

for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate listed above for COGEMA/Eurodif will be the rate established in the final results of this review, except if a rate is less than 0.5 percent, and therefore *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 19.95 percent, the "All Others" rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice 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 entities 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 determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 20, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-887]

#### Notice of Preliminary Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol from the People's Republic of China

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

**EFFECTIVE DATE:** January 27, 2004.

**FOR FURTHER INFORMATION CONTACT:** Catherine Bertrand or Peter Mueller, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3207 and (202) 482-5811 respectively.

#### SUPPLEMENTARY INFORMATION:

##### Preliminary Determination

We preliminarily determine that tetrahydrofurfuryl alcohol ("THFA") from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

##### Case History

On June 23, 2003, the Department of Commerce ("Department") received a petition on THFA from the PRC filed in proper form by Penn Specialty Chemicals, Inc. ("petitioner"). See *Petition for the Imposition of Antidumping Duties: Tetrahydrofurfuryl Alcohol from the PRC*, dated June 23, 2003 ("Petition"). This investigation was initiated on July 18, 2003. See *Notice of Initiation of Antidumping Duty Investigation: Tetrahydrofurfuryl Alcohol from the People's Republic of China*, 68 FR 42686 (July 18, 2003) ("Notice of Initiation"). The Department initiated the investigation using a non-market economy analysis. For a further discussion of the PRC's market analysis, please see the "Non-Market Economy Country Status" section below. For a detailed discussion of the comments regarding the scope of the merchandise under investigation, please see the "Scope of the Investigation" section below.

On August 11, 2003, the United States International Trade Commission ("ITC") issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from the PRC of THFA. See *Tetrahydrofurfuryl Alcohol from China*, 68 FR 48938 (August 15, 2003).

On July 23, 2003, the Department requested quantity and value ("Q&V") information from four PRC companies that were identified in the *Petition* and for which the Department was able to locate contact information.<sup>1</sup> On August

<sup>1</sup> Companies include: Hunan Sun-Yuan Chemical Co., Ltd., Shandong Baofeng Chemicals Group

5, 2003, the Embassy of the United States, Beijing, submitted to the Department an additional list ("embassy list") of potential producers/exporters of THFA in the PRC.<sup>2</sup> Included in the embassy list were two companies that matched with two producers/exporters submitted in the petitioner's list.<sup>3</sup> After comparing the two lists, the Department concluded that seven companies in the PRC potentially exported, manufactured, or had the capability to manufacture THFA.<sup>4</sup> Shortly thereafter, using proprietary U.S. Bureau of Customs and Border Protection ("CBP") data, the Department identified an additional potential exporter, Qingdao Wenkem (F.T.Z.) Trading Co., Ltd. ("QWTC"), of subject merchandise during the period of investigation ("POI"). Therefore, in total, the Department identified eight potential producers/exporters of subject merchandise during the POI.<sup>5</sup>

On August 12, 2003, the Department requested Q&V information from the three PRC companies which were submitted as part of the embassy list, (*i.e.*, Wenzhou Dongsheng Chemicals and Reagent Factory, Qingdao Tian'an Group Co., Ltd., Gaoping Chemicals Co., Ltd., and Taizhou Qianquan Medical and Chemicals Co., Ltd.), and to QWTC. On August 13, 2003, the Department also sent the Ministry of Commerce in the PRC and the Embassy of the PRC in Washington a letter requesting assistance in locating all known PRC producers/exporters of THFA who exported the subject merchandise to the United States during POI and the quantity and value information for all exports to the United States of the merchandise under investigation during the POI. In response, the Department received two submissions, one from

Corp., Taizhou Qianquan Medical and Chemicals Co., Ltd., and Zhucheng Huaxiang Chemical Company.

<sup>2</sup> Companies included: Wenzhou Dongsheng Chemicals and Reagent Factory, Qingdao Tian'an Group Co., Ltd., and Gaoping Chemicals Co., Ltd., Zhucheng Huaxiang Chemicals Co., Ltd. and Taizhou Qianquan Medical and Chemicals Co., Ltd.

<sup>3</sup> Two matching companies: Zhucheng Huaxiang Chemicals Co., Ltd. and Taizhou Qianquan Medical and Chemicals Co., Ltd.

<sup>4</sup> Wenzhou Dongsheng Chemicals and Reagent Factory, Qingdao Tian'an Group Co., Ltd., Gaoping Chemicals Co., Ltd., Zhucheng Huaxiang Chemicals Co., Ltd., Taizhou Qianquan Medical and Chemicals Co., Ltd., Hunan Sun-Yuan Chemical Co., Ltd., and Shandong Baofeng Chemicals Group Corp.

<sup>5</sup> Wenzhou Dongsheng Chemicals and Reagent Factory, Qingdao Tian'an Group Co., Ltd., Gaoping Chemicals Co., Ltd., Zhucheng Huaxiang Chemicals Co., Ltd., Taizhou Qianquan Medical and Chemicals Co., Ltd., Hunan Sun-Yuan Chemical Co., Ltd., Shandong Baofeng Chemicals Group Corp., and Qingdao Wenkem (F.T.Z.) Trading Company Ltd.

Zhucheng Huaxiang Chemical Co., Ltd. ("ZHC") on August 6, 2003 and the other from QWTC on August 26, 2003. The data from these responses indicated that ZHC manufactured the subject merchandise during the POI while QWTC exported, in full, ZHC's subject merchandise from the PRC to the United States during the POI.

On August 28, 2003, the Department issued to ZHC the Section A, C, D, and E of the Department's non-market economy antidumping duty questionnaire. On August 29, 2003, the Department issued to the other responding company, QWTC, Section A, C, D, and E of the Department's non-market economy antidumping duty questionnaire. In addition, on September 10, 2003, the Department sent the Ministry of Commerce in the PRC and the Embassy of the PRC in Washington a copy of the Section A, C, D, and E of the Department's non-market economy antidumping duty questionnaire.

On September 4, 2003, the Department requested comments on surrogate country and factor valuation information in order to have sufficient time to consider this information for the preliminary determination. On September 18, 2003, the petitioner submitted comments concerning the surrogate country selection.

On October 1, 2003, the Department received Section A responses from ZHC and QWTC. On October 10, 2003, the petitioner submitted comments concerning ZHC's and QWTC's Section A responses. On October 10, 2003, the Department received ZHC's Section C and D response and on October 14, 2003, the Department received QWTC's Section C response. On October 24, 2003, the petitioner submitted comments concerning ZHC's Section C and D response.

On October 27, 2003, the Department issued its respondent selection memorandum, selecting QWTC as the mandatory respondent to be investigated. *See Memorandum to the File from Peter Mueller, Case Analyst to Edward C. Yang, Director, Office IX, Antidumping Duty Investigation of Tetrahydrofurfuryl Alcohol from the People's Republic of China*, dated October 27, 2003 ("Respondent Selection Memo").

On October 30, 2003, the Department issued a supplemental Section A questionnaire to QWTC. On November 28, 2003, the Department received QWTC's response to the Department's supplemental Section A. On December 11, 2003, the petitioner submitted comments concerning QWTC's

November 28, 2003 supplemental Section A response.

On November 14, 2003 the Department issued to QWTC a supplemental containing additional Section A questions and also Section C questions. On December 5, 2003, the Department received QWTC's response to the Department's Section A and C questionnaire.

On November 10, 2003, the Department issued its surrogate country memorandum, selecting India as the surrogate country. *See Memorandum to the File from Peter Mueller, Case Analyst to Edward C. Yang, Director, Office IX, Antidumping Duty Investigation of Tetrahydrofurfuryl Alcohol from the People's Republic of China*, dated November 10, 2003 ("Surrogate Selection Memo").

On November 18, 2003, the Department issued a Section D supplemental questionnaire to QWTC. On December 3, 2003, the Department received QWTC's response to the Department's November 18, 2003 Section D supplemental. On December 11, 2003, the petitioner submitted comments concerning QWTC's December 3, 2003 Section D supplemental response.

On November 19, 2003 the Department issued an additional questionnaire to QWTC regarding QWTC's Section C and D responses. On December 10, 2003, the Department received QWTC's response to the Department's November 19, 2003 Section C and D questionnaire.

On November 19, 2003, the Department sent a cable to the United States Foreign Commercial Service ("FCS") posts in India, requesting that they provide publicly available financial statements for six manufacturers of furfural and furfuryl alcohol in India. On January 4, 2004, the Department received a cable from the FCS in India relaying that it had contacted six companies and that of the six only two manufacturers of furfural responded with their financial statements. Both sets of financials were sent by facsimile to the Department, the first set on December 16, 2003, and the second set on January 5, 2004. Of the two companies providing financial statements, only Delta Agro Chemical Co., Ltd., the company that submitted financials on January 5, 2004, had financial statements that were publicly available.

On November 20, 2003, the Department published a postponement of the preliminary antidumping duty determination on THFA from the PRC, postponing the preliminary determination from November 30, 2003

to January 19, 2004. *See Notice of Postponement of Preliminary Antidumping Duty Determination: Tetrahydrofurfuryl Alcohol from the People's Republic of China*, 68 FR 65437 (November 20, 2003) ("Notice of Prelim Postponement").

On December 15, 2003, the Department issued a further Section A, C, and D supplemental questionnaire to QWTC. On December 29, 2003, the Department received QWTC's response to the Department's December 15, 2003 Section A, C, and D supplemental questionnaire.

On December 16, 2003, the petitioner submitted comments concerning the valuation of the factors of production.

On December 19, 2003, the Department issued an additional supplemental Section D questionnaire. On January 6, 2004, the Department received QWTC's response to the Department's December 19, 2003 supplemental Section D questionnaire.

#### Period of Investigation

The POI is October 1, 2002 through March 31, 2003. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition (June 23, 2003). *See* 19 CFR 351.204(b)(1).

#### Scope of Investigation

For the purpose of this investigation, the product covered is tetrahydrofurfuryl alcohol (C<sub>5</sub>H<sub>10</sub>O<sub>2</sub>) ("THFA"). THFA, a primary alcohol, is a clear, water white to pale yellow liquid. THFA is a member of the heterocyclic compounds known as furans and is miscible with water and soluble in many common organic solvents. THFA is currently classified in the Harmonized Tariff Schedules of the United States ("HTSUS") under subheading 2932.13.00.00. Although the HTS subheadings are provided for convenience and for the purposes of the CBP, the Department's written description of the merchandise under investigation is dispositive.

#### Selection of Respondents

Section 777A(c)(1) of the Act, directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise.<sup>6</sup> In addition, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies.

<sup>6</sup> Regarding respondent selection in general *see* 19 CFR 351.204 (c).

The Department selected as the mandatory respondent the exporter QWTC, as it accounted for the largest volume of the subject merchandise pursuant to section 777(c)(2)(B) of the Act. See *Respondent Selection Memo* at 3.

The Department need not limit the number of respondents to be examined in this investigation, as the Department found that it had the resources available to investigate the one respondent, QWTC, in the above-captioned case.

#### Nonmarket Economy Country Status

For purposes of initiation, the petitioner submitted LTFV analysis for the PRC as a non-market economy. See *Notice of Initiation*, at 42687. The Department has treated the PRC as a non-market economy ("NME") country in all past antidumping investigations. See e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (April 13, 2000). A designation as an NME remains in effect until it is revoked by the Department. See section 771(18)(C) of the Act. The respondent in this investigation have not requested a revocation of the PRC's NME status. We have, therefore, preliminarily determined to continue to treat the PRC as an NME country. When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base the normal value on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the "Normal Value" section, below.

Furthermore, no interested party has requested that the THFA industry in the PRC be treated as a market-oriented industry and no information has been provided that would lead to such a determination. Therefore, we have not treated the THFA industry in the PRC as a market-oriented industry in this investigation.

#### Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value, in most circumstances, on the NME producer's factors of production, valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section

773(c)(4) of the Act, the Department, in valuing the factors of production, shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME country; and, (2) are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the normal value section below and in *Antidumping Duty Investigation of Tetrahydrofurfuryl Alcohol from the People's Republic of China: Factor Valuation, Memorandum from Peter Mueller, Case Analyst, through Edward C. Yang, Program Manager, Office IX, to the File*, dated January 19, 2004 ("Factor Valuation Memo").

The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of economic development. See *Memorandum from Ron Lorentzen to Robert Bolling: Antidumping Duty Investigation on Tetrahydrofurfuryl Alcohol from the People's Republic of China (PRC): Request for a List of Surrogate Countries*, ("Policy Letter"), dated August 26, 2003. Customarily, we select an appropriate surrogate country based on the availability and reliability of data from the countries that are significant producers of comparable merchandise. For PRC cases, the primary surrogate country has often been India if it is a significant producer of comparable merchandise. In this case, we have found that India is a significant producer of comparable merchandise. See *Surrogate Selection Memo*.

The Department used India as the primary surrogate country, and, accordingly, has calculated normal value using Indian prices to value the PRC producers' factors of production, when available and appropriate. Additionally, the Department has used Indonesia as the secondary surrogate country for certain factors of production. See *Surrogate Selection Memo and Factor Valuation Memo*. We have obtained and relied upon publicly available information wherever possible. See *Id.*

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to value factors of production within 40 days after the date of publication of this preliminary determination.

#### Separate Rates

In an NME proceeding, the Department presumes that all

companies within the country are subject to governmental control and should be assigned a single antidumping duty rate unless the respondent demonstrates the absence of both *de jure* and *de facto* governmental control over its export activities. See *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026 (April 30, 1996) ("Bicycles"). The exporter that the Department selected to investigate, QWTC, and the PRC producer of QWTC's exported goods, ZHC, each provided company-specific separate rates information and stated that they met the standards for the assignment of separate rates. In determining whether companies should receive separate rates, the Department focuses its attention on the exporter, in this case QWTC, rather than the manufacturer (*i.e.*, ZHC), as our concern is the manipulation of dumping margins. See *Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China*, 60 FR 56045 (November 6, 1995). Consequently, the Department analyzed whether the exporter of the subject merchandise, QWTC, should receive a separate rate. QWTC has provided the requested company-specific separate rates information and has indicated that there is no element of government ownership or control over their export operations. We have considered whether the mandatory respondent is eligible for a separate rate as discussed below.

The Department's separate rate test is not concerned, in general, with macroeconomic/ border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 61276 (November 17, 1997); and *Notice of Preliminary Determination of Sales at Less than Fair Value: Honey from the People's Republic of China*, 60 FR 14725 (March 20, 1995).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test

arising out of 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 modified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, (May 2, 1994) ("*Silicon Carbide*"). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities. See *Silicon Carbide* and *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995) ("*Furfuryl Alcohol*").

#### 1. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

The mandatory respondent has placed on the record statements and documents to demonstrate absence of *de jure* control. In its questionnaire responses, the respondent, QWTC reported that it has no relationship with any level of the PRC government. QWTC states that it has complete independence with respect to its export activities and that neither any PRC legislative enactments nor any other formal measures centralize any aspect of QWTC's export activities. QWTC reported that the subject merchandise is not subject to export quotas or export control licenses. Further, QWTC reported that the subject merchandise does not appear on any government list regarding export provisions or export licensing. Furthermore, QWTC stated that the local Chamber of Commerce in the PRC does not coordinate any export activities for QWTC.

QWTC reported that it is required to obtain a business license, which is issued by the Qingdao Industry and Commercial Administrative Bureau. According to QWTC, its business license allows a business entity, such as itself, to operate in the PRC and facilitates QWTC's export and import business based in the PRC. In addition, QWTC submitted the "Administration Regulations of Free Trade Zone, Qingdao, Shangong", ("*Administrative Regulation*"). The *Administrative Regulation* defines QWTC's rights as a business within a free trade zone. We

examined the *Administrative Regulation* and determine that it demonstrates an authority for establishing the *de jure* decentralized control over the export activities and evidence in favor of the absence of government control associated with its business license. See *Memorandum to the File from Peter Mueller, Case Analyst to Edward C. Yang, Director, Office IX, Antidumping Duty Investigation of Tetrahydrofurfuryl Alcohol from the People's Republic of China*, dated December 22, 2003 ("*Separate Rates Memo*").

#### 2. Absence of *De Facto* Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates. The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. QWTC has asserted the following: (1) it established its own export prices; (2) it negotiated contracts without guidance from any governmental entities or organizations; (3) it made its own personnel decisions; and (4) it retained the proceeds of its export sales and used profits according to its business needs. Additionally, QWTC's questionnaire responses indicate that it does not coordinate with other exporters in setting prices or in determining which companies will sell to which markets. This information supports a preliminary finding that there is an absence of *de facto* governmental control of the export functions of QWTC. Consequently, we preliminarily determine that QWTC has

met the criteria for the application of separate rates.

The evidence placed on the record of this investigation by QWTC demonstrates an absence of government control, both in law and in fact, with respect to QWTC's exports of the merchandise under investigation. As a result, for the purposes of this preliminary determination, we are granting a separate, company-specific rate to QWTC, the exporter which shipped the subject merchandise, THFA, to the United States during the POI. For a full discussion of separate rates, please see the *Separate Rates Memo*.

#### PRC-Wide Rate

For a discussion of the PRC-Wide rate please see *Memorandum to the File From Peter Mueller, Case Analyst to Edward C. Yang, Director, Office IX, Antidumping Duty Investigation of Tetrahydrofurfuryl Alcohol from the People's Republic of China: PRC-Wide Rate*, dated January 20, 2004.

#### Date of Sale

Section 351.401(i) of the Department's regulations state that "in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." After examining the sales documentation placed on the record by the respondent, we preliminarily determine that invoice date is the most appropriate date of sale for the respondent. We made this determination because, at this time, there is not enough evidence on the record to determine whether the contracts used by the respondent establish the material terms of sale to the extent required by our regulations in order to rebut the presumption that invoice date is the proper date of sale. See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China*, 67 FR 79054 (December 27, 2002). The Department will examine the date of sale issue more fully after the preliminary determination.

#### Fair Value Comparisons

To determine whether sales of THFA to the United States by QWTC were made at less than fair value, we compared EP to normal value, as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

### Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c) of the Act.

We calculated EP for QWTC based on delivered prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight from the plant to the port of exportation, ocean freight, and marine insurance, where appropriate.

### Normal Value

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

As the basis for normal value, the respondents in this investigation provided integrated factors of production data from the raw material input stage to the final product stage (*i.e.*, the THFA production stage). In response to supplemental questionnaires, the respondent also provided factors of production information used in each of the earlier production stages, including the raw material input to furfural processing stage and the furfural to furfuryl alcohol production stage, separately. Although the respondent reported the factors of production for the feedstock inputs used to produce the main input to the processing stage (*i.e.*, furfuryl alcohol), for the purposes of this preliminary determination, we are not valuing those inputs when calculating the normal value of THFA. Rather, our normal value calculation begins with the factor value of the furfuryl alcohol used to produce the merchandise under investigation. The preliminary decision to calculate the normal value at the furfuryl alcohol stage is explained below.

Our general policy, consistent with section 773(c)(1)(B) of the Act, is to value the factors of production that a respondent uses to produce the subject

merchandise. If the NME respondent is an integrated producer, we take into account the factors utilized in each stage of the production process. For example, in the case of preserved canned mushrooms produced by a fully integrated firm, the Department valued the factors used to grow the mushrooms, the factors used to further process and preserve the mushrooms, and any additional factors used to can and package the mushrooms, including any used to manufacture the cans (if produced in-house). See *Final Results Valuation Memorandum for Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 31204 (June 11, 2001). If, on the other hand, the firm was not integrated, but simply a processor that purchased fresh mushrooms to preserve and can, the Department valued the purchased mushrooms and not the factors used to grow them. This policy has been applied to both agricultural and industrial products. See *e.g.*, *Persulfates From the People's Republic of China: Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 6712 (February 10, 2003) and *Notice of Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China*, 62 FR 9160 (February 28, 1997). Accordingly, our standard NME questionnaire asks respondents to report the factors used in the various stages of production.

There are, however, two limited exceptions to this general rule. First, in some cases a respondent may report factors used to produce an intermediate input that accounts for a small or insignificant share of total output. The Department recognizes that, in those cases, the increased accuracy in our overall calculations that would result from valuing (separately) each of those factors may be so small so as to not justify the burden of doing so. Therefore, in those situations, the Department would value the intermediate input directly.

Second, in certain circumstances, it is clear that attempting to value the factors used in a production process yielding an intermediate product would lead to an inaccurate result because a significant element of cost would not be adequately accounted for in the overall factors buildup. For example, in the *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Ukraine*, 67 FR 55785 (August 30, 2002), we addressed whether we should value

the respondent's factors used in extracting iron ore an input to its wire rod factory. The Department determined that, if it were to use those factors, it would not sufficiently account for the capital costs associated with the iron ore mining operation given that the surrogate used for valuing production overhead did not have mining operations. Therefore, because ignoring this important cost element would distort the calculation, the Department declined to value the inputs used in mining iron ore and valued the iron ore instead. See also *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China*, 66 FR 49632 (September 28, 2001); *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 61964 (November 20, 1997); and *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544 (May 8, 1995).

In this investigation, we preliminarily determine that the exceptions described above do not apply at this time. However, after carefully reviewing and analyzing the information submitted by the respondent, the Department has found that the data pertaining to the furfural and furfuryl alcohol stages of production cannot be used for purposes of the preliminary determination. In the original Section D questionnaire and in one subsequent supplemental questionnaire, the Department requested multi-stage input information from the respondent. In response, the Department received data which was inadequate for valuing the factors of production consumed in the earlier stages of the production processes (*i.e.*, the furfural and furfuryl alcohol production processes). Although these responses did clarify that the manufacturer was an integrated producer of furfural, furfuryl alcohol, and THFA, the responses did not provide factors of production that were sufficiently detailed, and therefore could not be used to quantify the factors of production from the earlier stages. Thereafter, the Department issued a second supplemental questionnaire, again requesting multi-stage input information and received a response on January 6, 2004, that was received too close to the preliminary date to allow the Department sufficient time to properly analyze (*i.e.*, the submission text and the corresponding data). Therefore, the Department's ability to analyze the inputs provided in the response to the supplemental

questionnaires was particularly constrained given the number of supplemental questionnaires issued in this case and the lack of sufficient time to fully evaluate the responses to those questionnaires. As this is the case, certain critical analysis regarding the data remain.

In light of these concerns, we have not used the multi-stage factor data for the preliminary determination and have incorporated, instead, the value of the furfuryl alcohol input used at the final stage of production. Subsequent to the preliminary determination, we will clarify the factors data for the furfural and furfuryl alcohol stages of production that the respondent has reported. If we make a change in the methodology and use the factor information for the various stages previous to the final determination, we will release to interested parties for comment a preliminary calculation sheet and analysis memorandum using that methodology.

The factors of production from the furfuryl alcohol stage to THFA includes: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; (4) costs associated with packing; and (5) representative capital costs. We calculated normal value based on factors of production, reported by the respondent, for materials, energy, labor, and packing. Where applicable, we deducted from the respondent's normal value the value of by-products sold during the POI. For a further discussion, please see *Memorandum to the File from Peter Mueller, Case Analyst to Edward C. Yang, Director, Office IX, Analysis for the Preliminary Determination of Tetrahydrofurfuryl Alcohol from the People's Republic of China*, dated January 19, 2004 ("Analysis Memo"). We valued the input factors using publicly available published information as discussed in the "Surrogate Country" and "Factor Valuations" sections of this notice.

#### Factor Valuations

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine normal value using a factors of production methodology if: (1) the merchandise is exported from an NME, and (2) the information does not permit the calculation of normal value using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Because information on the record does not permit the calculation of NV using home-market prices, third-country prices, or constructed value, and no party has argued otherwise, we

calculated NV based on factors of production in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Because we are using surrogate country factors of production prices to determine normal value, section 773(c)(4) of the Act requires that the Department use values from a market economy (surrogate) country. For this case we have selected India as the primary market economy (surrogate) country. See *Surrogate Country Memo*.

We selected, where possible, publicly available values from India which were: (1) average non-export values; (2) representative of a range of prices within the POI or most contemporaneous with the POI; (3) product-specific; and, (4) tax-exclusive. Where necessary, we have excluded import data from an NME country (*i.e.*, the PRC) and from countries (*i.e.*, South Korea, Thailand, and Indonesia) that the Department has found to maintain broadly available, non-industry specific export subsidies, which the existence of, provide sufficient reason to believe or suspect that export prices from these countries are distorted. See *Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002) and accompanying *Issues and Decision Memorandum*.

In accordance with section 773(c) of the Act, we calculated normal value based on factors of production reported by respondent for the POI. To calculate normal value, the reported per-unit factor quantities were multiplied by publicly available surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. We selected information that represented cumulative values for the POI, for inputs classified according to the Harmonized Commodity Description and Coding System ("HTS"). For unit values initially reported in U.S. dollars ("USD") no conversion was necessary. For unit values initially reported in Indian rupees, we converted from rupees to USD using the average exchange rate for the POI. See *Factor Valuation Memo* at Attachment I. For values not contemporaneous with the POI, we adjusted the values for inflation/deflation.

To value furfuryl alcohol, we relied upon contemporaneous Indian import values of "furfuryl alcohol and tetrahydrofurfuryl alcohol" under the Indian Customs' heading of "29321300" obtained from the World Trade Atlas online, which notes that its data was

published by the DGCI&S, Ministry of Commerce of India, May 2003. This data was reported in USD. Consistent with the Department's practice, import data from both NMEs (*i.e.*, the PRC and Ukraine) and countries deemed to have generally-available export subsidies (*i.e.*, Indonesia, Korea, and Thailand) were not included in our calculation. Because the HTS category used for furfuryl alcohol is a basket category which includes the subject merchandise, we are removing from the Indian import statistics the import data from the United States. We note also that the import data value for the United States for the basket category is substantially higher than the figures for most other countries. Therefore, we infer that the U.S. figures reported in the Indian import data may include the U.S. production quantities and values of the subject merchandise. Furthermore, we are removing the import data from Japan as it is a similar value to the U.S. value. We surmise that the Japanese data is a mixture of furfuryl alcohol and THFA due to possible transshipment of THFA from the PRC through Japan. We consider both the United States and Japan figures to be aberrational as they are significantly higher than the other countries included in this category. Because this data is contemporaneous with the POI, no adjustment has been made for inflation/deflation. See *Factor Valuation Memo* at Attachment III.

As this basket category includes the subject merchandise, we recognize that a more appropriate surrogate value for furfuryl alcohol may be required. However, at the time of this preliminary determination, it is the most appropriate surrogate value that we can locate. Accordingly, we are requesting comments on issues concerning the calculation and selection of surrogate values. In particular, we request that parties provide comments on the calculations for furfuryl alcohol and any suggestions for alternative calculations. In accordance with 19 CFR 351.301(c)(3) of the Department's regulations, interested parties may submit publicly available information to value the factors of production for purposes of the final determination within 40 days after the date of publication of this preliminary determination.

For steam, the Department relied upon the values of the raw material inputs used to make steam, (*i.e.*, coal and water). The respondent reported the usage rate for steam in metric tons and further provided the raw material input usage rates required to produce the steam. When comparing the usage rate for steam used in the production process with the amount of water used



to create the steam, we found that there was one to one ratio between the reported amount of steam consumed and the reported amount of water consumed in making the steam. Although the respondents provided a usage rate for steam, we preliminarily determine that the usage rates for inputs to steam, coal and water provide the most accurate factor valuation.

To value coal, we relied upon contemporaneous Indian import values of "other coal" under the Indian Customs' heading of "27011909" obtained from the *World Trade Atlas* online. This data was reported in USD. Consistent with the Department's practice, import data from both NMEs (*i.e.*, the PRC) and countries deemed to have generally-available export subsidies (*i.e.*, Indonesia, Korea, Ukraine, and Thailand) were not included in our calculation. Because this data is contemporaneous with the POI, no adjustment has been made for inflation/deflation. We adjusted the surrogate value for coal to include freight costs incurred between the supplier and the factory. *See Factor Valuation Memo* at Attachment IV and Attachment VII. We adjusted the input price by including freight costs to make it a delivered price. Specifically, we added the surrogate freight cost to the surrogate value using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997).

To value hydrogen, we relied upon contemporaneous import values of "hydrogen," obtained from Indonesia Statistics, 2002 as published on *World Trade Atlas* online. The Department researched contemporaneous Indian hydrogen values and compared them to contemporaneous hydrogen values from other countries. As a result, we found the Indian values for hydrogen to be aberrational, in that they were significantly higher than the values from the other countries. Thereafter, we determined that Indonesian import statistics reported the most contemporaneous and non-aberrational hydrogen value. Therefore, we relied upon the contemporaneous Indonesian import values of "hydrogen" under the Indonesian Customs' heading of "280410000" obtained from the *World Trade Atlas*. Consistent with the Department's practice, import data from both NMEs (*i.e.*, the PRC) and countries deemed to have generally-available export subsidies (*i.e.*, Korea and

Thailand) were not included in our calculation. Because this data is contemporaneous with the POI, no adjustment has been made for inflation/deflation. *See Factor Valuation Memo* at 3.

To value water, we used the water tariff rate, as reported on the Municipal Corporation of Greater Mumbai. This factor was reported in Indian rupees and converted into USD using the average exchange rate for the POI. Because this data is contemporaneous with the POI, no adjustment has been made for inflation/deflation. *See Factor Valuation Memo* at 3.

To value electricity, we used the 2000 total average price per kilowatt hour (kwh) for "Electricity for Industry" as reported in the International Energy Agency's publication, *Energy Prices and Taxes, Second Quarter, 2002*. This factor was reported in Indian rupees and converted into USD using the average exchange rate for the POI. We adjusted the average total surrogate cost of electricity to reflect inflation. We then multiplied the inflation factor by the surrogate value to derive the adjusted surrogate value. *See Factor Valuation Memo* at 4.

To value packing, we used a surrogate value, "Tank, ET 50–300 Liter, Others," derived from India import statistics as published by the *Monthly Statistics of Foreign Trade of India* ("Monthly Statistics"), covering the period April 2002 through January 2003. *World Trade Atlas* reported the packing in USD. We multiplied the surrogate value, which was for one kilogram of a packing drum by the weight of the drum in kilograms to obtain a surrogate value for one drum. We used the value that petitioner provided in the petition for the weight of the barrel. *See* June 23, 2003 at Exhibit 9, page 7. We then multiplied the surrogate value per drum by the amount of drums used to pack one metric ton of THFA. *See Factor Valuation Memo* at 5.

To value truck freight, we used an average truck freight cost based on Indian market truck freight rates on a rupees per-metric ton per kilometer basis published in the *Iron and Steel Newsletter*, April 2002. We then inflated the rate using the WPI published by the International Monetary Fund. We then divided by the POI average exchange rate to obtain a factor value for truck freight in USD. *See Factor Valuation Memo* at 5.

In accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corporation v. United States*, 117 F. 3d 1401, 1407–08 (Fed. Cir. 1997), we added to surrogate values, as applicable, a surrogate freight cost using

the shorter of the reported distances from either the closest PRC port of exportation to the factory, or from the domestic supplier to the factory. *See Factor Valuation Memo* at 5.

To value factory overhead, selling, general and administrative expenses ("SG&A"), and profit, the Department did not use the data from the financial statements of an Indian company, Delta Agro Chemicals Ltd. ("Delta"), because although it appeared initially to produce the comparable merchandise furfuryl alcohol as one of its main products, the FCS's cable, received on January 4, 2004, and a previous email, received on December 30, 2003, reported that Delta only manufactured the feedstock product, furfural. For a copy of the cable and email, *See Factor Valuation Memo*, at Attachment X. As the Department prefers the use of financial data from a producer of the comparable merchandise, use of this source is less than ideal. Therefore, to value factory overhead, selling, general and administrative expenses ("SG&A"), and profit, we calculated surrogate financial ratios based on the financial information from the Reserve Bank of India ("RBI"). *See Factor Valuation Memo* at 4 and 5.

For labor, consistent with 19 CFR 351.408(c)(3), we used the 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/corrected00wages/>). The source of the wage rate data on the Import Administration's Web site can be found in the Yearbook of Labour Statistics 2000, International Labor Office (Geneva: 2000), Chapter 5B: Wages in Manufacturing.

### Catalyst

When determining whether an input should be treated as a factor of production or as an overhead item, the Department's practice is to consider inputs as part of overhead only when they are small in value relative to the total cost of manufacturing. *See Notice of Final Determination of Sales at Less Than Fair Value; Saccharin from the People's Republic of China*, 59 FR 58818, 58824, (November 15, 1994). The respondent reported that catalyst is used in the production process from furfuryl alcohol to THFA.<sup>7</sup> In determining how

<sup>7</sup> According to *The American Heritage Dictionary*, a catalyst is defined as a "substance, usually present in small amounts relative to the reactants, that modifies and especially increases the rate of a chemical reaction without being consumed in the

the catalyst should be classified when calculating the factors of production for the THFA investigation, we examined what percentage of the total cost of manufacturing the catalyst represented. Accordingly, based on the normal value summary information submitted by the petitioner for India, the value of the catalyst used in the production process is less than 0.5% of the total cost of manufacturing of THFA. *See Petitioner's Antidumping Duty Investigation of Tetrahydrofurfuryl Alcohol from the People's Republic of China; Publicly Available Information to Value Factors of Production*, (December 16, 2003). Since the catalyst is an insignificant portion of the cost of manufacture, we maintain that it would typically be recorded as an overhead item in a company's books and records. Therefore, due to the insignificant cost impact of the catalyst, we are classifying this as overhead item rather than a separate factor of production.

Further, including the catalyst as a factor of production could, in this case, result in double counting the cost in one of two ways: (1) since the amount of the catalyst is insignificant, it is most likely accounted for as an indirect material and included in the surrogate company's overhead costs; or (2) if the surrogate company capitalizes the cost of the catalyst, then an allocated amount is already included in the overhead costs. If a company purchases property, plant or piece of equipment that benefits future periods, then it can capitalize the asset in accordance with its internal policy. Typically, companies set up an internal policy that dictates the threshold for capitalizing assets. Normally, if an asset is being depreciated, then it is considered to have a life in excess of one year and the cost is allocated over the life of the asset and is considered to be a part of fixed overhead. *See Antidumping Duty Investigation of Urea Ammonium Nitrate Solutions from Belarus and the Russian Federation: Classification of Catalysts as Overhead Expense, Memorandum from Paige Rivas, Team Leader, through Thomas F. Futtner, Program Manager, Group II, Office IV*, (September 26, 2002). Although we do not have information on the record to determine whether the catalyst cost for the surrogate companies data are included in overhead, record evidence indicates that this cost is included as an overhead cost by the respondent. In support of this, the Department points to the useful life of the catalyst as reported by the respondent, which

although below the one year threshold, indicates that the catalyst is being capitalized over a long-term time period. Therefore, to avoid any double counting, for the analysis of factor of production data submitted in this antidumping investigation of THFA from the PRC, we are preliminarily treating the reported catalyst as an overhead expense.

#### Weighted Average Dumping Margin

The weighted-average dumping margins are as follows:

Tetrahydrofurfuryl Alcohol from the PRC	
Producer/Manufacturer/Exporter	Weighted-Average Margin (Percent)
Qingdao Wenkem (F.T.Z.) Trading-Company, Ltd. ....	31.33
PRC - Wide Rate .....	31.33

#### Verification

As provided in section 782(I)(1) of the Act, we intend to verify all company information relied upon in making our final determination.

#### Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

#### Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the CBP to suspend liquidation of all imports of subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** with respect to QWTC. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds EP, as indicated above. With respect to all other PRC exporters, the Department will direct the CBP to suspend liquidation of all entries of THFA from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of publication in the **Federal Register** of our preliminary determinations in this investigation. CBP shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins reflected in the preliminary determination published in the **Federal Register**. The suspension of liquidation to be issued after our preliminary determination will remain in effect until further notice.

#### International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination of sales at less than fair value. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of THFA, or sales (or the likelihood of sales) for importation, of the subject merchandise.

#### Public Comment

In accordance with 19 CFR 351.301(c)(3) of the Department's regulations, interested parties may submit publicly available information to value the factors of production for purposes of the final determination within 40 days after the date of publication of this preliminary determination. Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, whose content is limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. *See* 19 CFR 351.309(c)(1)(i); 19 CFR 351.309(d)(1). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs.

If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain: (1) the party's name,

process." *See The American Heritage Dictionary*, Houghton Mifflin Company, 1982



address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: January 20, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04-1697 Filed 1-26-02; 8:45 am]

BILLING CODE 3510-DS-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 011204C]

#### Caribbean Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The Caribbean Fishery Management Council's Habitat Advisory Panel (HAP), and the Scientific and Statistical Committee (SSC) will hold meetings.

**DATES:** The HAP/SSC meetings will be held on February 11-12, 2004. The HAP/SSC will convene on Wednesday, February 11, 2004, from 10 a.m. until 5 p.m., and will reconvene on Thursday, February 12, 2004, from 9 a.m. to 12 noon, approximately.

**ADDRESSES:** The meetings will be held at the Embassy Suites Hotel, #8000, Tartak St., Isla Verde, Carolina, Puerto Rico 00979.

**FOR FURTHER INFORMATION CONTACT:** Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918-1920, telephone: (787) 766-5926.

**SUPPLEMENTARY INFORMATION:** The HAP and the SSC will meet to discuss the items contained in the following agenda:

1. Review draft response from the Caribbean Council and NOAA Fisheries to public comments, and recommend changes as appropriate to the essential fish habitat/environmental impact statement (EFH/EIS).
2. Review draft revisions to EIS, resulting from public comments and

internal review, and recommend changes as appropriate to the EFH/EIS.

#### 3. Other.

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/or other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918-1920, telephone (787) 766-5926, at least 5 days prior to the meeting date.

Dated: January 21, 2004.

**Peter H. Fricke,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 04-1692 Filed 1-26-04; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 012104A]

#### New England Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Enforcement Oversight Committee and Advisory Panel in February, 2004. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meeting will held on Thursday, February 12, 2004 at 9:30 a.m.

**ADDRESSES:** The meeting will be held at the NMFS Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930; telephone: (978) 281-9300.

*Council address:* New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

**SUPPLEMENTARY INFORMATION:** The panels will review and approve the Herring Enforcement Analysis and discuss other business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: January 21, 2004.

**Peter H. Fricke,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 04-1693 Filed 1-26-04; 8:45 am]

BILLING CODE 3510-22-S

## CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 04-C0002]

### E&B Giftware, LLC, Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with E&B