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Dated: October 1, 2003.

**Raymond C. Porfiri,**

*Deputy General Counsel.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-848]

#### **Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review; Final Rescission, in Part; and Intent to Rescind, in Part**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) in response to requests from the Crawfish Processors Alliance, its members, and the Domestic Parties (collectively, the Domestic Interested Parties); and from respondents Qingdao Rirong Foodstuff Co., Ltd. (Qingdao Rirong), Weishan Fukang Foodstuffs Co., Ltd. (Weishan Fukang), and Weishan Zhenyu Foodstuff Co., Ltd. (Weishan Zhenyu). The period of review (POR) is from September 1, 2001 through August 31, 2002.

We preliminarily determine that sales have been made below normal value (NV). The preliminary results are listed below in the section titled "Preliminary Results of Review." If these preliminary results are adopted in our final results, we will instruct the U.S. Bureau of Customs and Border Protection (BCBP) to assess antidumping duties based on the difference between the export price (EP) or constructed export price (CEP), as applicable, and NV. Interested parties are invited to comment on these preliminary results. See the "Preliminary Results of Review" section of this notice.

**EFFECTIVE DATE:** October 8, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Doug Campau or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482-1395 or (202) 482-3020, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Department published in the **Federal Register** an antidumping duty order on freshwater crawfish tail meat from the PRC on September 15, 1997. See *Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat from the People's Republic of China*, 62 FR 48218 (September 15, 1997). Based on timely requests from various interested parties, the Department initiated an administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC for the period of September 1, 2001 through August 31, 2002. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 65336 (October 24, 2002) (*Notice of Initiation*).

The Domestic Interested Parties requested a review of the following companies: China Everbright; China Kingdom Import & Export Co., Ltd., aka China Kingdome Import & Export Co., Ltd., aka Zhongda Import & Export Co., Ltd. (China Kingdom); Fujian Pelagic Fishery Group Co. (Fujian Pelagic); Huaiyin Foreign Trade Corporation (5) (Huaiyin 5); Huaiyin Foreign Trade Corporation (30) (Huaiyin 30); Jiangsu Cereals, Oils, & Foodstuffs Import & Export Corp. (Jiangsu Cereals); Jiangsu Hilong International Trading Co., Ltd. (Jiangsu Hilong); Nantong Delu Aquatic Food Co., Ltd. (Nantong Delu); Nantong Shengfa Frozen Food Co., Ltd. (Nantong Shengfa); Ningbo Nanlian Frozen Foods Co., Ltd. (Ningbo Nanlian); North Supreme Seafood (Zhejiang) Co., Ltd. (North Supreme); Qingdao Rirong Foodstuff Co., Ltd., aka Qingdao Rirong Foodstuffs (Qingdao Rirong); Qingdao Zhengri Seafood Co., Ltd., aka Qingdao Zhengri Seafoods (Qingdao Zhengri); Shanghai Taoen International Trading Co., Ltd. (Shanghai Taoen); Shantou SEZ Yangfeng Marine Products Co. (Shantou SEZ); Shouzhou Huaxiang Foodstuffs Co., Ltd. (Shouzhou Huaxiang); Suqian Foreign Trade Corp., aka Suqian Foreign Trading (Suqian Foreign Trade); Weishan Fukang Foodstuffs Co., Ltd. (Weishan Fukang); Weishan Zhenyu; Yancheng Baolong Biochemical Products Co., Ltd. (YBBP); Yancheng Foreign Trade Corp., aka Yancheng Foreign Trading, aka Yang Chen Foreign Trading (YFTC); Yancheng Haiteng Aquatic Products & Foods Co., Ltd. (Yancheng Haiteng); Yancheng Yaou Seafoods (Yancheng Yaou); and Yangzhou Lakebest Foods Co., Ltd. (Yangzhou Lakebest). In

addition, the Domestic Interested Parties requested review, for the same POR, of "the single PRC entity," within the meaning of that term as it was used in the Department's previous *Notice of Initiation*, 66 FR 54195, 54196 (October 26, 2001)." See *Letter from Domestic Interested Parties* (September 30, 2002).

On September 30, 2002, Qingdao Rirong, Weishan Fukang, and Weishan Zhenyu, which were included in the Domestic Interested Parties' request for review, also requested review of their shipments of subject merchandise. The Department published a notice of initiation of this antidumping duty administrative review on October 24, 2002. See *Notice of Initiation*. We did not specifically initiate a review of the PRC entity. See *Memorandum to Barbara E. Tillman: Domestic Parties Request for a Review of the Non-Market Economy Entity* (September 30, 2003).

On June 3, 2003, the Department determined that it was not practicable to complete the preliminary results of this review within the statutory time limit. Consequently, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) and section 351.213(h)(2) of the Department's regulations, the Department extended the deadline for completion of the preliminary results to September 30, 2002. See *Notice of Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review: Freshwater Crawfish Tail Meat from the People's Republic of China*, 68 FR 33098 (June 3, 2003).

##### **Final Rescission of Administrative Review, in Part**

Pursuant to the Department's regulations, the Department will rescind an administrative review "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." See 19 CFR 351.213(d)(1). Since Domestic Interested Parties submitted a timely withdrawal of its request for review of China Everbright, China Kingdom, Fujian Pelagic, Huaiyin 5, Huaiyin 30, Jiangsu Cereals, Jiangsu Hilong, Nantong Delu, Ningbo Nanlian, North Supreme, Qingdao Zhengri, Shantou SEZ, Suqian Foreign Trade, YBBP, YFTC, Yancheng Haiteng, and Yancheng Yaou, and no other interested party requested a review of these companies, the Department is rescinding its antidumping administrative review of these companies, in accordance with 19 CFR 351.213(d)(1).

### Intent to Rescind Administrative Review, in Part

The Department's regulations provide that the Department "may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be." See 19 CFR 351.213(d)(3). On December 11, 2002, Nantong Shengfa informed the Department that it did not export or produce for export to the United States, nor did it produce and sell subject merchandise through others to the United States, during the POR. In addition, on January 2, 2002, Weishan Zhenyu informed the Department that it did not have any direct or indirect export sales of the subject merchandise to the United States during the POR. The Department reviewed data on entries under the order during the period of review from the BCBP, and found no reportable U.S. entries, exports, or sales of subject merchandise by Nantong Shengfa or Weishan Zhenyu during the POR. Therefore, absent the submission of any evidence that these companies had reportable U.S. entries, exports, or sales of subject merchandise, the Department intends to rescind the administrative review with respect to these companies, in accordance with 19 CFR 351.213(d)(3).

### Scope of the Antidumping Duty Order

The product covered by this antidumping duty order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by the BCBP in 2000, and HTS numbers 0306.19.00.10 and 0306.29.00.00, which are reserved for fish and crustaceans in general. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

### Shanghai Taoen

The Department has identified a significant discrepancy between the quantity and value data Shanghai Taoen reported in its questionnaire response and the quantity and value information that the Department identified through BCBP data queries. The Department contacted BCBP about this issue and will be working closely with it to determine the cause of this discrepancy. In addition, the Department will further examine this issue for the final results by requesting additional information from Shanghai Taoen.

### Application of Facts Available

#### 1. Shouzhou Huaxiang

As further discussed below, pursuant to sections 776(a)(2)(A),(B) and (D) and section 776(b) of the Act, the Department determines that the application of total adverse facts available is warranted for respondent Shouzhou Huaxiang. Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts otherwise available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. Section 776(a)(2)(D) of the Act warrants the use of facts otherwise available in reaching a determination when information is provided, but cannot be verified. Shouzhou Huaxiang requested an extension of the August 8, 2003 deadline for responding to the second supplemental questionnaire on August 6, 2003. See *Letter from Shouzhou Huaxiang*, at 1 (August 6, 2003). The Department granted a 12-day extension, to August 20, 2003. See *Letter to Shouzhou Huaxiang*, at 1 (August 8, 2003). However, Shouzhou Huaxiang never submitted its response. Thus, because Shouzhou Huaxiang failed to respond to the Department's second supplemental questionnaire, pursuant to sections 776(a)(2)(A) and (B) of the Act, the Department determines that the application of facts otherwise available is warranted.

The Department further finds that the application of facts available is also warranted pursuant to section 776(a)(2)(D) of the Act, because Shouzhou Huaxiang's questionnaire responses could not be verified. On June 4, 2002, Shouzhou Huaxiang informed the Department that "due {sic} the continuing impact of the recent flooding of the Huaihe river, Shouzhou Huaxiang, the company {sic} will not be able to participate in the verification scheduled to begin on August 29, 2003."

See *Letter from Shouzhou Huaxiang*, at 1 (August 18, 2003). On August 15, 2003, the Department left messages with counsel for Shouzhou Huaxiang to convey the Department's continued willingness to try to work with Shouzhou Huaxiang, and to offer to consider any alternative proposals for conducting verification (such as by shuffling the order in which each of the three entities Shouzhou Huaxiang, and its two producers would be visited). See *Memorandum to the File: Shouzhou Huaxiang Foodstuffs Co., Ltd.'s Refusal to Allow Verification*, (September 29, 2003) (*Shouzhou Huaxiang Memo*).

On August 18, 2003, prior to the extended deadline for responding to the second supplemental questionnaire, the Department again contacted counsel for Shouzhou Huaxiang, to convey the Department's continued willingness to try to work with Shouzhou Huaxiang, and to offer to consider any alternative proposals for conducting verification. The Department also asked whether Shouzhou Huaxiang's producers, Yancheng Yaou and Hubei Houhu, could still be verified. *Id.* at 3. Counsel for Shouzhou Huaxiang indicated that they would discuss the matter with Shouzhou Huaxiang, and then get back to the Department on August 19, 2003. *Id.* On August 19, 2003, the Department again contacted counsel for Shouzhou Huaxiang to find out whether they had received any feedback from Shouzhou Huaxiang, concerning the Department's offer to consider any alternative proposals for conducting verification, or whether Shouzhou Huaxiang's producers, Yancheng Yaou and Hubei Houhu, would agree to be verified. *Id.*

Shouzhou Huaxiang never offered any alternative proposals for conducting verification, and never changed its position that it would not participate in verification. This decision prevented the verification of information placed on the record. Thus, the information submitted by Shouzhou Huaxiang cannot serve as a reliable basis for reaching a determination since verification provides the Department with an opportunity to check the accuracy of the information submitted by the respondent. Because Shouzhou Huaxiang did not respond to the Department's second supplemental questionnaire, and refused to allow verification, sections 782(d) and (e) of the Act are not applicable.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a respondent, if it determines that a party has failed to cooperate to the best of its ability. The Department finds that

Shouzhou Huaxiang has failed to cooperate to the best of its ability because evidence on the record of this review indicates that it could have complied with the Department's request for supplemental information and could have participated in verification. Information on the record indicates that the flooding referred to by Shouzhou Huaxiang was not so severe that verification could not proceed by August 29, 2003, or that the company could not respond to the Department's second supplemental questionnaire by the extended August 20, 2003 deadline. See *Shouzhou Huaxiang Memo* at 3–4. Shouzhou Huaxiang's main business is selling crawfish tail meat, and during the period of review it dealt with a limited number of crawfish tail meat processors. As such, Shouzhou Huaxiang was in a position to respond to the Department's supplemental questionnaire. The Department's determination that Shouzhou Huaxiang failed to act to the best of its ability is further supported by Shouzhou Huaxiang's failure to participate in, and even propose any alternatives to, the Department's request for verification. Shouzhou Huaxiang participated in a previous review, and was therefore aware of the Department's interest in conducting verification of Shouzhou Huaxiang's questionnaire responses. Shouzhou Huaxiang was further put on notice that the Department intended to conduct verification by the Department's letter of August 6, 2003, and by the Department's verification outline issued on August 11, 2003. *Id.* at 1–2. While Shouzhou Huaxiang initially raised concerns regarding the location and timing of the verification due to flooding in the area, Shouzhou Huaxiang failed to respond to the Department's requests that Shouzhou Huaxiang propose alternative arrangements. The Department therefore concludes that Shouzhou Huaxiang failed to cooperate to the best of its ability by refusing to allow verification, as well as for failing to respond to the Department's second supplemental questionnaire, as discussed above.

Because the Department concludes that Shouzhou Huaxiang failed to cooperate to the best of its ability, in applying the facts otherwise available, the Department finds that an adverse inference is warranted, pursuant to section 776(b) of the Act. Since Shouzhou Huaxiang did not allow verification of its questionnaire responses, the Department was unable to examine Shouzhou Huaxiang's eligibility for a separate rate. In the absence of verifiable information

establishing Shouzhou Huaxiang's entitlement to a separate rate, we have preliminarily determined that it is subject to the PRC-wide rate. As AFA, and as the PRC-wide rate, the Department is assigning the rate of 223.01 percent—the highest rate determined in the current or any previous segment of this proceeding. See *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002) (1999–2000 Final Results). As discussed further below, this rate has been corroborated.

## 2. Yangzhou Lakebest

As further discussed below, pursuant to sections 776(a)(2)(A) and (B) and section 776(b) of the Act, the Department determines that the application of total adverse facts available is warranted for respondent Yangzhou Lakebest. Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. Yangzhou Lakebest failed to properly file its response to the Department's May 2, 2003 supplemental questionnaire. See *Memorandum to the File: Details of Communications with Yangzhou Lakebest Foods Co. Ltd.* (September 30, 2003). The Department received Yangzhou Lakebest's response to the May 2, 2003 supplemental questionnaire on June 6, 2003. We examined the response and found numerous deficiencies. The response contained numerous errors regarding the bracketing of information for which proprietary treatment was requested in the response, and the factors of production information was incomplete and unusable. In addition, Yangzhou Lakebest did not file the required number of copies with the Department or serve the other interested parties. Therefore, we returned the response to Yangzhou Lakebest. In the accompanying letter, the Department requested that Yangzhou Lakebest remedy the procedural errors in its response and refile it and explain a number of substantive deficiencies in its response. See *Letter to Yangzhou Lakebest* (June 20, 2003). However, Yangzhou Lakebest failed to re-file its response to the Department's supplemental questionnaire, or to provide any explanation for its deficiencies. The Department received

no further responses, correspondence, or other filings from Yangzhou Lakebest after the company submitted its deficient response to the Department's supplemental response on June 6, 2003. Because Yangzhou Lakebest stopped responding to the Department, section 782(e) of the Act is not applicable.

Yangzhou Lakebest failed to provide information explicitly requested by the Department; therefore, we must resort to the facts otherwise available. Section 782(c)(1) of the Act does not apply because Yangzhou Lakebest did not indicate that it was unable to submit the information required by the Department.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of the respondent, if it determines that a party has failed to cooperate to the best of its ability. The Department finds that, by not providing the necessary responses to the questionnaires issued by the Department, and not providing any explanation, Yangzhou Lakebest failed to cooperate to the best of its ability. The information requested by the Department is integral to its antidumping analysis. Without complete and reliable factors of production information, the Department cannot calculate normal value, and, therefore, a dumping margin. Yangzhou Lakebest is the only party which has access to the information requested by the Department and therefore is the only party which could have complied with the Department's supplemental request for information and provided the necessary factors of production data.

Therefore, in selecting from the facts available, the Department determines that an adverse inference is warranted. In accordance with sections 776(a)(2)(A) and (B), as well as section 776(b) of the Act, because of the breadth of the missing, unsupported and unverifiable data, we are applying total adverse facts available to Yangzhou Lakebest. As part of this adverse facts available determination, we find that Yangzhou Lakebest did not demonstrate its eligibility for a separate rate, and have preliminarily determined that it is subject to the PRC-wide rate. As noted above, as AFA, and as the PRC-wide rate, the Department is assigning the rate of 223.01 percent—the highest rate determined in the current or any previous segment of this proceeding. See 1999–2000 Final Results. As discussed below, this rate has been corroborated.

## 3. Weishan Fukang

As further discussed below, pursuant to sections 776(a)(2)(D) and section

776(b) of the Act, the Department determines that the application of total adverse facts available is warranted for respondent Weishan Fukang because Weishan Fukang failed to allow the Department to verify its questionnaire responses. Section 776(a)(2)(D) warrants the use of facts otherwise available in reaching a determination when information is provided, but cannot be verified. Verification of the questionnaire responses of Weishan Fukang was scheduled for August 27 through August 29, 2003. On August 28, 2003, Weishan Fukang withdrew from verification. See *Memorandum to the File: Verification of Weishan Fukang Foodstuffs Co., Ltd.* (September 26, 2003). Verification is integral to the Department's analysis because it allows the Department to satisfy itself that the information that the Department relies upon in calculating a margin is accurate and therefore enables the Department to comply with the statutory mandate to calculate the dumping margin as accurately as possible. Since Weishan Fukang withdrew from verification, the Department cannot rely on Weishan Fukang's questionnaire responses to calculate a margin for Weishan Fukang.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of a respondent, if it determines that a party has failed to cooperate to the best of its ability. The Department concludes that Weishan Fukang failed to cooperate to the best of its ability when it withdrew from verification. In applying the facts otherwise available, the Department finds that an adverse inference is warranted, pursuant to section 776(b) of the Act. Because Weishan Fukang did not demonstrate, using verifiable information, its eligibility for a separate rate, we have preliminarily determined that it is subject to the PRC-wide rate. As noted above, as AFA, and as the PRC-wide rate, the Department is assigning the rate of 223.01 percent - the highest rate determined in the current or any previous segment of this proceeding. See *1999-2000 Final Results*. As discussed further below, this rate has been corroborated.

#### 4. Qingdao Rirong

As further discussed below, pursuant to sections 776(a)(2)(A) and (B) and section 776(b) of the Act, the Department determines that the application of total adverse facts available is warranted for respondent Qingdao Rirong. On April 21, 2003, the Department published *Freshwater Crawfish Tail Meat from the People's*

*Republic of China: Notice of Final Results of Antidumping Duty Administrative Review (2000-2001 Final Results)*, 68 FR 19504, for the review period covering September 1, 2000 through August 31, 2001 (2000/2001 POR). In the *2000-2001 Final Results*, and accompanying *Issues and Decision Memorandum*, which the Department has placed on the record of this review, the Department determined that Qingdao Rirong and its U.S. importer, Y&Z International (Y&Z), should be treated as affiliated parties for purposes of the 2000/2001 POR. In that determination, we also found that Qingdao Rirong was affiliated with Y&Z until at least December 16, 2002. See *2000-2001 Final Results*, at comment 3.

On November 20, 2002, the Department issued its initial antidumping duty questionnaire in the instant administrative review to Qingdao Rirong. See *Qingdao Rirong Questionnaire*. In Section C of the Department's questionnaire, the Department requested that Qingdao Rirong identify its sales as either EP or CEP. See *Qingdao Rirong Questionnaire*, dated November 20, 2002, at Section C. On January 22, 2003 (and resubmitted on May 20, 2003), Qingdao Rirong responded to the Department's questionnaire. See *Qingdao Rirong Questionnaire Response*, dated May 20, 2003. In its response, Qingdao Rirong stated that "{d}uring the POR, all Rirong sales to the United States were EP sales."

Based on our determination in the *2000-2001 Final Results* that Qingdao Rirong and Y&Z were affiliated throughout at least December 16, 2002, the Department requested that Qingdao Rirong report U.S. sales for the current review period on a CEP basis. See *Supplemental Questionnaire from the Department to Qingdao Rirong*, dated June 10, 2003. The Department noted that "should {Qingdao Rirong} choose not to provide sales data on a CEP basis, and should the Department conclude that Qingdao Rirong and Y&Z should be considered affiliated for this period of review, and that, as a result, U.S. sales should be classified as CEP sales, the Department may apply facts available for purposes of this review." *Id.* In its July 1, 2003 response to the Department's June 10, 2003 supplemental questionnaire, Qingdao Rirong claimed that it was not affiliated with Y&Z "in any form for this fifth administrative review." See *Qingdao Rirong Supplemental Questionnaire Response*, dated July 1, 2003 at page 2.

On August 4, 2003, the Department placed on the record of this review its affiliation analysis for the current POR,

incorporating information obtained during both the current and previous administrative reviews, in which it again determined that, at least through December 16, 2002, Qingdao Rirong was affiliated with Y&Z under section 771(33) of the Act. See *Memorandum to Barbara E. Tillman: Analysis of Relationship between Qingdao Rirong Foodstuff, Co., Ltd., and Y&Z International Trade Inc.* Thus, Qingdao Rirong's CEP sales data was necessary in order for the Department to be able to calculate Qingdao Rirong's antidumping margin, in accordance with sections 771(33) and 772(b) of the Act, and 19 CFR 351.402 of the Department's regulations. In light of this determination, the Department sent Qingdao Rirong a letter in which it again requested that Qingdao Rirong report its U.S. sales on a CEP basis. See *Letter to Qingdao Rirong* (August 4, 2003). On August 11, Qingdao Rirong submitted a letter to the Department indicating that it would not report its U.S. sales on a CEP basis. See *Letter from Qingdao Rirong* (August 11, 2003).

As further discussed below, pursuant to sections 776(a)(2)(A) and (B) and section 776(b) of the Act, the Department determines that the application of total adverse facts available is warranted for respondent Qingdao Rirong. Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in the form required. Qingdao Rirong refused to provide its U.S. sales data on the appropriate CEP basis. As the Department has determined that Qingdao Rirong and Y&Z are affiliated for purposes of this administrative review, the CEP sales data (i.e., the sales price from Y&Z to the first unaffiliated customer in the United States, and all the CEP adjustment information) requested by the Department would provide the only reliable basis for calculating a dumping margin for Qingdao Rirong. Qingdao Rirong failed to provide information explicitly requested by the Department; therefore, we must resort to the facts otherwise available. Because Qingdao Rirong refused to provide its U.S. sales data on the appropriate basis, sections 782(d) and (e) of the Act are not applicable.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of the respondent, if it determines that a party has failed to cooperate to the best of its ability. The Department

concludes that Qingdao Rirong failed to cooperate to the best of its ability by refusing to provide its U.S. sales data on the appropriate basis. Without CEP sales data, none of the information submitted by Qingdao Rirong can serve as a reliable basis for reaching a determination because we do not have the appropriate U.S. sales to compare to NV. This information was in the sole possession of Qingdao Rirong, and could not be obtained otherwise. Thus, the Department is precluded from calculating a margin for Qingdao Rirong. Because the Department concludes that Qingdao Rirong failed to cooperate to the best of its ability, in applying the facts otherwise available, the Department finds that an adverse inference is warranted, pursuant to section 776(b) of the Act. Because Qingdao Rirong did not demonstrate its eligibility for a separate rate, we have preliminarily determined that it is subject to the PRC-wide rate. As AFA, and as the PRC-wide rate, the Department is assigning the rate of 223.01 percent—the highest rate determined in the current or any previous segment of this proceeding. This is a calculated dumping margin from the 1999–2000 administrative review. See 1999–2000 Final Results. As discussed further below, this rate has been corroborated.

#### **Corroboration of Secondary Information Used As Adverse Facts Available**

Section 776(c) of the Act provides that when the Department relies on the facts otherwise available and relies on “secondary information,” the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department’s disposal. The *Statement of Administrative Action*, H.R. Doc. 103–316 (SAA), states that “corroborate” means to determine that the information used has probative value. See SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for calculated margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from the current or a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. See, e.g., *Grain-*

*Oriented Electrical Steel From Italy; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 36551, 36552 (July 11, 1996). The information used in calculating this margin was based on sales and production data of a respondent in a prior review, and on the most appropriate surrogate value information available to the Department, chosen from submissions by the parties in that review, as well as information gathered by the Department itself. Furthermore, the calculation of this margin was subject to comment from interested parties in the proceeding. See 1999–2000 Final Results. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company’s uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. See *D & L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present here. As there is no information on the record of this review that indicates that this rate is not relevant as adverse facts available for the PRC-entity, including Shouzhou Huaxiang, Yangzhou Lakebest, Weishan Fukang, and Qingdao Rirong, we determine that this rate has probative value. Accordingly, we determine that the highest rate from any segment of this administrative proceeding (*i.e.*, 223.01 percent) is in accord with section 776(c)’s requirement that secondary information be corroborated (*i.e.*, that it have probative value).

#### **Verification**

As provided in section 782(i) of the Act, we verified the responses of Shanghai Taoen. We used standard verification procedures, including on-site inspection of the manufacturers’ facilities and the examination of relevant sales and financial records. Verification of the questionnaire

responses of Shanghai Taoen took place from August 18 through August 21, 2003. See *Antidumping Duty Administrative Review of Freshwater Crawfish Tail Meat from the People’s Republic of China (PRC) (A-570-848): Verification Report for Shanghai Taoen International Trading Co., Ltd.* (September 29, 2003).

Verification of the questionnaire responses of Weishan Fukang was scheduled for August 27 through August 29, 2003. However, as described in the “Application of Facts Available” section above, on August 28, 2003, Weishan Fukang withdrew from verification. See *Memorandum to the File: Verification of Weishan Fukang Foodstuffs Co., Ltd.* (September 26, 2003). Our verification results are on file in the CRU, Room B-099 of the main Department building.

#### **Separate Rates Analysis for Shanghai Taoen**

To establish whether a company operating in a non-market economy country (NME) is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People’s Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People’s Republic of China*, 59 FR 22585 (May 2, 1994). Under this policy, exporters in NMEs are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with an individual exporter’s business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: 1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the

government regarding the selection of management.

#### *De Jure Control*

In its questionnaire responses, Shanghai Taoen stated that it is an independent legal entity. Evidence on the record indicates that the government does not have *de jure* control over Shanghai Taoen's export activities. Shanghai Taoen submitted evidence of its legal right to set prices independent of all government oversight. Furthermore, the business license of Shanghai Taoen indicates that it is permitted to engage in the exportation of crawfish. We also found no evidence of *de jure* government control restricting Shanghai Taoen's exportation of crawfish.

In its responses, Shanghai Taoen stated that no export quotas apply to crawfish. Prior verifications have confirmed that there are no commodity-specific export licenses required and no quotas for the seafood category "Other," which includes crawfish, in *China's Tariff and Non-Tariff Handbook* for 1996. In addition, we have previously confirmed that crawfish is not on the list of commodities with planned quotas in the 1992 PRC Ministry of Foreign Trade and Economic Cooperation document entitled *Temporary Provisions for Administration of Export Commodities*. See *Freshwater Crawfish Tail Meat From the People's Republic of China; Preliminary Results of New Shipper Review*, 64 FR 8543 (February 22, 1999) and *Freshwater Crawfish Tail Meat From the People's Republic of China; Final Results of New Shipper Review*, 64 FR 27961 (May 24, 1999) (*Ningbo New Shipper Review*).

The following laws, which have been placed on the record of this review, indicate a lack of *de jure* government control. The *Company Law of the People's Republic of China*, effective as of July 1, 1994 states that a company is an enterprise legal person, that shareholders shall assume liability towards the company to the extent of their shareholdings, and that the company shall be liable for its debts to the extent of all its assets. Shanghai Taoen also provided copies of the *Foreign Trade Law of the PRC*, which identifies the rights and responsibilities of organizations engaged in foreign trade dealings, grants autonomy to foreign trade operators in management decisions, and establishes the foreign trade operator's accountability for profits and losses. Shanghai Taoen also provided a copy of its business license. We therefore preliminarily determine that there is an absence of *de jure*

control over the export activities of Shanghai Taoen.

#### *De Facto Control*

With respect to the absence of *de facto* control over export activities, information on the record indicates that, for Shanghai Taoen, company management is responsible for all decisions concerning export strategies, export prices, profit distribution, and contract negotiations, and that there are no governmental policy directives that affect management's decisions. Furthermore, Shanghai Taoen's pricing and export strategy decisions are not subject to any outside entity's review or approval. Information on the record also indicates that there is no government involvement in the daily operations or the selection of management for Shanghai Taoen.

There are no restrictions on the use of Shanghai Taoen's export earnings. Shanghai Taoen's general manager has the right to negotiate and enter into contracts, and may delegate this authority to employees within the company. There is no evidence that this authority is subject any level of governmental approval. Shanghai Taoen has stated that its management is selected by its board of directors and/or its employees, and that there is no government involvement in the management selection process. Lastly, decisions made by Shanghai Taoen concerning purchases of subject merchandise from other suppliers are not subject to government approval. We therefore preliminarily determine that there is an absence of *de facto* control over the export activities of Shanghai Taoen.

Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over its export activities, we preliminarily determine that Shanghai Taoen is eligible for a separate rate.

#### **Normal Value Comparisons**

To determine whether Shanghai Taoen's sales of the subject merchandise to the United States were made at prices below NV, we compared its United States prices to NV, as described in the *United States Price* and *Normal Value* sections of this notice.

#### **United States Price**

For Shanghai Taoen, we based United States price on EP in accordance with section 772(a) of the Act, because the first sales to unaffiliated purchasers were made prior to importation, and CEP was not otherwise warranted by the facts on the record. We calculated EP based on packed prices from the

exporter to the first unaffiliated purchaser in the United States. Where applicable, we deducted foreign inland freight, brokerage and handling expenses in the home market, and ocean freight, from the starting price (gross unit price) in accordance with Section 772(c) of the Act.

#### **Normal Value**

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the respondents contested such treatment in this review. Accordingly, we have applied surrogate values to the factors of production to determine NV. See *Factor Values Memo for the Preliminary Results of the Antidumping Duty Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China*, dated September 30, 2003 (Factor Values Memo).

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and 19 CFR 351.408(c). Consistent with the original investigation and subsequent administrative reviews of this order, we determined that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. With the exceptions of the whole live crawfish input and the crawfish scrap by-product, for which Indian data were not available, we valued the factors of production using publicly available information from India. We adjusted the Indian import prices by adding foreign inland freight expenses to make them delivered prices.

We valued the factors of production as follows:

To value the input of whole crawfish we used publicly available data for Spanish imports of whole live crawfish from Portugal. As noted above, Indian data were not available and this data was all that was available on the record of this review. We adjusted the values of whole live crawfish to include freight costs incurred between the supplier and the factory. For transportation distances

used in the calculation of freight expenses on whole live crawfish, we added, using surrogate values from India, a surrogate freight cost of the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. (*See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China*, 62 FR 51410 (October 1, 1997) (*Roofing Nails*).

To value a by-product, wet crawfish scrap, we used a price quote from Indonesia for wet crab and shrimp shells. (*See Attachment 5 of the Factor Values Memo.*) Again, Indian data were not available, and this was the best information available.

To value coal, we used Indian import data, concurrent with the POR, from the *World Trade Atlas*. We adjusted the cost of coal to include an amount for transportation. To value electricity, we used the 2001 total cost per kilowatt hour (KWH) for "Electricity for Industry" as reported in the International Energy Agency's publication, *Key World Energy Statistics*, 2002. For water, we relied upon public information from the October 1997 *Second Water Utilities Data Book: Asian and Pacific Region*, published by the Asian Development Bank.

To achieve comparability of water prices to the factors reported for the POR, we adjusted this factor value to reflect inflation through the POR using the Wholesale Price Index (WPI) for India, as published in the 2002 *International Financial Statistics (IFS)* by the International Monetary Fund (IMF).

To value packing materials (plastic bags, cardboard boxes and adhesive tape), we used Indian import data from

the *World Trade Atlas*, concurrent with the POR. We adjusted the values of packing materials to include freight costs incurred between the supplier and the factory. For transportation distances used in the calculation of freight expenses on packing materials, we added, to surrogate values from India, a surrogate freight cost using the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. (*See Roofing Nails.*)

To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we continued to use simple averages derived from the publicly available 1996–97 financial statements of four Indian seafood processing companies. We applied these rates to the calculated cost of manufacture. (*See Factor Values Memo*, at 6.)

For labor, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2002, and corrected in February 2003. *See http://ia.ita.doc.gov/wages/*. Because of the variability of wage rates in countries with similar per capita gross domestic products, 19 CFR 351.408(c)(3) requires the use of a regression-based wage rate. The source of these wage rate data on the Import Administration's web site is the *Year Book of Labour Statistics 2000*, International Labour Office (Geneva: 2001), Chapter 5: Wages in Manufacturing.

To value truck freight expenses we used an average of nineteen Indian price quotes as reported in the February 14, 2000 issue of *The Financial Express* (an Indian business publication), which were used in the antidumping duty investigation of certain circular welded

carbon-quality steel pipe from the PRC. *See Notice of Final Determination of Sales at Less than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China*, 67 FR 36570 (May 24, 2002) (*China Pipe*). We adjusted the rates to reflect inflation through the POR using the WPI for India from the *IFS*.

To value foreign brokerage and handling, we used a publicly summarized version of the average value for brokerage and handling expenses reported in *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from India*, 66 FR 50406 (October 3, 2001) (*Hot-Rolled from India*), which was also used in *China Pipe*. We used the average of the foreign brokerage and handling expenses reported in the U.S. sales listing of the public questionnaire response submitted in the antidumping investigation of Essar Steel Ltd. in *Hot-Rolled from India*. Charges were reported on a per metric ton basis, which we converted to a per pound basis. We adjusted these values to reflect inflation through the POR using the WPI for India from the *IFS*. *See Factor Values Memo.*

To value ocean freight we used September 2000 quotes from Maersk Sealand and TransOceanic from Shanghai to various U.S. ports, adjusted for inflation. *See Factor Values Memo.*

**Currency Conversions**

We made currency conversions using exchange rates obtained from the website of Import Administration at <http://ia.ita.doc.gov/exchange/index.html>.

**Preliminary Results of Review**

We preliminarily determine that the following dumping margins exist:

Manufacturer and exporter	Period of review	Margin (percent)
Shanghai Taoen .....	9/1/01 – 8/31/02	57.73
PRC-Wide Rate <sup>1</sup> .....	9/1/01 – 8/31/02	223.01

Shouzhou Huaxiang, Yangzhou Lakebest, Weishan Fukang, and Qingdao Rirong are included in the PRC-wide rate.

**Cash Deposit Requirements**

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For Shanghai Taoen, a per kilogram cash deposit rate will be established (*see Memorandum to*

*Barbara E. Tillman through Maureen Flannery, from Mark Hoadley: Collection of Cash Deposits and Assessment of Duties on Freshwater Crawfish from the PRC*, August 27, 2001, and placed on the record of this review (*Cash Deposits Memo*)) ; (2) For all other exporters with separate rates, the deposit rate will be the company-specific per-kilogram or *ad valorem* rate established for the most recent period, as applicable; (3) For all other PRC

exporters, the rate will be the PRC-wide rate, 223.01 percent; (4) For all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that exporter.

**Assessment Rates**

Upon completion of this administrative review, the Department shall determine, and the U.S. Customs

Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisal instructions directly to the BCBP upon completion of this review. For assessment purposes, for Shanghai Taoen, where appropriate, we will calculate importer-specific assessment rates for freshwater crawfish tail meat from the PRC. We will divide the total dumping margins (calculated as the difference between NV and EP) for each importer by the total quantity of subject merchandise sold by Shanghai Taoen to that importer during the POR. *See Cash Deposits Memo*. Upon the completion of this review, we will direct Customs to assess the resulting quantity-based rates against the weight in kilograms of each entry of the subject merchandise by the importer during the POR. Also upon completion of this review, for all other exporters covered by this review, we will direct BCBP to assess the resulting *ad valorem* rates against the entered value of each entry of the subject merchandise during the POR. The Department will issue appropriate assessment instructions directly to BCBP within 15 days of publication of the final results of review.

#### Comments and Hearing

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Normally, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location. The Department will publish the final results of this administrative review, including the results of its analysis of

issues raised in any case or rebuttal brief, not later than 120 days after publication of these preliminary results, unless extended.

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are published in accordance with section 751(a)(1) of the Act, and 19 CFR 351.213 and 351.221.

Dated: September 30, 2003.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 03-25517 Filed 10-7-03; 8:45 am]

**BILLING CODE 3510-DS-S**

#### DEPARTMENT OF COMMERCE

##### International Trade Administration

[A-570-851]

#### Certain Preserved Mushrooms From the People's Republic of China: Rescission of Antidumping Duty New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Rescission of the Antidumping Duty New Shipper Review.

**SUMMARY:** In response to requests from Xiamen Zhongjia Imp. & Exp. Co., Ltd. and Zhangzhou Longhai Minhui Industry and Trade Co., Ltd., the Department of Commerce initiated a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China. The period of review is February 1, 2002, through July 31, 2002.

For the reasons discussed below, this review has now been rescinded. No party submitted comments in response to our intent to rescind this review.

**EFFECTIVE DATE:** October 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Brian C. Smith or James Mathews, Office of AD/CVD Enforcement 1, Import Administration, International Trade Administration, U.S. Department

of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230; telephone: (202) 482-1766 and (202) 482-2778, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Department of Commerce ("the Department") initiated a new shipper review covering Xiamen Zhongjia Imp. & Exp. Co., Ltd. ("Zhongjia") and Zhangzhou Longhai Minhui Industry and Trade Co., Ltd. ("Minhui") on September 30, 2002. This initiation was based on, among other things, each company's certification that it was both the exporter and producer of the subject merchandise for which it requested a new shipper review. *See Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review*, 67 FR 62438 (October 7, 2002) ("Initiation Notice"). On July 28, 2003, we notified parties of our intent to rescind this review because during the course of conducting this review, both Zhongjia and Minhui revealed that they were not the producer of the subject merchandise they exported to the United States during the period of review ("POR") (*see Certain Preserved Mushrooms from the People's Republic of China: Intent to Rescind Antidumping Duty New Shipper Review*, 68 FR 45792 (August 4, 2003)). Therefore, neither respondent provided the Department with the producer certification required for initiating this review. *See* 19 CFR 351.214(b)(2)(ii).

##### Scope of the Order

The products covered by this order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species