believe that the use of Q&V data is preferable to the use of CBP data in this particular proceeding because it allows the Department to follow the express language of section 777A(c)(2)(B) of the Act, which requires that the Department select respondents on the basis of volume (rather than value).

See Memorandum dated April 20, 2009, entitled “Respondent Selection in the Antidumping Duty Administrative Review of Wooden Bedroom Furniture from the People’s Republic of China,” at page 7, included in the Judicial Record in Other Memoranda at Attachment 4.⁵

In another, more recent example involving a review of pneumatic off-the-road tires from the PRC, the Department explained that it was necessary to deviate from the practice of relying on CBP data for respondent selection because the CBP data do not provide adequate, relevant information for determining the relative volume of imports from the prospective respondents:

For this administrative review, the Department has determined that it will use Q&V data, and not CBP data, to select respondents. We based this determination on the fact that CBP volume data do not account for differences in tire size and weight, and we note that the weight of subject tires varies significantly by model. The Department acknowledges that in prior cases it has relied on CBP data to select respondents. However, for the reasons discussed herein, the Department agrees with {interested parties’} assertions that the use of CBP volume (*i.e.*, per-piece) data is not the preferred option.... Therefore, for purposes of this administrative review, we have determined to rely on Q&V data based on weight in kilograms for respondent selection purposes.

See Memorandum dated April 20, 2009, entitled “Selection of Respondents for the 2008-2009 Antidumping Administrative Review of New Pneumatic Off-the-Road Tires from the People’s

⁵ This memorandum was issued in the wooden bedroom furniture from the PRC review cited by the Court at page 10, footnote 13, of the CIT Opinion. For similar reasons, the Department also relied, in part, on Q&V questionnaire response data in the subsequent wooden bedroom furniture review, also cited in this footnote. See Initiation of Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture From the People’s Republic of China, 75 FR 9869, 9870 (March 4, 2010).

Republic of China,” at page 3, included in the Judicial Record in Other Memoranda at Attachment 5.

At page 10, footnote 13 of the CIT Opinion, the Court cites two other cases where the Department relied on Q&V questionnaires, rather than CBP data, to select respondents. With respect to polyester fiber from the PRC, the CIT Opinion noted that the Department had determined that the CBP volume data was insufficient for respondent selection purposes because “a significant amount of the volume in the CBP data was unclear.” See Certain Polyester Staple Fiber from the People’s Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review and Extension of Time Limit for the Final Results, 74 FR 32125 (July 7, 2009).

With respect to polyethylene retail carrier bags from the PRC, we note that this review was initiated in September 2007 and respondent selection was made in October 2007. At that time, the Department had not established the practice of relying on CBP data where practicable for respondent selection. See Polyethylene Retail Carrier Bags From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 73 FR 52282, 52283, (September 9, 2008) (Bags from the PRC). Rather, the Department did not begin announcing in initiation notices its intention to rely upon CBP data until after that date. See, e.g., Notice of Initiation of Antidumping Duty Investigations: Lightweight Thermal Paper from Germany, the Republic of Korea, and the People’s Republic of China, 72 FR 62430, 62435 (November 5, 2007); Sodium Nitrite from the Federal Republic of Germany and the People’s Republic of China: Initiation of Antidumping Duty Investigations, 72 FR 68563, 68567, (December 5, 2007); and Uncovered Innerspring Units From the People’s Republic of China, South Africa, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations, 73 FR 4817, 4822 (January 28, 2008).

The above examples illustrate the specific reasons why the Department has not relied on CBP data for respondent selection. In these reviews (apart from Bags from the PRC), the Department explained that, while its practice is to use CBP data for respondent selection, the CBP data for the particular merchandise covered by those reviews was not adequate for selecting respondents in those reviews. In arriving at these conclusions, the Department drew from its expertise and knowledge of the industry derived from previous segments of the proceedings in question.

In this same manner, the Department examined CBP data with respect to the selection of respondents in the 2007-2008 shrimp from Thailand review. As the Department detailed in both the Respondent Selection Memo and the Final Results at Comment 2, the Department’s analysis of the CBP data, supported by the Department’s experience in conducting three previous segments of the proceeding, demonstrated that the CBP data for entries of shrimp from Thailand during the POR were adequate, appropriate, and reliable for purposes of determining the largest

exporters of subject merchandise, and thus selecting mandatory respondents.⁶ That is, the Department found no basis to depart from its new practice of relying on CBP data for respondent selection. In contrast, the bearings, furniture, tires, and polyester fiber cases cited above present examples where the Department identified specific reasons for deviating from its practice of determining respondents based on CBP data. As the problems with the CBP data related to imports of the subject merchandise in those cases did not apply to the CBP data for imports of shrimp from Thailand, those cases were not “similarly situated” to the instant case, and the Department’s determination to rely upon CBP data in this review was consistent with its practice and was, therefore, not arbitrary or capricious.

The Court has expressed some concern that, because the CBP entry data does not contain information with respect to company affiliations, domestic interested parties face a heavier burden to discover and correct any inaccuracies with regard to such affiliations and to determine how they may impact quantity and value data. See CIT Opinion at pages 11-12. The Department acknowledges that Q&V questionnaire response data may provide additional affiliation information that the CBP data may lack. However, as the Department has established its normal practice to use CBP data for respondent selection, all domestic parties in all reviews face this same burden, with the rare exception of the cases where CBP data are not useable. We do not, however, believe that a practice becomes arbitrary simply because it has exceptions.

Moreover, we note that the affiliation information available in Q&V responses is limited to one question which requests that, if the company believes it should be treated as one entity with any other company, then it should provide data for all companies in the aggregate and individually. Thus, regarding affiliation, the only information that might be available in a Q&V response that is not available in CBP data is a party’s belief that it should be treated as one entity with another company. Because the information contained in Q&V responses is so limited with respect to affiliation, it does not alleviate, to any great extent, the burden on Domestic Producers to obtain information on affiliation that would be useful and relevant for respondent selections.

Finally, with respect to the instant proceeding, the Department explained in the Respondent Selection Memo at page 7 that:

{R}egarding potential affiliations/collapsible entities, we note that this review is the fourth segment of this proceeding and that we have developed considerable information regarding the affiliations of the requested companies during the previous segments. Moreover, as the petitioner acknowledges, we have already indicated in the Initiation Notice, where applicable, that absent information to the contrary, we will continue to treat any affiliated companies found to be collapsible in previous segments of the proceeding as a single entity in the current segment.

⁶ We note that the CIT Opinion does not require further explanation of whether the CBP data are reliable. Thus, we did not give further explanation on that issue in the Draft Results beyond our discussion in the Respondent Selection Memo and the Final Results at Comment 2. In response to Ad Hoc’s comments on the Draft Results concerning this matter, we address this issue below.

Thus, if a party does have information to the contrary regarding affiliated companies, the Department would consider that information for respondent selection purposes. Importantly, we note that, in this proceeding, no party identified any significant inaccuracies in the identification of affiliated companies or in the CBP data used to select the largest exporters/producers of subject merchandise.

C. Comments from Interested Parties

On October 12, 2010, Ad Hoc and the Rubicon Group submitted comments on the Draft Results issued on October 6, 2010. The Rubicon Group states that the Draft Results provided a reasonable explanation for the Department's use of CBP data in selecting respondents in the review at issue, and thus recommends that the Department not make any changes for the final remand results. Ad Hoc, however, raised several objections to the reasoning outlined in the Draft Results. These objections are summarized below, followed by the Department's response.

1. Ad Hoc states that the Draft Results did not address whether CBP data are reliable for purposes of respondent selection. Ad Hoc contends that the data are unreliable because the information in the "manufacturer ID block" of the entry forms, from which CBP data is derived, is completed by the importer, rather than the manufacturer/exporter, and thus it is uncertain whether the entity in that block is actually the exporter of the merchandise. By contrast, Ad Hoc continues, the Department's Q&V questionnaire explicitly asks a respondent whether it is a manufacturer, exporter, or both of the imported merchandise. Ad Hoc asserts that the accurate identification of the exporters of the subject merchandise is critical for the Department's analysis in administrative reviews, as the exporters actually set the price at which the subject merchandise is sold in the United States. However, notwithstanding this fact, according to Ad Hoc, the Department relied on CBP data to make that identification, even though the CBP data was not collected with the purpose of properly identifying exporters.

Further, Ad Hoc objects to the Department's apparent characterization of its concerns regarding the reliability of CBP data as a matter of satisfying an evidentiary burden in an administrative proceeding, rather than addressing directly the deficiencies Ad Hoc identifies in the CBP data. According to Ad Hoc, the Department should provide evidentiary support that the CBP data was reliable for respondent selection purposes in this review. Moreover, Ad Hoc finds it contradictory that the Department relied on affiliation information obtained from Q&V questionnaires issued in previous reviews in selecting respondents in this review, where the Department did not issue questionnaires to obtain that information.

Department Position

As a threshold matter, we note that the CIT instructed the Department to “either provide an adequately reasoned explanation distinguishing the present case from apparently similar cases in which the Department has employed and continues to employ a materially different respondent selection methodology, or else apply a methodology consistent with those similarly situated cases.” The Draft Results, and thus these final remand results as well, fulfill those instructions by providing a reasoned and detailed explanation of our use of CBP data to select respondents for this review, and addressing the bases for deviating from that practice in certain other reviews. The CIT did not order the Department to further explain the reliability of CBP data beyond our discussions in the Final Results and the United States’ Brief before the Court.

Nevertheless, in response to Ad Hoc’s comments, we reiterate our position that the CBP data are reliable in this review for purposes of respondent selection, and there is no evidence to indicate that the CBP data are inaccurate in any way. Ad Hoc questioned the reliability of the information in the CBP data earlier in this proceeding. As we explained in the Respondent Selection Memo,

The CBP data on which the Department’s respondent selection methodology is based represents reliable data on entries of subject merchandise readily available to the Department. The data is compiled from actual entries of merchandise subject to the order based on information required by and provided to the U.S. government authority responsible for permitting goods to enter into the United States. Further, the entries compiled in this database are the same entries upon which the antidumping duties determined by this review will be assessed.

See also Final Results at Comment 2.

Similarly, the Department previously addressed Ad Hoc’s aspersions concerning the “manufacturer ID block” in the CBP entry forms. The Department responded to that issue in the Respondent Selection Memo:

The data reported to CBP in the “manufacturer ID” block on the CBP Form 7501 (the entry summary) is supposed to represent the manufacturer/exporter of the merchandise. CBP instructs persons completing CBP Form 7501 to report the manufacturer ID code according to “the invoicing party or parties (manufacturers or other direct suppliers).” See CBP FORM 7501 INSTRUCTIONS available online at http://www.cbp.gov/linkhandler/cgov/toolbox/forms/7501_instructions.ctt/7501_instructions.doc. Accordingly, it is reasonable for the Department to consider the “invoicing party” to be the exporter for purposes of determining respondent selection.

See also United States’ Brief before the Court at page 7 (explaining that the fact that the Q&V questionnaires request different information about the exporter or producer does not affect the reasonableness of considering the “invoicing party” reported in the CBP data to refer to the exporter).

Regarding the Department's reliance on its experience in prior segments of this proceeding, Ad Hoc incorrectly states at page 9 of its comments that the Department relied on affiliation information obtained from Q&V questionnaires in previous reviews as part of its analysis in this review. Ad Hoc is wrong because the relevant information on affiliation was obtained from the full questionnaire responses submitted by respondents selected for individual examination in the less-than-fair-value investigation and the previous reviews and not the Q&V responses Ad Hoc would have the Department rely upon in this review. It is not unreasonable nor, for that matter, contradictory, for the Department to take into account affiliation information obtained from previous reviews in analyzing the CBP data in this review for purposes of respondent selection. As we explained in the Draft Results, in each of the cases identified by the Department in the Draft Results, where the Department departed from the practice of using CBP data for respondent selection, the Department applied its knowledge and expertise with respect to the respective subject merchandise in determining that the CBP data was not appropriate for use in selecting the largest exporters of that merchandise. Similarly, the Department drew from its considerable knowledge and expertise obtained in three previous segments of this proceeding in analyzing the CBP data in order to identify the largest exporters of the subject merchandise in this review for purposes of respondent selection.

2. Ad Hoc contends that the Department's claimed gains in efficiency obtained from the reliance on CBP data increases the prejudice and burden to the domestic interested parties. In the absence of any effort by the Department to obtain information on affiliations, Ad Hoc considers as conclusory the Department's assertion in the Draft Results that issuance of a Q&V questionnaire does not alleviate significantly the burden on domestic interested parties to obtain information on affiliations that would be useful for respondent selection purposes. Ad Hoc asserts that reliance on CBP data relieves foreign exporters from providing information relevant to respondent selection, while it tasks the domestic parties with reviewing the CBP data, identifying errors and deficiencies, and submitting comments to the Department within a relatively short timeframe. According to Ad Hoc, foreign exporters are able to meet the evidentiary burden regarding the correction and clarification of the CBP data, as they possess the relevant information with respect to their own shipments, while domestic parties cannot do so because they do not have access to such information. Ad Hoc notes that, while the Draft Results state that, as a result of the use of CBP data, respondent selection was completed in this review earlier than in the previous reviews, that fact does not appear relevant to the Department's efficiency in the conduct of the reviews. For example, the preliminary results were not issued any earlier in this review than in the previous reviews. Thus, Ad Hoc concludes, the Department fails to explain how the burden to domestic parties caused by reliance on CBP data is offset by any benefit to the Department in the conduct of the administrative review.

Department Position

CBP or Q&V questionnaire data are analyzed at an early stage of the segment of the proceeding where the Department must limit the number of respondents. The data are used solely to identify the volume of subject merchandise exporters imported into, or shipped to, the United States during the POR. The Q&V questionnaire issued in the previous two reviews included additional questions in an attempt to segregate merchandise produced by one party, but exported by another party, as noted by Ad Hoc in its comments. Information relevant to a determination of whether responding parties should be treated as affiliates or collapsed is requested and obtained through the Department's normal antidumping questionnaire, not the Q&V questionnaire.

As we explained in the Draft Results, the only information that might be available in a Q&V response that is not available in CBP data is a party's belief that it should be treated as one entity with one or more other companies, and thus it may aggregate its reporting of shipment volume with other entities. The nature of export or shipment volume data obtained from Q&V questionnaires issued in this proceeding did not differ materially from the import entry volume information obtained from the CBP data. In either situation, interested parties are provided access to the volume data under administrative protective order (where applicable) and have the opportunity to comment on that data, including on the matter of whether a party believes that any exporter's shipments or entries should be aggregated with any other exporter's shipments or entries. We note further that, contrary to Ad Hoc's complaints, when the Department relies on CBP data for respondent selection, it does not "task" the domestic interested parties with any responsibility for analyzing CBP data, nor does it "relieve" the respondents from providing information. All parties are provided with equal opportunity to review and comment on the CBP data, at which time all parties may comment upon whether they believe any export data should be aggregated.

In addition, CBP data represents the universe of subject merchandise entries during the POR, collected and reported uniformly by a government agency, and placed on the record in its entirety early in the review. By contrast, Q&V questionnaire responses are normally received over a period of several weeks, are subject to varying interpretations as to how to present the data, or may not be received at all. Thus, with respect to the time available for compiling and analyzing quantitative data, the use of CBP data reduces the burden on domestic interested parties as well as the Department. As the Department explained in the Draft Results, in certain cases, the Department determined that the CBP data was not suitable for identifying the largest exporters because of such issues as the unit of quantity reported in the CBP data may not reflect the unit of quantity relevant for margin analysis. In this review, the unit-of-quantity reported in the CBP data is consistent with the unit of quantity used in the Department's margin analysis, and there was otherwise no evidence that CBP data was unsuitable for use in respondent selection.

Further, with respect to considering affiliations in the context of aggregating CBP entry data, the Department explained that it had sufficient information developed from previous segments to identify and determine the largest exporters during the POR. This information was obtained

from full questionnaire responses from respondents selected in those segments, and there is no evidence that there was any error in this regard. Given the limited affiliation information that may be obtained from Q&V questionnaires, *i.e.*, whether a party believes its exports should be aggregated with another's, we note, as we did in the Draft Results, that the reliance on information obtained from Q&V questionnaires rather than the use of CBP data, does not alleviate the burden, to any great extent, on domestic interested parties to obtain information on affiliation relevant to respondent selection.

With regard to Ad Hoc's comments on the increased efficiency that the use of CBP data afforded in this review, we note that Ad Hoc appears to measure efficiency primarily on the timing of the Department's issuance of the preliminary results of review. However, as the Department explained in the Final Results at Comment 2, "relying on Q&V responses in this proceeding requires significant resources to send and track the delivery of numerous Q&V questionnaires and responses, and to aggregate and analyze the numerous responses." The additional time and resources necessary for compiling Q&V questionnaire responses cuts into the Department's available time and resources for analyzing questionnaire responses, issuing and analyzing supplemental questionnaires, conducting verifications, and preparing the preliminary results. As noted in the Respondent Selection Memo at page 3, the Department needed to manage its limited administrative resources in conducting this review as well as other proceedings. Consequently, the Department's efficiency gains afforded by the use of CBP data for respondent selection in this review were considerable, even if the timing of the preliminary results was not different from that in the previous reviews. Moreover, the efficiency gains also benefited respondents and domestic interested parties, as the former had more time available for preparing questionnaire responses, and the latter had more time available to analyze and comment on those responses.

3. Ad Hoc contends that the Department's Draft Results fail to address the substantially different burdens the domestic interested parties face in administrative reviews where the Department relies on CBP data for respondent selection, versus those reviews where Q&V questionnaires are issued. In particular, Ad Hoc asserts that the Draft Results do not identify any steps the Department takes to mitigate the allegedly adverse impact to domestic interested parties when the Department does not actively seek information from exporters when it relies on CBP data for respondent selection. Ad Hoc also complains that the Department does not address affiliation issues in its citation of proceedings where Q&V questionnaires were issued as an exceptional departure from its practice of relying on CBP data. Because the Department appears to affirmatively seek affiliation information in cases where Q&V questionnaires are issued, but does not seek it in others where CBP data are relied upon, Ad Hoc asserts that the Department's practice in obtaining information for respondent selection appears to be arbitrary and capricious.

Department Position

As discussed above, contrary to Ad Hoc's assertions, the Department does not actively seek information regarding affiliations when it issues Q&V questionnaires to exporters. The only

relevant affiliation information that may be obtained from Q&V questionnaires is whether a responding party believes its shipments should be aggregated with those of another party. Because limited affiliation information is obtained from Q&V questionnaire responses, it is not surprising that the issue of affiliation is not a reason cited for the Department's reliance on Q&V questionnaires in the other proceedings discussed in the Draft Results. As we explained in the Draft Results, the Department provided detailed explanations why it departed from its practice of relying on CBP data for respondent selection in the exceptional cases cited. Accordingly, there is no basis for Ad Hoc's claim that the Department's use of Q&V questionnaires in some cases but not others is arbitrary and capricious.

D. Final Results of Remand

In accordance with the Court's instructions, the Department has further explained the basis for its respondent selection methodology in this review, and how the methodology applied in this review is distinguishable from the different methodology applied in apparently similar cases.



Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration



Date