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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China

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

EFFECTIVE DATE: July 16, 2004.

FOR FURTHER INFORMATION CONTACT: James C. Doyle or Alex Villanueva, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0159, or 482–3208, respectively.

Preliminary Determination

We preliminarily determine that certain frozen and canned warmwater shrimp 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.

Interested parties are invited to comment on this preliminary determination. We will make our final determination not later than 135 days after the date of publication of this preliminary determination.

Case History

On December 31, 2003, the Ad Hoc Shrimp Trade Action Committee, an ad hoc coalition representative of U.S. producers of frozen and canned warmwater shrimp and harvesters of wild-caught warmwater shrimp (hereafter known as, the ''Petitioners'') filed, in proper form, petitions on imports of certain frozen and canned warmwater shrimp from Brazil, Ecuador, India, Thailand, the PRC, and the Socialist Republic of Vietnam (''Vietnam''), filed in proper form by. On January 12, 2003, the Petitioners filed amendments to the petitions.

On January 8, 2004, the Department requested additional information about the petition from the Petitioners.

On January 12, 2004, the Coalition of Shrimp Exporters/Producers of South China (the ''PRC Shrimp Coalition''), Allied Pacific Group [1], the National Chamber of Aquaculture of Ecuador (''Expalsa''), the Thai Frozen Foods Association (''TFFA''), the Vietnam Association of Seafood Exporters and Producers (''VASEP''), the Vietnamese Shrimp Committee (''VSC''), the Association of Brazilian Shrimp Producers, and the Seafood Exporters'Association of India (''SEAI'') submitted comments regarding domestic industry support. On January 13, 2004, the Department requested that all interested parties submit comments on the Petitioners' calculation of industry support.

On January 13, 2004, the Petitioners filed a supplement to the petition.

On January 15, 2004, the Department received affidavits in support of the Petitioners' calculation of industry support. On January 15, 2004, the Respondents submitted additional comments regarding domestic industry support. On January 16, 2004, the Petitioners submitted rebuttal comments to the Respondents' January, 15, 2004 comments regarding industry support.

On January 16, 2004, the Louisiana Shrimp Association (''LSA'') filed comments regarding the petitions.

On January 20, 2004, the Petitioners submitted supplemental information to the petition and revised comments to their January 16, 2004, submission.

On January 20, 2004, the Department initiated antidumping duty investigations on certain frozen and canned warmwater shrimp from Brazil, Ecuador, India, Thailand, the PRC and Vietnam. *See Notice of Initiation of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam (''Initiation Notice'')* 69 FR 3876 (January 27, 2004). On January 20, 2004, the Department notified the International Trade Commission (''ITC'') of the antidumping investigation initiation and the intent to publish in the **Federal Register** a notice of such initiation.

Post-Initiation General Case Issues and Letters From Outside Parties

On February 4, 2004, the Petitioners filed an amendment to the petition adding Versaggi Shrimp Corporation and Indian Ridge Shrimp Company as petitioners.

On February 10, 2004, the Department issued initiation instructions to U.S. Customs and Border Protection (''CBP'').

On March 2, 2004, the ITC made an affirmative preliminary determination in the antidumping investigation and published its report on such determination. *See Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand and Vietnam (''ITC Injury Notice'')* 69 FR 9842 (March 2, 2004).

On March 11, 2004, the Department sent the Commercial Secretary at the Embassy of China notice of the initiation of an antidumping investigation as well as the questionnaires sent to all Respondents.

On May 24, 2004, the Department published in the **Federal Register** a notice of the postponement of the preliminary determination for this antidumping duty investigation. *See Notice of Postponement of Preliminary Determination of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp from Brazil (A–353–838), Ecuador (A–331–802), India (A–533–840), Thailand (A–549–822), PRC (A–570–893) and Vietnam (A–503–802* [2]*)*, 69 FR 29509 (May 24, 2004) (''*Postponement Notice*'').

On June 15, 2004, the Petitioners filed comments on the Respondents' request to postpone the final determination.

CONNUM Comments

On January 28, 2004, the Department requested comments from interested parties regarding the appropriate product characteristic criteria for the investigation matching hierarchy for comparing the export price to normal value.

[1] Allied Pacific (H.K.) Co., Ltd.; Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd.; Allied Pacific Food (Dalian) Co., Ltd.; and Allied Pacific Aquatic Products (Zhongshan) Co., Ltd.; and King Royal Investments, Ltd. (collectively, ''Allied Pacific Group'').

[2] The Department inadvertently listed case number A–503–882 as Vietnam's case number in the *Postponement Notice*. The correct case number for Vietnam is A–552–802.

On February 4, 2004, the Department received model match comments from the VSC [3]; TFFA [4]; the PRC Shrimp Coalition [5]; Camara Nacional de Acuacultura (''CNA''); Union Frozen Products Co., Ltd. (''UFP''); SEAI; the Marine Products Export Development Authority (''MPEDA''); and the Petitioners.

On February 9, 2004, VSC and TFFA filed replies to the Petitioners' February 4, 2004, model match submissions. On February 10, 2004, CNA submitted a reply to the Petitioners February 14, 2004, model match comments.

On February 11, 2004, the Petitioners filed rebuttal comments in response to model matching comments submitted by respondents in the investigation. On February 17, 2004, the Department requested comments from all interested parties on product characteristic reporting.

On February 18, 2004, the PRC Shrimp Coalition, Yelin, and Allied Pacific Group requested an extension of the time to comment on draft product characteristics. On February 18, 2004, the Department extended the deadline for submission of comments on draft product characteristics until February 23, 2004.

On February 18, 2004, SEAI submitted model match comments. On February 18, 2004, the Department alerted the Petitioners and interested parties to an error in the draft product characteristics. On February 19, 2004, the UFP, CNA, and TFFA submitted model match comments.

On February 23, 2004, Allied Pacific Group submitted comments on the proposed CONNUM fields.

On February 23, 2004, VSC, the Brazilian shrimp exporters, and the Petitioners submitted model match comments.

On March 9, 2004, the Department informed all interested parties of revised reporting requirements.

On June 7, 2004, the Department received Rubicon's [6], CNA's, VSC's, EMPAF's, and the Petitioner's comments on product comparison methodology.

Scope Comments

On February 17, 2004, the Department received scope comments from the Ocean Duke Corporation (''Ocean Duke'') requesting that the Department confirm that ''dusted shrimp,'' ''battered shrimp,'' and ''seafood mix,'' not be covered by the scope of the investigation. On February 17, 2004, LSA filed scope comments. On February 27, 2004, Rubicon submitted comments in support of Ocean Duke's comments concerning the status of dusted and battered shrimp. On March 4, 2004, Ocean Duke requested scope clarification regarding dusted shrimp, battered shrimp, and seafood mix.

On March 12, 2004, the Petitioners filed their reply to LSA's scope comments. On March 16, 2004, the Petitioners filed their reply to various other scope comments.

On April 16, 2004, Ocean Duke submitted additional scope comments discussing the concept that dusted and battered shrimp fall within the meaning of breaded shrimp.

On May 6, 2004, SEAI filed comments on product coverage.

On May 10, 2004, Exportadora de Alimentons S.A. (''Expalsa'') filed scope comments from Expalsa.

On May 19, 2004, the Petitioners submitted scope comments regarding dusted and battered shrimp, organic shrimp and warmwater salad shrimp, and the species *Macrobachium rosenbergii*.

On June 9, 2004, the Department received certifications of factual accuracy not found in time for filing with the American Breaded Shrimp Processors Association's (''ABSPA'') June 7, 2004, request for a scope determination.

On June 4, 2004, Ocean Duke and Expalsa submitted replies to the Petitioners' May 19, 2004, scope comments.

Quantity and Value (Q&V) Questionnaires

On January 29, 2004, the Department sent a letter to all interested parties requesting the quantity and value of all exports to the United States. On January 29, 2004, the Department notified the Commercial Secretary at the Embassy of the PRC of the initiation of an antidumping duty investigation and its request for quantity and value information with regard to exports to the United States. On February 3, 2004, the PRC Shrimp Coalition and Allied Pacific Group requested an extension of the response time to the Department's Q&V questionnaire. On February 4, 2004, the Department extended the deadline for filing Q&V data until February 9, 2004.

On February 9, 2004, the Department received volume and value data information from Allied Pacific Group; Shantou Yuexing Enterprise Company; Shantou Sez Xu Hao Fastness Freeze Aquatic Factory Co., Ltd.; Shantou Long Feng Foodstuffs Co., Ltd.; Meizhou Aquatic Products Quick-Frozen Industry Co., Ltd. Shengping Shantou; Shantou Jinhang Aquatic Industry Co., Ltd; Zhangjiang Universal Seafood Co., Ltd.; Zhanjiang Guolian Aquatic Products Co., Ltd. (''Zhanjiang''); ZJ CNF Sea Products Engineering Ltd.; Shanghai Linghai Fisheries Economic and Trading Co., Ltd.; Zhoushan Cereals Oils and

[3] Minh Phu Seafood Corporation (''Minh Phu''); Kim Anh Co., Ltd. (''Kim Anh''); Minh Hai Joint-Stock Seafoods Processing Company (''Seaprodex Minh Hai''); Camau Frozen Seafood Processing Import Export Corporation (''Camimex''); Can Tho Animal Fisheries Product Processing Export Enterprise (''Cafatex''); Cai Doi Vam Seafood Import Export Company (''Cadovimex''); Sao Ta Foods Joint Stock Company (''Fimex VN''); Viet Hai Seafood Company (''Vietnam FishOne''); Kiengiang Seafood Import Export Company (''Kisimex''); Soc Trang Aquatic Products and General Import Export Company (''Stapimex''); Coastal Fisheries Development Corporation (''Cofidec''); Phuong Nam Co., Ltd.; Cuu Long Seaproducts Company (''Cuulong Seapro''); Minh Hai Export Frozen Seafood Processing Joint-Stock Company (''Jostoco''); Can Tho Agriculture and Animal Products Import Export Company (''Cataco''); Nha Trang Fisheries Co.; Nhatrang Seaproduct Company (''Nhatrang Seafoods''); Minh Hai Seaproducts Import and Export Corporation (''Seaprimex''); Thuan Phuoc Seafoods and Trading Corporation; Nhatrang Fisheries Joint Stock Company (''Nhatrang Fishco''); Danang Seaproducts Import Export Company (''Seaprodex Danang''); C.P. Vietnam Livestock; UTXI Aquatic Products Processing Company; Viet Nhan Company; Investment Commerce Fisheries Corporation (''Incomfish''); Vinhloi Import Export Company (''Vimexico''); Bac Lieu Fisheries; Matourimex Ho Chi Minh City Branch (Tourism Material and Equipment Company); Viet Foods Co., Ltd.; Truc An Company; Camranh Seafoods Processing Enterprise PTE (''Camranh Seafoods''); Hai Thuan Comapny; Phu Cuong Comapny; Ngoc Sinh Company; Aquatic Product Trading Company (''APT''); Aquatic Songhuong Campany; Hanoi Seaproducts Import Export Corp. (''Seaprodex Hanoi''); An Giang Fisheries Import-Export Joint Stock Company (''Agifsih'').

[4] Andaman Seafood Company Limited (''Andaman''); Chantaburi Seafoods Limited (''CSC''); Pakfood PLC (''PF''); Thailand Fishery Cold Storage Public Company Limited (''TFC''); Thai Royal Frozen Food Co., Ltd. (''TRF'').

[5] Yihua Aquatic Products Co., Ltd.; Yangjiang City Yelin; Hoitat Quick Frozen Co., Ltd.; Yelin (Hong Kong) Inc.; Zhejiang Pingyang Xinye Aquatic Products Co., Ltd.; Taizhou Zhonghua Industrial Co. Ltd.; Taizhou Lingyang Aquatic Products Co., Ltd.; North Supreme Seafood (Zhejiang) Co. Ltd.; Zhejiang Cereals, Oils and Foodstuffs Import and Export Co., Ltd.; AIS AQUA Foods Inc.; Zhanjiang CNF Sea Products Engineering Ltd.; Beihai Zhengwu Industry Co., Ltd.; Hainan Jiadexin Aquatic Products Co., Ltd.; Yantai Wei-Cheng Food Co., Ltd.; Hainan Fruit Vegetable Food Allocation Co., Ltd.; Zhenjiang Evergreen Aquatic Products Science and Technology Co., Ltd.; Zhanjiang Jebshin Seafood Limited; Power Dekor Group Co., Ltd.; Shanghai Linghai Fisheries Economic and Trading Co., Ltd.; Zhoushan Diciyuan Aquatic Products Co., Ltd.; Zhoushan Guangzhou Aquatic Products Co., Ltd.; Zhoushan Huading Aquatic Products Co., Ltd.; Siahsan Baofa Aquatic Products Co., Ltd.; Shoushan Xi'an Aquatic Products Co., Ltd.; Zhejiang Zhenglong Food Co., Ltd.; Zhoushan Haichang Food Co., Ltd.; Zhejiang Xintianjiu Sea Products Co., Ltd.; Zhoushan Zhenyang Develop Co., Ltd.; Zhoushan Guotai Aquatic Products Co., Ltd.; Zhoushan Jingzhou Aquatic Products Co., Ltd.; Zhoushan Provisions and Oil Food Export and Import Co., Ltd.; Putuo Fahua Aquatic Products Co., Ltd.; Zhoushan International Trade Co., Ltd.; and Shan Tou Long Feng Foodstuff Co.

[6] Andaman Seafood Co., Ltd.; Chanthaburi Seafoods Co., Ltd.; and Thailand Fishery Cold Storage Public Co., Ltd.

Foodstuffs Import and Export Co., Ltd.; Pingyang Xinye Aquatic Products Co., Ltd.; Hainan Fruit Vegetable Food Allocation Co., Ltd.; Zhoushan Diciyuan Aquatic Products Co., Ltd.; Zhejiang Evernew Seafood Co., Ltd.; Taizhou Zhonghuan Industrial Co., Ltd.; Zhejiang Cereals Oils and Foodstuffs Import and Export Co., Ltd.; Zhoushan Putuo Huafa Sea Products Co., Ltd.; Zhoushan Industrial Co., Ltd.; North Supreme Seafood (Zhejiang) Co., Ltd.; Zhoushan Jingzhou Aquatic Foods Co., Ltd.; Zhoushan Haichang Food Co., Ltd.; Zhoushan Zhenyang Developing Co., Ltd.; Zhejiang Taizhou Lingyang Aquatic Products Co., Ltd.; Zhoushan Lizou Fishery Co., Ltd.; Zhoushan Huading Seafood Co., Ltd.; Yantai Wei-Cheng Food Co., Ltd.; Zhoushan Xifeng Aquatic Co., Ltd.; Kaifeng Ocean Sky Industry Co., Ltd.; Beihai Zhengwu Industry Co., Ltd.; Zhejiang Daishan Baofa Aquatic Product Co., Ltd.; Zhejiang Zhenglong Foodstuffs Co., Ltd.; Jinfu Trading Co., Ltd.; Zhoushan Juntai Foods Co., Ltd.; as exporter with Zhoushan Guontai Fisheries and Yelin Enterprise Company. Hong Kong as exporter with (1) Yangjiang City Hoitat Quick Frozen Seafood Co., Ltd.; (2) Fuqing Yihua Aquatic Products Ltd.; and (3) Yelin Frozen Seafood Co. As affiliated suppliers; and *22 producers/exporters*.

On February 10, 2004, the Department received Q&V data corrections from Shantou Yuexing Enterprise Company; Shantou Long Feng Foodstuffs Co., Ltd.; Shantou Sez Xu Hao Fastness Freeze Aquatic Factory Co., Ltd.; and Meizhou Aquatic Products Quick-Frozen Industry Co., Ltd. Shengping Shantou.

On February 12, 2004, the Department sent a supplemental questionnaire to Allied Pacific Group regarding their Q&V information.

On February 13, 2004, the Department received clarification from Allied Pacific Group and Yelin Enterprise Co. Hong Kong, Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd., Fuqing Yihua Aguatic Products Co., Ltd., and Yelin Frozen Seafood Co. (collectively ''Yelin'') regarding their Q&V information.

On February 17, 2004, Zhanjiang Regal Integrated Marine Resources Co., Ltd.''s submitted Q&V data.

On February 23, 2004, the Department issued its respondent selection memorandum, selecting Allied Pacific Group; Yelin; Shantou Red Garden Foodstuff Co., Ltd. (''Red Garden''); and Zhanjiang Guolian Aquatic Products Co., Ltd. (''ZG'') as mandatory respondents. *See Memorandum to the File from James C. Doyle, Program Manager, to Edward C. Yang, Director of Office IX, Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from the People'S Republic of China: Selection of Respondents* (''*Respondent Selection Memo*'').

On March 1, 2004, Meizhou Aquatic Products Quick-Frozen Industry Co., Ltd. (''Meizhou'') submitted a request regarding selection of mandatory and voluntary respondents.

Mandatory Respondents

On February 25, 2004, the Department sent Section A questionnaires to the Respondents.

On March 1, 2004, the Department issued sections C, D, and E of the Department's non-market economy (''NME'') questionnaire to the Respondents.

On March 8, 2004, Allied Pacific Group and Yelin requested an extension of time to respond to Sections A, C, and D of the questionnaire.

On March 10, 2004, the Department changed to March 31, 2004 the deadline for all Respondents to respond to the Section A questionnaires and to April 21, 2004, for Sections C, D, and E.

On April 7, 2004, the Petitioners submitted comments on the Respondents' Section A questionnaire responses.

On April 13, 2004, the Department issued supplemental Section A questionnaires to the Respondents.

On April 14, 2004, Allied Pacific Group requested an extension of the deadline to answer the Section A supplemental questionnaire.

On April 19, 2004, the Department granted an extension to May 4, 2004 to Allied Pacific Group to submit its supplemental Section A questionnaire response.

On April 21, 2004, the Respondents submitted Section C and D responses.

On April 21, 2004, Yelin requested an extension of time to respond to the supplemental Section A questionnaire. The Department extended the deadline until May 4, 2004. On April 22, 2004, ZG and Red Garden requested an extension of time to respond to the supplemental Section A questionnaire. The Department extended the deadline until May 4, 2004.

On May 4, 2004, the Respondents submitted supplemental Section A questionnaires, and the Petitioners submitted comments on the Respondents' Section C and D questionnaire responses.

On May 10, 2004, the Petitioners submitted proposed additional questions for and comments on the Respondents' Section A questionnaire responses.

On May 11, 2004, Red Garden filed a Section E questionnaire response.

On May 17, 2004, the Department sent the Respondents supplemental questionnaires addressing deficiencies in their Section A questionnaire responses.

On May 20, 2004, Allied Pacific Group requested an extension of time to respond to the Department's second Section A supplemental questionnaire.

On May 27, 2004, Yelin requested an extension of time to respond to the supplemental Section A, C, and D questionnaires. On May 27, 2004, Red Garden requested an extension of time to respond to the supplemental Section C and D questionnaires.

On May 27, 2004, the Department extended to June 8, 2004, the deadline for Allied Pacific and Yelin to submit their responses to Sections A, C and D.

On May 28, 2004, the Department sent a letter to Red Garden with a supplemental Section A questionnaire.

On May 28, 2004, ZG requested an extension of time to respond to the supplemental Sections A, C, and D questionnaires.

On May 28, 2004, the Department sent a letter to Red Garden addressing certain deficiencies in their Section A, C, and E questionnaire responses and requesting a correction of such deficiencies.

On June 1, 2004, the Department extended the deadline for ZG to submit its response to the Section A, C, and D supplemental questionnaires until June 8, 2004.

On June 8, 2004, Yelin submitted its second supplemental questionnaire responses.

On June 8, 2004, Mingfeng requested an extension of time to respond to the supplemental Section A questionnaire. On June 9, 2004, the Department granted Mingfeng an extension to June 16, 2004.

On June 9, 2004, Red Garden requested a ten-day extension to respond to its supplemental Section E questionnaire.

On June 10, 2004, the Department received supplemental Section A questionnaire responses from ZG, Yelin, and Allied Pacific Group.

On June 16, 2004, Mingfeng submitted its second supplemental Section A response.

Section A Respondents

As noted above, on February 23, 2003, the Department selected its mandatory respondents. On March 8, 2004, the Department received a request from companies who wished to submit voluntary Section A questionnaires

responses (hereafter known as ''Section A Respondents'').

On March 17, 2004, the Department sent a letter to Seatech Corporation rejecting its Section A questionnaire response.

On March 17, 2004, the Department received Dalian Sea-Rich's and Hainan Golden Spring's Section A questionnaire responses.

On March 29, 2004, the Department received Section A questionnaire responses from: Shantou Ruiyuan; Go-Harvest; Xuwen Hailang; Fuqing Dongwei; Zhanjiang Runhai; Leizhou Zhulian; Shantou Ocean; Chenghai Nichi; Newpro; Shantou Wanya; Gallant; Fuqing Longwei; Shantou/Chaoyang Qiaofeng; Shantou Oceanstar; Shantou Freezing; Shantoy Yuexing; Evergreen; and Dongri Aquatic. On March 30, 2004, Shanghai Taoen submitted a Section A questionnaire response. On March 31, 2004, the Department received Section A questionnaire responses from: Mingfeng; Beihai Zhengwu; Zhoushan Diciyuan; ZJ CNF Sea Products; Zhoushan Putuo Huafa; Yantai Wei-Cheng; Zhanjiang Bobogo; Asian Seafoods; Zhoushan Industrial; Zhejiang Cofiec; Shanghai Linghai; Zhoushan Cereal Oils; Zhejiang Zhenglong; Zhoushan Huading; Zhanjiang Guolian; Yelin Enterprise; Kainfeng Ocean Sky; Hainan Fruit Vegetable Food Allocation; Jinfu Trading; Taizhou Zhonghuan; Universal; Zhejiang Daishan Baofa; Shantou Red Garden; Longfeng; Savvy Seafood; Zhoushan Zhenyang; Zhejiang Taizhou Lingyang; Zhoushan Xifeng; Zhoushan Lizhou; Zhoushan Haiching; Meizhou; Pingyang Xinye; Zhejiang Evernew; Shantou Sez Xuaho; and Allied Pacific Group.

On April 12, 2004, the Department issued a letter to Seatech Corporation requesting correction of deficiencies in its Section A response.

On April 13, 2004, Seatech Corporation requested an extension of time to respond to the Section A questionnaire. On April 14, 2004, the Department rejected Seatech Corporation's submission.

On May 24, 2004, the Department sent supplemental Section A questionnaires to: Beihai Zhengwu; Zhoushan Cereals; Hainan Fruit; Pingyang Xinye; Yantai Wei-Cheng; Zhanjiang Bobogo; Zhoushan Huading; Zuwen Hailang; Zhanjiang Newpro; Dalian; DAP; Shantou Qiafeng; and Zhoushan Lizhou.

On May 26, 2004, the Department sent a letter to ShantouYuexing Enterprise; Savvy Seafood Inc; Shantou Longfeng Foodstuff; Zhanjiang Runhai Foods Co., Ltd.; Zhanjiang Universal Seafoods; Meizhou Aquatic Products Quick-Frozen; and Shantou Sez Xu Hao requesting additional information for certain areas of their questionnaire responses. On May 26, 2004, the Department issued supplemental Section A questionnaires to: Shantou Ruiyuan; Shantou Oceanstar; Fuqing Longwei; Asian (Zhanjiang); Fuqing Dongwei; Hainan Golden; Zhejiang Zhenglong; Zhoushan Putuo; Kaifing Ocean Sky; Shantou Freezing; Shanghai Taoen; and Zhoushan Diciyuan.

On May 26, 2004, the Department received a letter from Beihai Zhengwu Industry Co., Ltd.; Hainan Fruit Vegetable Food Allocation Co., Ltd.; Pingyang Zinye Aquatic Products Co., Ltd.; Yantai Wei-Cheng Food Co., Ltd.; Zhoushan Cereals Oils and Foodstuffs Import and Export Co., Ltd.; Zhoushan Huading Seafood Co., Ltd.; and Zhoushan Lizhou Fishery Co., Ltd. requesting an extension of time for their supplemental Section A responses.

On May 27, 2004, the Department issued supplemental Section A questionnaires to: Shanghai Linghai; Jinfu; Zhoushan; Zhejiang Evernew; Shantou Jinhang; and Leizhou Zhulian.

On May 27, 2004, the Department extended the deadline to June 8, 2004 for: Beihai Zhengwu Industry Co., Ltd.; Hainan Fruit Vegetable Food Allocation Co., Ltd.; Pingyang Zinye Aquatic Products Co., Ltd.; Yantai Wei-Cheng Food Co., Ltd.; Zhoushan Cereals Oils and Foodstuffs Import and Export Co., Ltd.; Zhoushan Huading Seafood Co., Ltd.; and Zhoushan Lizhou Fishery Co., Ltd.

On May 28, 2004, the Department received a letter from Zhejiang Zhenglong Foodstuffs Co., Ltd.; Zhoushan Diciyuan Aquatic Products Co., Ltd; Zhoushan Putuo Huafa Sea Products Co., Ltd.; Jinfu Trading Co, Ltd.; Zhoushan Industrial Co., Ltd.; and Zhejiang Evernew Seafood Co., Ltd. requesting an extension for the supplemental Section A questionnaire response.

On May 28, 2004, the Department received a request from Bobogo, Savvy, Sez Xu, and Asian for an extension of time to submit responses to supplemental Section A questionnaires.

On June 1, 2004, the Department extended the deadline to June 8, 2004, for Bobogo, Savvy, Sez Xu, and Asian to respond to the Section A supplemental questionnaires.

On June 2, 2004, the Department sent letters to: Taizhou Zhonghuan Industrial; Zhanjiang Go-Harvest Aquatic; Shantou Wanya Food Factory; Zhoushan Zhenyang Developing; Shantou Jinyuan District Mingfeng; Zhanjiang Evergreen Aquatic; Chenghai Nichi Lan Foods; Zhejiang Daishan Baofa Aquatic; Zhoushan Xifeng Aquatic; Shantou Ocean Freezing; Zhoushan Haichang Food; Zhejian Cereals, Oils and Foodstuffs; ZJ CNF SEA Products Engineering; and Gallant Ocean (Lianjiang) addressing certain deficiencies in their Section A supplemental responses. On June 2, 2004, Dalian and Hainan Golden requested an extension of time to respond to the supplemental Section A questionnaires. The Department extended the deadline for Dalian until June 8, 2004, and until June 9, 2004 for Hainan Golden.

On June 2, 2004, Shantou Long Feng Foodstuff Co., Ltd. requested an extension of the deadline to respond to the supplemental Section A questionnaire. On June 2, 2004, Meizhou and Universal requested an extension of the deadline to respond to the supplemental Section A questionnaires.

On June 2, 2004, the Department extended the deadline for Zhejiang Zhenglong Foodstuffs Co., Ltd.; Zhoushan Diciyuan Aquatic Products Co., Ltd.; Zhoushan Putuo Huafa Sea Products Co., Ltd.; and Kaifeng Ocean Sky Industry Co., Ltd. until June 9, 2004, and until June 10, 2004, for Shanghai Linghai Fisheries Economic and Trading Co., Ltd.; Jinfu Trading Co., Ltd.; Zhoushan Industrial Co., Ltd.; and Zhejiang Evernew Seafood Co., Ltd.

On June 2, 2004, the Department extended the deadline for Shantou Long Feng Foodstuff Co., Ltd. until June 9, 2004. On June 3, 2004, the Department revised that deadline and determined that no further extensions may be granted.

On June 4, 2004, the Department received a request from ZJ CNF Sea Products Engineering Ltd.; CNF Zhangjiang (Tong Lian) Fisheries Co., Ltd., Zhejian Cereals Oils and Foodstuffs Import and Export Co., Ltd.; Zhejiang Taizhou Lingyang Aquatic Products Co.; Zhoushan Juntai Foods Co., Ltd.; Zhoushan Haichang Food Co., Ltd.; Zhoushan Xifeng Aquatic Co., Ltd.; Taizhou Zhonghuan Industrial Co., Ltd.; Zhoushan Zhenyang Developing Co., Ltd.; and Zhejiang Daishan Baofa Aquatic Product Co., Ltd., to extend their time for responding to the Section A questionnaire. The Department granted an extension for the companies until June 16, 2004.

On June 8, 2004, the Department received a request from Bobogo, Savvy, Sez Xu, and Asian to extend the time to respond to the supplemental Section A questionnaire. On June 8, 2004, the Department received Dalian FTZ Sea-Rick's and Zhangjiang Goulian's

supplemental Section A questionnaires responses.

On June 8, 2004, the Department received Section A questionnaire responses from Hainan Fruit Vegetable Food Allocation Company; Yantai Wei-Cheng; Pingyang Xinye; Beihai Zhengwu Industry Company; Zhoushan Hauding; and Zhoushan Lizhou.

On June 9, 2004, the Department received supplemental Section A questionnaire responses from: Meizhou; Hainan Golden Spring; Long Feng; Kaifeng Ocean Sky Industry Company; Zhoushan Putuo Huafa Sea Products Company; Zhoushan Diciyuan Aquatic Products; and Bobogo.

On June 10, 2004, the Department received supplemental Section A questionnaire responses from: Shantou Xuhao; Zhejiang Evernew; Savvy; Shanghai Linghai; Asian; Jinfu; and Zhoushan.

On June 10, 2004, the Department extended the filing date for responding to supplemental questionnaires until June 9, 2004, for Bobogo and until June 10, 2004, for Savvy, Sez Xu, and Asian.

On June 16, 2004, the Department received supplemental Section A questionnaire responses from: ZJ CNF Sea Products/CNG Zhangjiang Fisheries; Zhejiang Cereals, Oils and Foodstuffs; Zhejiang Daishan Baofa Aquatic Product Company; Zhoushan Haiching; Zhejiang Taizhou Lingyang Aquatic Products; Zhoushan Xifeng; Zhoushan Zhenyang; and Taizou Zhonghuan.

On June 4, 2004, the Section A companies requested a one-day extension of time to respond to supplemental Section A questionnaires. The Department granted the request; however, it stated that no further requests would be granted.

Critical Circumstances Allegation

On May 19, 2004, the Petitioners requested an expedited critical circumstances finding.

On May 26, 2004, the Department sent a letter to Red Garden requesting that it report monthly shipment data.

On May 28, 2004, the Department sent letters to Yelin, Red Garden, Allied Pacific, and Zhanjiang Guolian Aquatic Products stating that they must report their monthly shipment data for 2001, 2002, 2003 and January through May 2004.

On June 14, 2004, Yelin responded to the Petitioners' critical circumstances allegations.

On June 14, 2004, ZG, Ming Feng, Red Garden, and Long Feng submitted critical circumstances information. On June 14, 2004, Allied Pacific responded to the Petitioners' critical circumstances allegation.

On June 17, 2004, Allied Pacific submitted corrections to its June 14, 2004, critical circumstances submission.

Surrogate Country and Factors

On March 12, 2004, the Department solicited comments regarding surrogate country selection from all interested parties.

On March 26, 2004, Allied Pacific Group submitted comments on surrogate country selection.

On April 26, 2004, Allied Pacific Group requested an extension of time to submit surrogate value data.

On May 4, 2004, the Petitioners requested an extension of time to submit surrogate value data. On May 5, 2004 the Department granted an extension from May 7, 2004, to May 21, 2004, for all parties to submit surrogate value data.

On May 21, 2004, the Petitioners and the Respondents submitted surrogate value data.

On June 2, 2004, Yelin and Allied Pacific Group responded to the Petitioners May 21, 2004, surrogate value submission.

On June 4, 2004, the Petitioners submitted comments on the Respondents May 21, 2004, surrogate value submission.

On June 9, 2004, the Department selected the surrogate country.

On June 10, 2004, the Department sent supplemental questionnaires to ZG, Allied Pacific, and Yelin concerning their surrogate value submissions. On June 10, 2004, Yelin, ZG, and Allied Pacific requested an extension of time to answer the Department's surrogate value questionnaire.

On June 14, 2004, the Department extended to June 21, 2004, the deadline for Yelin, ZG, and Allied Pacific to respond to the surrogate value questionnaire.

On June 14, 2004, Allied Pacific requested an extension for the surrogate value supplemental questionnaire response.

On June 15, 2004, the Respondents requested that the Department seek additional surrogate value data. On June 29, 2004, Allied and Yelin submitted comments regarding Petitioners' June 4, 2004, surrogate valuation comments.

Headless, Shell-on ("HLSO") Issue

On May 21, 2004, the Department sent a letter to all interested parties requesting comments on the methodology to employ in making product comparisons, where applicable, and performing margin calculations for purposes of the preliminary determination.

On June 4, 2004, Red Garden submitted comments on HLSO comparison.

On June 8, 2004, Thai I-Mei, and its affiliated reseller, Ocean Duke, submitted comments on the calculation methodology.

On June 10, 2004, Rubicon, UFP, and SEAI submitted comments regarding the Petitioners' submission.

On June 15, 2004, the Petitioners submitted rebuttal comments regarding the use of the HLSO count sizes.

Pre-Preliminary Determination Comments

On June 23, 2004, Petitioners submitted pre-preliminary determination comments. On June 29, 2004, Allied and Yelin submitted rebuttal comments to Petitioners' pre-preliminary comments. On June 30, 2004, Petitioners submitted comments regarding Meizhou's reply to Petitioners' June 23, 2004 comments and Petitioners submitted comments regarding Allied and Yelin's June 29, 2004 comments.

Postponement of Final Determination

Section 735(a) of the Act provides that a final determination may be postponed until no later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise or, in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. Section 351.210(e)(2) of the Department's regulations requires that requests by respondents for postponement of a final determination be accompanied by a request for an extension of the provisional measures from a four-month period to not more than six months.

On June 28, 2004, the PRC Shrimp Coalition requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. In addition, on July 1, 2004, Allied, Yelin, and ZG also requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. All requests included a request to extend the provisional measures to not more than six months after the publication of the

preliminary determination. Red Garden submitted a request to postpone the final determination, however, Red Garden did not request to extend the provisional measures to not more than six months after the publication of the preliminary determination. Accordingly, because we have made an affirmative preliminary determination and the requesting parties account for a significant proportion of the exports of the subject merchandise, we have postponed the final determination until no later than 135 days after the date of publication of the preliminary determination and are extending the provisional measures accordingly as requested by the PRC Shrimp Coalition, Allied and Yelin. We note that ZG's request is not applicable as ZG received a *de minimis* preliminary determination.

Period of Investigation

The period of investigation (''POI'') is April 1, 2003, through September 30, 2003. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition (December 31, 2003). *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The scope of this investigations includes certain warmwater shrimp and prawns, whether frozen or canned, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[7] deveined or not deveined, cooked or raw, or otherwise processed in frozen or canned form.

The frozen or canned warmwater shrimp and prawn products included in the scope of the investigations, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTSUS''), are products which are processed from warmwater shrimp and prawns through either freezing or canning and which are sold in any count size.

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

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

Excluded from the scope are (1) breaded shrimp[8] and prawns (1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (1605.20.05.10); and (5) dried shrimp and prawns.

The products covered by this scope are currently classifiable under the following HTSUS subheadings; 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, 1605.20.10.30, and 1605.20.10.40. These HTSUS subheadings are provided for convenience and for CBP purposes only and are not dispositive, but rather the written descriptions of the scope of these investigations is dispositive.

In accordance with the preamble to our regulations (*see Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice. See Initiation Notice* 69 FR at 3877.

Throughout the 20 days and beyond, the Department received many comments and submissions regarding a multitude of scope issues, including: (1) Fresh (never frozen) shrimp, (2) Ocean Duke's seafood mix, (3) salad shrimp sold in counts of 250 pieces or higher, (4) Macrobrachium rosenbergii, organic shrimp, (5) peeled shrimp used in breading, (6) dusted shrimp and (7) battered shrimp. On May 21, 2004, the Department determined that the scope of these investigations remains unchanged, as certain frozen and canned warmwater shrimp, without the addition of fresh (never frozen) shrimp. *See Memorandum from Jeffrey A. May, Deputy Assistant Secretary for Import Administration, AD/CVD Enforcement, Group III and Joseph A. Spetrini, Deputy Assistant Secretary for Import Administration, AD/CVD Enforcement, Group I to James J. Jochum, Assistant Secretary for Import Administration Regarding Antidumping Investigations on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, the Socialist Republic of Vietnam, Thailand, and the Socialist Republic of Vietnam: Scope Determination Regarding Fresh (Never Frozen) Shrimp* (''*Fresh Shrimp Memo*''), dated May 21, 2004.

On July 2, 2004, the Department made scope determinations with respect to Ocean Duke's seafood mix, salad shrimp sold in counts of 250 pieces or higher, *Macrobrachium rosenbergii,* organic shrimp and peeled shrimp used in breading. *See Memorandum from Edward C. Yang, Vietnam/NME Unit Coordinator, Import Administration to Jeffrey A. May, Deputy Assistant Secretary for Import Administration Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the Socialist Republic of Vietnam and the Socialist Republic of Vietnam: Scope Clarification on Ocean Duke's Seafood Mix, Salad Shrimp Sold in Counts of 250 Pieces or Higher, Macrobrachium rosenbergii, Organic Shrimp and Peeled Shrimp Used in Breading* (''*Scope Memo*''), dated July 2, 2004. Based on the information presented by interested parties, the Department determines that Ocean Duke's seafood mix is excluded from the scope of this investigation; however, salad shrimp sold in counts of 250 pieces or higher, *Macrobrachium rosenbergii,* organic shrimp and peeled shrimp used in breading are included within the scope of this investigation. *See Scope Memo* at 33.

Additionally, on July 2, 2004, the Department made a scope determination with respect to dusted shrimp and

[7] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

[8] Pursuant to our scope determination on battered shrimp, we find that breaded shrimp includes battered shrimp as discussed below. *See Memorandum from Edward C. Yang, Vietnam/NME Unit Coordinator, Import Administration to Jeffrey A. May, Deputy Assistant Secretary for Import Administration Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the Socialist Republic of Vietnam and the Socialist Republic of Vietnam: Scope Clarification on Dusted Shrimp and Battered Shrimp (''Dusted/Battered Scope Memo''),* dated July 2, 2004.

battered shrimp. *See Dusted/Battered Scope Memo.* Based on the information presented by interested parties, the Department preliminarily finds that while substantial evidence exists to consider battered shrimp to fall within the meaning of the breaded shrimp exclusion identified in the scope of these proceedings, there is insufficient evidence to consider that shrimp which has been dusted falls within the meaning of ''breaded'' shrimp. However, there is sufficient evidence for the Department to be prepared to exclude this merchandise from the scope of the order provided an appropriate description can be developed. *See Dusted/Battered Scope Memo* at 18. To that end, along with the previously solicited comments regarding breaded and battered shrimp, the Department solicits comments from interested parties which enumerate and describe a clear, administrable definition of dusted shrimp. The Department considers these comments would be helpful in its evaluation of the disposition of the status of dusted shrimp. *See Dusted/ Battered Scope Memo* at 23.

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. Section 777A(c)(2) of the Act provides the Department discretion, when faced with a large number of exporters/producers, however, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either (1) A sample of exporters, producers, or types of products that is statistically valid based on the information available to the Department at the time of selection or (2) exporters/producers accounting for the largest volume of the merchandise under investigation that can reasonably be examined. After considering the complexities in this proceeding and the resources, the Department determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. *See Respondent Selection Memo* at 2. Instead, we limited our examination to the four exporters and producers accounting for the largest volume of the subject merchandise pursuant to section 777A(c)(2)(B) of the Act. The four Chinese producers/ exporters (Allied, ZG, Red Garden and Yelin) accounted for a significant percentage of all exports of the subject merchandise from the PRC during the POI and were selected as mandatory respondents. *See Respondent Selection Memo* at 4.

Non Market Economy Country

For purposes of initiation, the Petitioners submitted LTFV analyses for the PRC as a non-market economy. *See Initiation Notice,* 69 FR at 3880. In every case conducted by the Department involving the PRC, the PRC has been treated as a nonmarket-economy (''NME'') country. In accordance with 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. *See also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review,* 68 FR 7500 (February 14, 2003). 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 an economically comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the ''Factor Valuations'' section, below.

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 (''NV''), 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, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the NV section below.

The Department determined that India, Indonesia, Sri Lanka, the Phillippines, Ecuador and Egypt are countries comparable to the PRC in terms of economic development. *See Memorandum from Ron Lorentzen to James Doyle: Antidumping Duty Investigation onCertain Frozen and Canned Warmwater Shrimp from the People's Republic of China,* dated March 10, 2004. We select an appropriate surrogate country based on the availability and reliability of data from the countries. *See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (''Policy Bulletin''),* dated March 1, 2004. In this case, we have found that India is a significant producer of comparable merchandise, frozen and canned warmwater shrimp, and is at a similar level of economic development pursuant to 733(c)(4) of the Act. *See Surrogate Country Memo* at 7. Since our issuance of the Surrogate Country Memo, we have not received comments from interested parties regarding this issue.

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. The four mandatory respondents and the Section A respondents have provided company-specific information and each has stated that it met the standards for the assignment of a separate rate.

We have considered whether each PRC company is eligible for a separate rate. 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 Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value, 62 FR 61754, 61757 (November 19, 1997), and 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, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers*

from the People's Republic of China, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as amplified 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''). In accordance with the separate-rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

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; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589.

Our analysis shows that the evidence on the record supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) the applicable legislative enactments decentralizing control of the companies; and (3) any other formal measures by the government decentralizing control of companies. *See Memorandum to Edward C. Yang, Director, Non-Market Economy Unit, Import Administration, from Julia Hancock and Hallie Zink, Case Analysts through James C. Doyle, Program Manager, Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China: Separate Rates for Producers/Exporters that Submitted Questionnaire Responses,* dated July 2, 2004 (''*Separate Rates Memo*'').

2. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (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 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. *See Silicon Carbide*, 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). 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.

We determine that, for the mandatory respondents and certain Section A respondents, the evidence on the record supports a preliminary finding of *de facto* absence of governmental control based on record statements and supporting documentation showing the following: (1) Each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) each exporter has the authority to negotiate and sign contracts and other agreements; and (4) each exporter has autonomy from the government regarding the selection of management.

Therefore, the evidence placed on the record of this investigation by the mandatory respondents and certain Section A respondents demonstrates an absence of government control, both in law and in fact, with respect to each of the exporter's exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* As a result, for the purposes of this preliminary determination, we have granted separate, company-specific rates to the mandatory respondents and certain Section A respondents which shipped certain frozen and canned warmwater shrimp to the United States during the POI. For a full discussion of this issue and list of Section A respondents, please see the *Separate-Rates Memo.*

PRC-Wide Rate

The Department has data that indicates there are more known exporters of the certain frozen and canned warmwater shrimp from the PRC during the POI that responded to our quantity and value (''Q&V'') questionnaire. *See Respondent Selection Memo.* Although we issued the Q&V questionnaire to nine known Chinese exporters of subject merchandise (as identified in the petition), we received 57 Q&V questionnaire responses, including those from the four mandatory respondents. Also, on January 29, 2004, we issued a Section A questionnaire to the Government of the PRC (*i.e.*, Ministry of Commerce). Although all known exporters were given an opportunity to provide information showing they qualify for separate rates, not all of these other exporters provided a response to either the Department's Q&V questionnaire or its Section A questionnaire. Further, the Government of the PRC did not respond to the Department's questionnaire. Therefore, the Department determines preliminarily that there were exports of the merchandise under investigation from other PRC producers/exporters, which are treated as part of the countrywide entity.

Section 776(a)(2) of the Act provides that, if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Information on the record of this investigation indicates that there are numerous producers/exporters of the certain frozen and canned warmwater shrimp in the PRC. As described above, all exporters were given the opportunity to respond to the Department's questionnaire. Based upon our knowledge of the volume of imports of subject merchandise from the PRC and the fact that information indicates that the responding companies did not account for all imports into the United States from the PRC, we have preliminary determined that certain PRC exporters of certain frozen and canned warmwater shrimp failed to respond to our questionnaires. As a result, use of adverse facts available

(''AFA'') pursuant to section 776(a)(2)(A) of the Act is appropriate. Additionally, in this case, the Government of the PRC did not respond to the Department's questionnaire, thereby necessitating the use of AFA to determine the PRC-wide rate. *See e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may employ adverse inferences if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000), *See also* ''Statement of Administrative Action'' accompanying the URAA, H.R. Rep. No. 103–316, 870 (1994) (''SAA''). We find that, because the PRC-wide entity and certain producers/exporters did not respond at all to our request for information, they have failed to cooperate to the best of their ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

In accordance with our standard practice, as AFA, we have assigned the PRC-wide entity the higher of the highest margin stated in the notice of initiation (*i.e.*, the recalculated petition margin) or the highest margin calculated for any respondent in this investigation. *See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China* 65 FR 34660 (May 31, 2000) and accompanying Issues and Decision Memorandum, at Comment 1. In this case, we have applied a rate of 112.81 percent, the highest rate calculated in the *Initiation Notice* of the investigation from information provided in the petition. *See e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Germany*, 63 FR 10847 (March 5, 1998).

Corroboration of Information

Section 776(b) of the Act authorizes the Department to use AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the SAA as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* SAA at 870. The SAA provides that to ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id.* As explained in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (''*Japan Notice*''), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

The Petitioners methodology for calculating the export price and NV in the petition is discussed in the initiation notice. *See Initiation Notice*, 69 FR at 3876. To corroborate the AFA margin of 112.81 percent, we compared that margin to the margin we found for the largest exporting respondent.

As discussed in the Memorandum to the File regarding the corroboration of the AFA rate, dated June 17, 2004, we found that the margin of 112.81 percent has probative value. *See Memorandum to the File from Alex Villanueva, Senior Case Analyst through James C. Doyle, Program Manager and Edward C. Yang, Director, NME Unit, Preliminary Determination in the Investigation of Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China, Corroboration Memorandum* (''*Corroboration Memo*''), dated July 2, 2004. Accordingly, we find that the lowest margin, based on the petition information as described above, of 112.81 percent is corroborated within the meaning of section 776(c) of the Act.

Consequently, we are applying a single antidumping rate—the PRC-wide rate—to producers/exporters that failed to respond to the Q&V questionnaire or Section A questionnaire, as well as to exporters which did not demonstrate entitlement to a separate rate. *See e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China*, 65 FR 25706, 25707 (May 3, 2000). The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from the four mandatory respondents and certain Section A respondents.

Because this is a preliminary determination, the Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate final PRC-wide margin. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 67 FR 79049, 79054 (December 27, 2002).

Margins for Section A Respondents

The exporters which submitted responses to Section A of the Department's antidumping questionnaire and had sales of the subject merchandise to the United States during the POI but were not selected as mandatory respondents in this investigation (Section A respondents) have applied for separate rates and provided information for the Department to consider for this purpose. Therefore, for the Section A respondents which provided sufficient evidence that they are separate from the countrywide entity and answered other questions in section A of the questionnaire, we have established a weighted-average margin based on the rates we have calculated for the four mandatory respondents, excluding any rates that are zero, *de minimis*, or based entirely on adverse facts available. Companies receiving this rate are identified by name in the ''Suspension of Liquidation'' section of this notice.

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 respondents, we preliminarily determine that invoice date is the most

appropriate date of sale for three of the four respondents. We made this determination because, at this time, there is not enough evidence on the record to determine that the contracts used by the respondents 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 Saccharin from China*, 67 FR at 79054.

With respect to the respondent ZG, we preliminarily determine that the contract date and/or purchase order dates are the most appropriate dates of sale because the terms of sale do not change after the contract is signed or the purchase order is received. ZG also stated that for some customers the contract date is not available because repeat customers do not use contracts, but choose to conduct their transactions using only a purchase order. ZG explained that both the contract date and purchase order date are generated prior to the issuance of the invoice. ZG also stated that the invoice is not issued until the product is shipped. Furthermore, ZG stated that the terms of sale do not change after the contract is signed or the purchase order is received. Section 351.401(i) of the Department's regulations state that ''the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date on which the exporter or producer established the materials terms of sale.'' Given the unique business operations by ZG to set the material terms of sale at the contract date or in the absence of a contract date, the purchase order date, we have preliminarily determined that the contract date or purchase order date is the most appropriate date to use ZG's date of sale. For a detailed discussion of the company-specific analysis memorandum.

Appropriate Basis for Comparison

On May 24, 2004, the Department requested comments from interested parties on whether product comparisons and margin calculations in this investigation should be performed based on data provided on an ''as sold'' basis or whether those comparisons and calculations should be performed on data converted to a headless, shell-on (''HLSO'') basis.

On June 4, 2004, the Department received comments on HLSO comparison from Shantou Red Garden Foodstuff Co., Ltd. (''Red Garden''). On June 7, 2004, and June 10, 2004, the Department received comments from the Petitioners in support of subject merchandise on an HLSO basis. Red Garden argues that by valuing shrimp products on an HLSO basis, when a significant quantity of such products are not sold on an HLSO basis, effectively requires converting shrimp products from a non-HLSO basis to an HLSO basis by employing conversion coefficients to the quantities and values of the subject merchandise. This conversion method alters the count-sizes and prices of shrimp in many instances where count-size and prices were not sold on an HLSO basis, but were subsequently converted for this investigation to an HLSO basis. Several other comments were submitted by interested parties both in support of and in opposition to calculating a margin on an HLSO basis, although those comments pertained to the Department's market economy analysis of product comparisons in the U.S., home, and/or third country markets. Since the market economy methodology of product comparisons does not apply in NME investigations, those comments will be addressed in the preliminary determinations for the market economy countries subject to this investigation.

Section 773(c)(1)(B) of the Act requires that the Department value the factors of production that a respondent uses to produce the subject merchandise. The Department notes that it will be less accurate to rely on HLSO quantities sold and HLSO values of the subject merchandise, rather than relying on actual quantities sold and actual values of the subject merchandise.

The Petitioners argue that using an HLSO conversion method will give a consistent basis for weight-averaging the unit margins in the calculation of the overall weight-averaged margin. To achieve the consistent measuring basis, the Petitioners' suggest converting actual quantities and values of subject merchandise sold by HLSO coefficients to standardize the different types of subject merchandise sold.

The Department examined the Petitioners' suggested methodology, which seeks to achieve a consistent measuring standard by adjusting subject merchandise product values and yields on a HLSO basis. However, the Department's current NME methodology for calculating margins also achieves consistency through valuing subject merchandise on an actual, as sold basis. The Department notes that when calculating the estimated weighted-average margin, the Department totals the margins for all CONNUMs to derive the total dumping margin of the company. The values generated from totaling the margins and sales values for all CONNUMs do not require converting quantities to the same basis.

The Petitioners also argue that the CONNUM assignment should be altered to place more weight on the species of subject merchandise, as it is the species type that is a predominant factor in determining shrimp prices. However, the Department notes that the placement of the shrimp species category in the order of CONNUM assignments does not increase or decrease the weight given to that category in nonmarket economy margin calculations. In the NME margin calculation methodology, the CONNUM hierarchy is inconsequential to the normal value calculation, because each CONNUM characteristic is afforded equal weight when calculating CONNUM-specific normal values. However, as this issue is relevant to the market economy margin calculation methodology, this issue will be addressed by the preliminary determinations of the market economy countries subject to this investigation.

Fair Value Comparisons

To determine whether sales of certain frozen and canned warmwater shrimp to the United States of the four mandatory respondents were made at less than fair value, we compared export price (''EP'') or constructed export price (''CEP'') to NV, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice.

U.S. Price

In accordance with section 772(a) of the Act, we used EP for the four mandatory respondents, because the subject merchandise was 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, and because the use of constructed export price was not otherwise indicated. In accordance with section 772(b) of the Act, we used CEP for Yelin because the subject merchandise was sold in the United States after the date of importation by a U.S. seller affiliated with the producer.

We calculated EP and CEP based on the packed F.O.B., C.I.F., or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (*e.g.,* foreign inland freight from the plant to the port of exportation, domestic brokerage, ocean freight, marine insurance, U.S. brokerage, and inland freight from warehouse to unaffiliated U.S. customer) in accordance with section 772(c)(2)(A) of the Act. For a detailed description of all adjustments, see the

company-specific analysis memorandum dated July 2, 2004.

In accordance with section 772(d)(1) of the Act and the SAA at 823–824, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes credit and indirect selling expenses. We compared NV to weighted-average EPs and CEPs, in accordance with section 777A(d) of the Act. Where appropriate, in accordance with sections 772(d)(3) and 772(f) of the Act, we deducted CEP profit. For a discussion of the surrogate values used for the movements deductions, see the *Factor Valuation Memo* at Exhibits 6–9.

Respondent Yelin indicated that it purchased subject merchandise from a number of unaffiliated suppliers. Yelin stated that these unaffiliated suppliers ''had constructive knowledge of the final destination of the merchandise.'' *See* Yelin's May 4, 2004, submission at 1. For these unaffiliated suppliers, Yelin stated that ''the merchandise was purchased by and sold to HK Yelin in convertible currency ($US), was marked in a manner consistent with goods destined for the United States, was packaged and sold to HK Yelin in condition ready for shipment to and resale in the U.S. market, and was not processed by any of the Yelin companies prior to shipment or after importation.'' *See* Yelin's May 4, 2004, submission at 2. Yelin provided evidence that demonstrates that purchase orders, commercial invoices and certificates of origin all indicate an ultimate delivery to the United States. *See* Yelin's May 4, 2004, submission at Exhibit 2–4. In *Wonderful Chemical Indus., Ltd. v. United States,* F.Supp. 2d 1273 (CIT 2003), the Court of International Trade affirmed the manner in which the Department administered this ''knowledge test'' in *Synthetic Indigo from the People's Republic of China, Final Determination of Sales at Less than Fair Value,* 65 FR 25706 (May 3, 2000). The CIT also summarized the Department's application of the ''knew or had reason to know'' test in NME cases. The Department also applied this ''knowledge test'' and excluded sales made by a party having such knowledge from the margin calculation in *Canned Pineapple Fruit From Thailand, Notice of Final Results of Antidumping Duty Administrative Review,* 63 FR 7392 (February 13, 1998), in *Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea, Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Order in Part,* 64 FR 69694 (December 14, 1999), and in *Certain Headwear from the People's Republic of China, Final Determination of Sales at Less than Fair Value,* 54 FR 11983 (March 23, 1989). Consequently, based on the record evidence, we did not request the factors of production from these unaffiliated suppliers for these U.S. sales and have not included these sales in our margin calculations as they are EP sales of the unaffiliated suppliers to a foreign market.

In addition, in response to a supplemental questionnaire, Shantou Yelin indicated that for this one U.S. sale it did not take title of the subject merchandise and the subject merchandise was delivered/released directly to Yelin prior to U.S. exportation. In addition, as with other purchases from unaffiliated manufacturers, Yelin purchased in ''U.S. dollars and references U.S. brand names, U.S. packaging sizes and types; the retail packaging prepared by the supplier contains FDA labeling requirements and the name of the ultimate U.S. distributors; microbial reports are prepared by the supplier of U.S. entry and FDA purposes; and country of origin certifications and freight documentation indicate a U.S. destination for these sales.'' *See* Yelin's June 8, 2004, Submission at 30. In addition, the unaffiliated supplier stated and provided evidence that it had constructive knowledge of the final destination of the merchandise. *See* Yelin's June 8, 2004, Submission at 6–10. ''The merchandise was purchased by and sold to HK Yelin in convertible currency ($US), was marked in a manner consistent with goods destined for the U.S., was sold to HK Yelin in condition ready for shipment to and resale in the U.S. market, and was not further processed by any of the Yelin companies in condition ready for shipment to and resale in the U.S. market, and was not further processed by any of the Yelin companies prior to shipment or after importation.'' *See* Yelin's April 21, 2004, Submission at 37. Consequently, based on the record evidence, we did not request the factors of production from the unaffiliated supplier for this one U.S. sale and have not included this sale in our margin calculations as it is an EP sale of the unaffiliated supplier to a foreign market. *See* Yelin's May 4, 2004, submission at Exhibit 1.

Red Garden reported that all sales of subject merchandise to the United States during the POI were sold to Red Chamber Co. (''Red Chamber''), and that Red Chamber is affiliated with Red Garden. Section 772(b) of the Act states that the Department must base its CEP calculations on the price at which the subject merchandise is first sold in the United States to a purchaser not affiliated with the producer or exporter, as adjusted. Because Red Garden considers Red Chamber to be affiliated, Red Garden argues that the Department should use Red Chamber's downstream sales to its unaffiliated customers in the United States for Red Garden's CEP sales of subject merchandise.

Section 771(33) of the Act states that the Department considers the following as affiliated: (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; (B) any officer or director of an organization and such organization; (C) partners; (D) employer and employee; (E) any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization; (F) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) any person who controls any other person and such other person. For purposes of affiliation, section 771(33) states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. In order to find affiliation between companies, the Department must find that at least one of the criteria listed above is applicable to the respondents.

Red Garden believes it is affiliated with Red Chamber because 100% of Red Garden's sales of subject merchandise during the POI were to Red Chamber. However, Red Garden also indicated that no equity relationship exists between Red Garden and Red Chamber. *See* March 31, 2004, Section A response at A–2. In addition, there is no indication that any form of affiliation as defined under sections 771(33)(A) through (E) of the Act exists between Red Garden and Red Chamber. Thus, any affiliation between Red Garden and Red Chamber would only be determined under section 771(33)(F) (two or more persons directly or indirectly controlling, controlled by, or under common control with, any person) or (G) (any person who controls any other person and such other person).

When, as in this case, the Department is faced with a commercial relationship between the foreign producer and a U.S. entity, and there is a question as to whether the producer has legal or operational control over the U.S. entity, or vice versa, the Department will examine the facts and circumstances to

determine whether the parties are affiliated. The Department's affiliation analysis is based on the facts and circumstances of a given relationship. As the Department has noted, ''the analysis of whether a relationship constitutes an agency is case-specific and can be quite complex; there is no bright line test.'' *See Notice of Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan,* 62 FR 24403 (May 5, 1997) (''*Turbo-Compressors from Japan*''). It is the Department's normal practice to find a principal-agent relationship when one is established by a written agreement as in *Notice of Preliminary Determination of Sales at Less Than Fair Value: Silicomanganese from Kazakhstan,* 66 FR 56639 (November 9, 2002) (''*Silicomanganese from Kazakhstan*''), and that the existence of such a formal arrangement is a sufficient basis to find affiliation. *See Silicomanganese from Kazakhstan.* The Department considers the ''control of the principal over its agent'' to be ''the hallmark of an agency relationship.'' In prior cases, the Department has found that a principal/agent relationship is characterized by control because ''{t}he agent may act only to the extent that its actions are consistent with the authority granted by the principal.'' *See Notice of Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan,* 62 FR 24403, 24407 (May 5, 1997) (''*Turbo-Compressors from Japan*''). Even in the absence of a formal agreement, when the Department finds evidence that the foreign producer has the potential to control pricing and/or the terms of sale through the agent to the end-customer, it will find that an affiliation exists with the agent. *See Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol from South Africa,* 62 FR 61084 (November 14, 1997). The Department also considers who bears the risk of loss as probative of whether one company is acting as an agent for another. However, this is not a formalistic exercise. The Department only considers the existence of a principal/agent relationship (actual or effective) to the extent that it is probative of Commerce's fundamental inquiry: is one party in a position to exercise legal or operational restraint or direction over the other?

In this case, we note that while Red Garden may sell 100% of its subject merchandise to Red Chamber, Red Chamber purchases subject merchandise from multiple suppliers in the PRC in addition to Red Garden. *See* Red Chamber's May 4, 2004, response at Exhibit B–1. Thus, Red Chamber does not exclusively purchase subject merchandise from Red Garden. Nor have they argued that Red Chamber has controlled Red Garden's production or sales decisions, or vice versa. Red Chamber and Red Garden have not provided evidence of an agreement indicating that Red Chamber is Red Garden's agent in the United States. Red Garden and Red Chamber also have not argued that Red Chamber bears the risk of loss prior to shipment from Red Garden, other than through normal CNF terms of sale, or that Red Garden bears any risks subsequent to delivery to Red Chamber.

Based on the record evidence, the Department therefore finds that Red Garden and Red Chamber do not maintain a principal agent relationship, and there is no indication that Red Chamber is in a position to exercise legal or operational control over Red Garden's decisions concerning the production, pricing, or cost of the subject merchandise, or vice versa.

As such, we preliminarily determine that the record evidence does not support a finding that Red Garden is controlled by Red Chamber, or vice versa. Therefore, we preliminarily find these two companies are not affiliated. Because Red Garden's first arm's-length transaction therefore occurred upon the sale to Red Chamber, we have based our margin calculation for Red Garden on Red Garden's EP sales to Red Chamber.

Facts Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the Department, fails to provide such information by the deadline or in the form or manner requested, significantly impedes a proceeding, or provides information which cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination.

Section 782(e) of the Act requires the Department to consider information that is submitted by the respondent and is necessary to the determination but does not meet all the applicable requirements established by the Department if: (1) The information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information; and (5) the information can be used without undue difficulties.

Red Garden did not provide the factors of production for the following suppliers of subject merchandise sold to the United States: Chaoyang Jindu Hengchang Aquatic Products Enterprise Co., Ltd. (''Hengchang''), Raoping County Longfa Seafoods Co., Ltd. (''Longfa''), and Meizhou Aquatic Products Quick-Frozen Industry Co., Ltd. Shengping, Shantou (''Meizhou''). Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) the information available does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Because the Department considers the PRC to be an NME, we must calculate NV using factors of production in accordance with section 773(c).

Red Garden reported that Hengchang and Longfa each supplied a minor amount of subject merchandise to Red Garden for sale to the United States during the POI. *See Red Garden's Analysis Memo* at 3. Red Garden requested that the Department ignore the factors of production from these two companies because the quantity was approximately one percent or less of Red Garden's total subject merchandise sales to the United States, and the collection and reporting of such data would pose an undue administrative burden for the respondent. *See* Red Garden's April 21, 2004, response at D–2 and May 4, 2004, response at 3. Accordingly, we have substituted the reported factors of production from Red Garden's other suppliers to determine the NV of Red Garden's sales of subject merchandise which were produced by Hengchang and Longfa, as facts available under section 776(a)(2) of the Act. We note that all CONNUMs for Red Garden's sales of subject merchandise to the United States during the POI that were produced by Hengchang and Longfa are also produced by Mingfeng and/or Longfeng. As facts available, we have preliminarily substituted Mingfeng and/or Longfeng's factors of production by CONNUM for merchandise produced by Hengchang and Longfa.

Red Garden has stated that Meizhou, an additional supplier of subject merchandise that Red Garden sold to the United States, does not have

adequate verifiable documents in the POI in order to report its factors of production. *See* Red Garden's June 18, 2004, response at 18. Because Red Garden failed to provide the necessary information to determine the NV of those sales that were produced by Meizhou, the Department finds that applying facts available under section 776(a)(2) of the Act is warranted. We note that all CONNUMs for Red Garden's sales of subject merchandise to the United States during the POI which were produced by Meizhou are also produced by Mingfeng and/or Longfeng. As facts available, we have preliminarily substituted Mingfeng and/or Longfeng's factors of production by CONNUM for merchandise produced by Meizhou.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if the merchandise is exported from an NME country and the 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. The Department will base NV on factors of production because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under its normal methodologies.

For purposes of calculating NV, we valued the PRC factors of production in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to hours of labor required, quantities of raw materials employed, amounts of energy and other utilities consumed, and representative capital costs, including depreciation. In examining surrogate values, we selected, where possible, the publicly available value which was an average non-export value, representative of a range of prices within the POI or most contemporaneous with the POI, product-specific, and tax-exclusive. We used the usage rates reported by respondents for materials, energy, labor, by-products, and packing. For a more detailed explanation of the methodology used in calculating various surrogate values, *see Factor-Valuation Memo*.

In response to a supplemental questionnaire dated June 8, 2004, ZG stated that it leased shrimp ponds for breeding. *See* ZG's June 8, 2004, Submission at 16. On June 24, 2004, in response to another supplemental questionnaire, ZG provided sample lease agreements for the leasing of the shrimp ponds. *See* ZG's June 24, 2004, Submission at Exhibit 2. We have determined that this factor is an important component in the cost build-up of NV and is not reflected in the financial ratios calculated from Devi Sea Foods, Ltd. and Sandhya Marines, Ltd. financial statements. Consequently, we have valued the cost of land using information contained in a Notification of Policy for Land Revenue issued by the State of Rajasthan, India (Indian Policy'') which can be found at *http://www.investrajasthan.com/pdf/policy/wastelandpolicy.pdf* (last visited July 2, 2004).

In that Indian Policy, the Indian State of Rajasthan set the cost of land and lease rent for cultivable wasteland. The annual lease rent for the land increases over the period of ten years, as the land becomes increasingly arable. For example, after ten years, presumably at the time the land is fully cultivable, the annual lease rent is set at 400 rupees per hectare.

Based on the limited information available at this time, we have determined that the rates presented in this Indian Policy serve as the most reliable surrogate value for calculating a cost of the shrimp ponds used to grow the subject merchandise as this is the only information on the record to value ZG's land lease costs. Furthermore, we find that the price for land that has been cultivated for more than ten years (400 Rs / Hectare) is the most appropriate surrogate value, because the land is currently being used for cultivation of food products. In order to determine the land lease cost for each unit of production of subject merchandise during the POI, we pro-rated the land lease price to reflect the six months of the POI. In addition, because the data is not contemporaneous with the POI, we adjusted the rate for inflation. We then converted the price from Rs to USD, and multiplied the USD per hectare price by the number of hectares of ponds leased by ZG, and allocated that POI costs over Zhanjiang's total POI production of subject merchandise. See ZG's analysis memorandum for the calculation of the per kilogram amount of land lease that was added to overhead.

With regard to Red Garden, who also leased shrimp ponds, we do not have the necessary information at this time to calculate a land-lease cost. Although the Department recognizes that this portion of overhead may not be captured in the margin calculation because the Department did not request this information from Red Garden, we are not valuing Red Garden's land-lease costs for shrimp ponds in this preliminary determination. However, the Department will request the necessary information in a supplemental questionnaire and may use this information for the final determination.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by respondents for the POI. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available Indian surrogate values (except as discussed below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost 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). For a detailed description of all surrogate values used for respondents, see *Factor-Valuation Memo*. Due to the extensive number of surrogate values it was necessary to assign in this investigation, we present a discussion of the main factors. For a detailed description of all surrogate values used for respondents, *see Factor-Valuation Memo*. For a detailed description of all actual values used for market-economy inputs, see the company-specific analysis memorandum dated July 2, 2004.

Except as discussed below, we valued raw material inputs using the weighted-average unit import values derived from the World Trade Atlas® online (''Indian Import Statistics''). *See Factor-Valuation Memorandum*. The Indian Import Statistics we obtained from the World Trade Atlas were published by the DGCI&S, Ministry of Commerce of India, which were reported in rupees and are contemporaneous with POI. Where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using the Indian Wholesale Price Index (''WPI'') as published in the *International Financial Statistics* of the International Monetary Fund.

Furthermore, with regard to both the Indian import-based surrogate values and the market-economy input values, we have disregarded prices that we have reason to believe or suspect may be subsidized. We have reason to believe or

suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers From The People's Republic,* 61 FR 66255 (February 12, 1996) and accompanying *Issues and Decision Memorandum* at Comment 1. We are also directed by the legislative history not to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. 100–576 at 590 (1988). Rather, Congress directed the Department to base its decision on information that is available to it at the time it makes its determination. Therefore, we have not used prices from these countries either in calculating the Indian import-based surrogate values or in calculating market-economy input values. In instances where a market-economy input was obtained solely from suppliers located in these countries, we used Indian import-based surrogate values to value the input. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China (''CTVs from the PRC'')*, 69 FR 20594 (April 16, 2004).

Finally, imports that were labeled as originating from an ''unspecified'' country were excluded from the average value, because the Department could not be certain that they were not from either an NME or a country with general export subsidies. Unit values were generally calculated in U.S. dollars (''USD'') per kilogram (''kg'').

On May 10, 2004, the Department requested all mandatory respondents to provide a chart indicating the Harmonized Tariff Schedule (''HTS'') heading and article description for each mandatory respondent's factors of production. The Department prefers to rely upon the mandatory respondents' HTS classification for its inputs during the POI. However, for HTS classifications which were supplied incorrectly by the mandatory respondents, we applied the most similar HTS classification that best captured the factor of production described by the Respondents. Where import data is not available for the POI, the Department sought to obtain data for the six-month period immediately preceding the POI (10/2002–03/2003). As a third alternative, the Department sought to obtain data for the period preceding that the period (*i.e.*, 03/2002–09/2002). Where input values were not contemporaneous with the POI, we adjusted them for inflation using the IMF's WPI rate for India.

Indian surrogate values denominated in foreign currencies were converted to USD using the applicable average exchange rate for India for the POI. The average exchange rate was based on exchange rate data from the Department's Web site. The POI exchange rate used is 0.02149 USD per Rupee.

Shrimp Surrogate Value

The Department notes that the value of the main input, head-on, shell-on (''HOSO'') shrimp, is an important factor of production in our dumping calculation as it accounts for a significant percentage of normal value. As a general matter, the Department prefers to use publicly available data to value surrogate values from the surrogate country to determine factor prices that, among other things: represent a broad market average; are contemporaneous with the POI; and are specific to the input in question. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China,* 68 FR 27530, (May 20, 2003) and accompanying Issues and Decision Memorandum, at Comment 1. In this instance, none of the values placed on the record by the Respondents or the Petitioners wholly satisfies all three of these requirements.

The Department only considers using surrogate values outside the primary surrogate country if there are no values from that country available or if it decides that the values available are aberrational or otherwise unsuitable for use. The Respondents and Petitioners have placed numerous Indian shrimp values on the record. In this case, the Department has found a suitable surrogate value for shrimp from the surrogate country. Therefore, using a surrogate value from a country other than one from India is not necessary. Consequently, the Department did not use any shrimp values from a surrogate country other than India.

The Department notes that the Petitioners and Respondents have argued at different times that count size is an important factor in the control number (''CONNUM'') creation. *See* Petitioners submission of February 4, 2004, at 3; Respondents' February 4, 2004, submission at Attachment 1. However, an analysis of the Respondents' count size data demonstrates that the final count size prices suggested by the Respondents relied upon numerous assumptions.

On May 21, 2004, the Respondents submitted surrogate factor prices to value raw shrimp. Specifically, the Respondents proposed a surrogate value based on prices published by SEAI in the regions of Andarah Pradesh and Tamil Nadu. *See* Respondents' May 21, 2004, Submission at Exhibit 3. The Respondents explained that SEAI is the organization that represents Indian exporters and processors of shrimp and has offices in the main shrimp producing regions of India. The SEAI prices proposed by the Respondents represented different counts sizes of raw shrimp sold from farms to exporters and processors. According to the Respondents, the prices from SEAI are contemporaneous with the POI and reflect values for shrimp purchased. The Respondents also stated that the SEAI prices represent prices from two regions in India accounting for over 55% of the Indian shrimp industry's total production. *See* Respondents' May 21, 2004, Submission at Exhibit 3.

On June 4, 2004, the Petitioners argued that the Respondents' SEAI prices are not publically available. The Petitioners provided an affidavit from an Indian market researcher which states that SEAI does not collect or publish the information provided in Exhibit 3 of the Respondents' May 21, 2004, submission to the public at large. *See* Petitioner's June 4, 2004, Submission at Attachment II. Furthermore, the Petitioners argue that SEAI's prices are only available to members of SEAI.

The Petitioners also argue that the pricing data provided by the Respondents is data that does not represent market prices because they do not appear to reflect actual sales transactions and because they are suggested minimum prices by committee and should be considered floor prices. The Petitioners note that the affidavit provided from their Indian market researcher states that ''SEAI does not collect or maintain actual fresh shrimp transaction prices but provides suggested minimum prices to be offered to fresh shrimp suppliers.'' *See* Petitioners' June 4, 2004, Submission at 6. In addition, the Petitioners argue that the Respondents have engaged in selectively submitting a very limited amount of data as the Respondents have only provided a limited period of prices. Therefore, the Petitioners propose that the Department use a surrogate value calculated from the May 2002–June 2003 financial statements of Apex Foods Ltd., a shrimp processor in Bangladesh or a surrogate value calculated from the

April 2002–March 2003 financial statements of Nekkanti Sea Foods Ltd.

On June 10, 2004, the Department issued the Respondents a supplemental questionnaire regarding the surrogate values, including the SEAI prices. On June 21, 2004, the Respondents provided their response. On June 28, 2004, the Department called SEAI and spoke with Mr. Reddy Raghuanath, the current Secretary General of SEAI regarding the values submitted by the Respondents. *See Memorandum to the File from James C. Doyle Regarding Phone Call to the Seafood Exporter's Association of India (''SEAI''),* dated June 28, 2004 (''*SEAI Memo*'').

Based on the record evidence, although the Department would prefer to use count-size specific surrogate values for the raw shrimp input, the Department finds that the only count-size specific surrogate value submitted by the Respondents is not the most appropriate basis for valuing the raw shrimp input for numerous reasons.

First, we note that the Department practice is to rely on publicly available data. *See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China,* 68 F 47538 (August 11, 2003) and accompanying Issues and Decision Memorandum at Comment 1. As indicated in the *SEAI Memo,* Mr. Rughuanath stated that these prices are ''only available to members of the SEAI.'' See *SEAI Memo.* In addition, we asked Mr. Rughuanath if these prices could be made available to the Department. Although Mr. Rughuanath explained that he would get back to us, we did not receive any further communication from him before the preliminary determination. We also attempted to locate these prices on the internet and were unsuccessful as SEAI does not maintain a website. Therefore, given that the Petitioners' Indian market researcher and the Department were unable to locate these prices either via the internet or through our request to SEAI, we do not consider these prices to be publicly available.

Second, the SEAI prices provided by the Respondents are not representative of the entire POI for those prices from the Andarah Pradesh region. The Respondents only provided prices from a selected time period within the POI. Specifically, the Respondents provided prices distributed on June 6, 2003, June 21, 2003, July 26, 2003, and August 9, 2003. In addition, it is unclear as to whether the SEAI prices provided by the Respondents are weekly or daily. Mr. Rughuanath indicated that these prices are distributed monthly, however, the Respondents provided two sources from SEAI for the month of June 2003. With regard to the SEAI prices from the Tamil Nadu region, the Department notes that although these prices are contemporaneous with the POI because it is an average price from the POI, it is unclear as to how the average was derived. Therefore, given that the SEAI prices from the Andarah Pradesh region represent only a selected number of prices and that the SEAI prices from the Tamil Nadu region are not provided with supporting documentation (*i.e.*, daily or weekly price circulars), we do not consider these prices to be a broad market average.

In addition, the record contains conflicting statements regarding the representativeness of the regions from which the SEAI prices were obtained. Mr. Raghuanath stated that the Andarah Pradesh and Tamil Nadu regions account for 10–11% of India's shrimp purchases. *See SEAI Memo.* However, the Respondents' May 21, 2004, submission indicates that these two regions produced over 55% of the Indian shrimp industry's production. *See* Respondents' May 21, 2004, submission at Exhibit 3. The reliability of the Respondents' supporting documentation is called into question by the statements made by SEAI Secretary General. *See SEAI Memo.* Consequently, it is unclear how the purchased amounts reconcile with the production figures cited by the Respondents. Therefore, the representativeness of the Andarah Pradesh and Tamil Nadu regions of India's shrimp industry as a source for a shrimp surrogate value is unreliable.

Finally, even if the Department were to use SEAI's count-size specific prices, the count sizes reported by the Respondents do not directly correspond to the count sizes indicated in SEAI's prices. The Respondents' count sizes are provided on a range basis (*e.g.*, 61–70 and 71–80) and these ranges are not consistent with the count-size SEAI prices (*e.g.*, 60, 70, 80, etc.). For example, if a Respondent reported a count size of 41–50, it is unclear as to which SEAI price would be applicable, the 41 count price or the 50 count price. The Department would also need to adjust prices into different count sizes. Therefore, because of the lack of consistency between the count sizes in SEAI's prices and the Respondents' reported count sizes, the Department determines that relying on SEAI prices and applying them to the Respondents' reported count sizes would require potentially inaccurate adjustments not based on the record evidence.

Consequently, based on the record evidence, although the Department would prefer to use count-size specific surrogate values for the raw shrimp input, the Department finds that the only count-size specific surrogate value submitted by the Respondents is not the most appropriate basis for valuing the raw shrimp input because it is not publicly available, does not represent a broad market average, has been shown to be representative of prices in India and does not contain prices for certain count-size ranges used by the Respondents.

As a result, for this preliminary determination, we are relying on a raw shrimp surrogate value based on the April 2002–March 2003 financial statements of Nekkanti, from which we derived a purchase price. We note that although relying on Nekkanti's financial statement to value the raw shrimp does not provide the Department with a count-size specific surrogate value, it does not contain the concerns we have if we used the SEAI prices. This information is publicly available and represents an average purchase price over Nekkanti's fiscal year (a 12-month period). We also note that this average price represents an appropriate valuation basis when compared with the relevant range of count sizes for the PRC Respondents. *See Factor Valuation Memo* at 13. Therefore, we have relied upon Nekkanti's 2002–2003 financial statements as the basis for the shrimp surrogate value.

To value shrimp larvae for those Respondents that grow shrimp, the Department has valued shrimp larvae using an average of the price derived from the Nekkanti Sea Foods Ltd. financial statement for 04/2002—03/2003, and the price quoted in *Fishing Chimes,* which is an Indian seafood industry publication. Both values are contemporaneous with the POI and are from public Indian sources. *See Factor Valuation Memo* at Exhibit 3.

Other Surrogate Values

To value ice, we used the prices submitted by the Respondents, published in the September 30, 2002 edition of the *Hindu Business Line. See* Yelin and Allied's May 21, 2004, submission at Exhibit 12. The article presents a high and low price paid by seafood processors in India for block ice. We averaged these prices for a value of Rs 1.05 per kilogram of ice, which was then adjusted for inflation and converted to USD. *See Factor Valuation Memo* at Exhibit 4.

To value water, we used the average water tariff rate as reported in the Asian Development Bank's *Second Water*

Utilities Data Book: Asian and Pacific Region (''ADB's Water Utility Book'') (1997), based on the average of the price per cubic meter (''m^3'') for four cities in India. We adjusted the average cost of water for the four cities for inflation and converted the value to USD. *See Factor Valuation Memo* at Exhibit 4. We have used data from this source in other antidumping proceedings. *See Certain Helical Spring Lock Washers from the Peoples Republic of China; Preliminary Results of Antidumping Duty Administrative Review,* 68 FR 63060, 63063 (November 7, 2003) (''*Lock Washers from the PRC*'').

We valued electricity using rates from *Key World Energy Statistics 2003,* published by the International Energy Agency (''IEA''). We adjusted the electricity rates for the POI by using the WPI inflator. *See Factor Valuation Memo* at Exhibit 11. We have used previous editions of this report in other antidumping proceedings. *See, e.g., Creatine Monohydrate from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 68 FR 62767, 62769 (November 6, 2003) (''*Creatine from the PRC*''); *Notice of Final Results and Rescission, in Part, of the Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China Monday,* 69 FR 12121, 12126 (March 15, 2004) (''*Wax Candles from the PRC*'').

We valued heavy oil using rates from *Key World Energy Statistics 2003,* published by the IEA. We adjusted the rate for the POI by using the WPI inflator. *See Factor Valuation Memo* at Exhibit 11.

We valued diesel fuel using rates from *Key World Energy Statistics 2003,* published by the IEA. We adjusted the rate for the POI by using the WPI inflator. *See Factor Valuation Memo* at Exhibit 11. We have used previous editions of this report in other antidumping proceedings. *See, e.g., Creatine from the PRC,* 68 FR at 62769; *Wax Candles from the PRC,* 69 FR at 12126.

We valued coal using rates from *Key World Energy Statistics 2003*, published by the IEA. We adjusted the rate for the POI by using the WPI inflator. *See Factor Valuation Memo* at Exhibit 11.

Section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. Therefore, to value the labor input, the Department used the regression-based wage rate for China published by Import Administration on our website. The source of the wage rate data is the *Yearbook of Labour Statistics* 2001, published by the International Labour Office (''ILO''), (Geneva: 2001), Chapter 5B: Wages in Manufacturing. See the Import Administration website: *http://ia.ita.doc.gov/wages/01wages/01wages.html*.

Our treatment of by-products is in accordance with the Department's practice. ''We allowed recovery/by-product credits where the company provided information demonstrating that the recoveries/by-products were sold and/or reused in the production process.'' *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Steel Flat Products from the Peoples' Republic of China*, 66 FR 49632 (September 28, 2001) and accompanying Issues and Decision Memo at Comment 3.

To value the by-products, the Department used a surrogate value for shrimp by-products based on a purchase price quote for wet shrimp shells from an Indonesian buyer of crustacean shells as Indian values were not available. Although we recognize that the Respondents reported by-products other than shells, this information represents the best information on the record and is being used for this preliminary determination. *See Factor Valuation Memo* at Exhibit 10.

To value packing materials, the Department used Indian Import Statistics published by WTA *See Factor Valuation Memo* at Exhibit 5.

To value Factory Overhead (''FOH''), Selling, General & Administrative (''SG&A'') expenses and Profit for those Respondents who are shrimp processors, we used the 2002–2003 financial statement of Nekkanti Sea Foods Ltd. (''Nekkanti''), an Indian seafood processor. *See Factor Valuation Memo* at Exhibit 13. For FOH, SG&A expenses and Profit for those Respondents who are integrated producers of processed shrimp, we used the 2002–2003 financial statements of Devi Sea Foods, Ltd. (''Devi'') and Sandhya Marines, Ltd. (''Sandhya''), which are both integrated Indian producers of processed shrimp, and Nekkanti.

The Department notes that two of Red Garden's suppliers, Mingfeng and Longfeng, as well as ZG, conduct both processing and shrimp farming operations. The Department also notes that none of these three surrogate companies whose financial information is on the record conduct only these two operations. All three are processors and have nursery operations. The processing company's financial results would not include any farming operations, while the processor/nursery companies' include information regarding nursery operations. The Department therefore averaged the processing company's results with the two other companies in order to attempt to best approximate the financial experience of the respondents; by averaging results from a company with ''less'' expenses with those from companies with ''more'' relevant expenses, the Department achieves the best estimation for the financial experience of the limited information on the record permits.

Critical Circumstances

On May 19, 2003, the Petitioners alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigations of certain frozen and canned warmwater shrimp from the PRC. On May 27, 2003, the Respondents submitted comments on the Petitioners' allegation of critical circumstances. In accordance with 19 CFR 351.206(c)(2)(i), because the Petitioners submitted critical circumstances allegations more than 20 days before the scheduled date of the preliminary determination, the Department must issue preliminary critical circumstances determinations not later than the date of the preliminary determination.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been ''massive,'' the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the ''relatively short period'' of time may be considered ''massive.'' Section 351.206(i) of the Department's regulations defines ''relatively short period'' as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed)

and ending at least three months later. The regulations also provide, however, that if the Department finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

In determining whether the relevant statutory criteria have been satisfied, we considered: (i) the evidence presented by the Petitioners in their May 19, 2003, filing; (ii) new evidence obtained since the initiation of the less-than-fair-value (''LTFV'') investigation (*i.e.*, additional import statistics released by the U.S. Census Bureau); and (iii) the ITC's preliminary determination of material injury by reason of imports.

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(i) of the Act, the Department normally considers evidence of an existing antidumping duty order on the subject merchandise in the United States or elsewhere to be sufficient. *See Preliminary Determination of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova*, 65 FR 70696 (November 27, 2000). With regard to imports of certain frozen and canned warmwater shrimp from the PRC, the Petitioners make no statement concerning a history of dumping for the PRC. We are not aware of any antidumping order in the United States or in any country on certain frozen and canned warmwater shrimp from the PRC. For this reason, the Department does not find a history of injurious dumping of the subject merchandise from the PRC pursuant to section 733(e)(1)(A)(i) of the Act.

To determine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales in accordance with 733(e)(1)(A)(ii) of the Act, the Department normally considers margins of 25 percent or more for export price sales or 15 percent or more for constructed export price transactions sufficient to impute knowledge of dumping. *See Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 31972, 31978 (October 19, 2001). Because the preliminary dumping margins two of the Respondents, Yelin and Allied, and the Section A Respondents, are greater than 25 percent for EP and 15 percent for CEP, we find there is a reasonable basis to impute to importers knowledge of dumping with respect to all imports from the PRC. *See Critical Circumstance Memo* at Attachment II.

In determining whether there are ''massive imports'' over a ''relatively short period,'' pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the ''base period'') to a comparable period of at least three months following the filing of the petition (*i.e.*, the ''comparison period''). However, as stated in section 351.206(i) of the Department's regulations, if the Secretary finds importers, exporters, or producers had reason to believe at some time prior to the beginning of the proceeding that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

For the reasons set forth in the *Critical Circumstances Memo*, we find sufficient bases exist for finding importers, or exporters, or producers knew or should have known an antidumping case was pending on certain frozen and canned shrimp imports from the PRC by August 2003, at the latest. In addition, in accordance with 351.206(i) of the Department's regulations, we determined December 2002 through August 2003 should serve as the ''base period,'' while September 2003 through May 2004 should serve as the ''comparison period'' in determining whether or not imports have been massive in the comparison period as these periods represent the most recently available data for analysis.

In this case, the volume of imports of certain frozen and canned warmwater shrimp from the PRC increased 51.57 percent from the critical circumstances base period December 2002 through August 2003) to the critical circumstances comparison period (September 2003 through May 2004).

For two of the mandatory respondents who submitted critical circumstances data, Yelin and Allied, and the Section A Respondents, we preliminarily determine, as noted above, that importers knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales in accordance with 733(e)(1)(A)(ii) of the Act. For Yelin, Allied and the Section A Respondents, we also found massive imports over a relatively short period. *See Critical Circumstance Memo* at Attachment I. These two Respondents and the Section A Respondents satisfy imputed knowledge of injurious dumping criterion under 733(e)(1)(A)(ii) of the Act and the massive imports in accordance with 733(e)(1)(B) of the Act. Therefore, we preliminarily find that critical circumstances exist for these Respondents.

With regard to the PRC-wide entity, as noted above, we preliminary find that importers knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales in accordance with 733(e)(1)(A)(ii) of the Act. In addition, we also find massive imports over a relatively short period because the volume of imports of certain frozen and canned warmwater shrimp from the PRC-wide entity increased more than 15 percent. *See Critical Circumstance Memo* at Attachment I. Therefore, we preliminary find that critical circumstances exist for the PRC-wide entity.

Given the analysis summarized above, and described in more detail in the *Critical Circumstances Memo*, we preliminarily determine that critical circumstances exist for imports of certain frozen and canned warmwater shrimp from Allied, Yelin, the Section A Respondents receiving a separate rate and the PRC-wide entity. However, for ZG and Red Garden, we preliminarily determine that no critical circumstances exist.

We will make a final determination concerning critical circumstances for all producers/ exporters of subject merchandise from the PRC when we make our final dumping determinations in this investigation, which will be 135 days after publication of the preliminary dumping determination.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

Preliminary Determination

The weighted-average dumping margins are as follows:

CERTAIN FROZEN AND CANNED WARMWATER SHRIMP FROM THE PRC—MANDATORY RESPONDENTS

Manufacturer/exporter	Weighted-average margin (percent)
Allied	90.05
ZG	[1] 0.04
Red Garden	7.67
Yelin	98.34
PRC-Wide Rate	112.81

[1] *De Minimis.*

CERTAIN FROZEN AND CANNED WARMWATER SHRIMP FROM THE PRC—SECTION A RESPONDENTS

Manufacturer/exporter	Weighted-average margin (percent)
Beihai Zhengwu Industry Co., Ltd.	49.09
Chenghai Nichi Lan Food Co., Ltd.	49.09
Dalian Ftz Sea-Rich International Trading Co., Ltd.	49.09
Dongri Aquatic Shantou Ocean Freezing	49.09
Gallant Ocean (Liangjiang) Co., Ltd.	49.09
Meizhou Aquatic Products Quick-Frozen Industry Co., Ltd.	49.09
Pingyang Xinye Aquatic Products Co., Ltd.	49.09
Savvy Seafood Inc.	49.09
Shanghai Taoen International Trading Co., Ltd.	49.09
Shantou Jinyuan District Mingfeng Quick-Frozen Factory	49.09
Shantou Long Feng Foodstuffs Co., Ltd.	49.09
Shantou Ocean Freezing Industry and Trade General Corporation	49.09
Shantou Wanya Food Factory Co., Ltd.	49.09
Xuwen Hailang Breeding Co., Ltd.	49.09
Yantai Wei-Cheng Food Co., Ltd.	49.09
Zhangjiang Bobogo Ocean Co., Ltd.	49.09
Zhangjiang Newpro Food Co., Ltd.	49.09
Zhangjiang Universal Seafood Corp.	49.09
Zhoushan Cereals Oils and Foodstuffs Import and Export Co., Ltd.	49.09
Zhoushan Huading Seafood Co., Ltd.	49.09
Zhoushan Lizhou Fishery Co., Ltd.	49.09

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 will instruct the CBP to suspend liquidation of all entries of subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. 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 U.S. price, as indicated above for Red Garden. For ZG, we will not direct the U.S. Customs Service to suspend liquidation of any entries of certain frozen and canned warmwater shrimp from the PRC as described in the ''Scope of Investigation'' section, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Department does not require any cash deposit or posting of a bond for this preliminary determination for ZG. With respect to Allied, Yelin, the Section A Respondents receiving a separate rate and the PRC-wide entity, the Department will direct CBP to suspend liquidation of all entries of certain frozen and canned warmwater shrimp from the PRC that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication in the **Federal Register** of our preliminary determinations in these investigations. The suspension of liquidation 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. Section 735(b)(2) of the Act requires that the ITC make a final determination before the later of 120 days after the date of the Department's preliminary determination or 45 days after the Department's final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of certain frozen and canned warmwater shrimp, or sales (or the likelihood of sales) for importation, of the subject merchandise. Because we have postponed the deadline for our final determination to 135 days from the date of publication of this preliminary determination, the ITC will make its final determination within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date of the final verification report issued in this proceeding and rebuttal briefs limited to issues raised in case briefs, no

later than five days after the deadline date for case briefs. 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 intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 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 the party's name, address, and telephone number, the number of participants, and 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.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

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

Dated: April 2, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–16110 Filed 7–15–04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam

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

EFFECTIVE DATE: July 16, 2004.

FOR FURTHER INFORMATION CONTACT: James C. Doyle or Alex Villanueva, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0159, or 482–3208, respectively.

Preliminary Determination

We preliminarily determine that certain frozen and canned warmwater shrimp from the Socialist Republic of Vietnam (''Vietnam'') 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.

Interested parties are invited to comment on this preliminary determination. We will make our final determination not later than 135 days after the date of publication of this preliminary determination.

Case History

On December 31, 2003, the Ad Hoc Shrimp Trade Action Committee, an ad hoc coalition representative of U.S. producers of frozen and canned warmwater shrimp and harvesters of wild-caught warmwater shrimp (hereafter known as, the ''Petitioners''), filed, in proper form, petitions on imports of certain frozen and canned warmwater shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China (''the PRC'') and Vietnam. On January 12, 2003, the Petitioners filed amendments to the petition.

On January 12, 2003, the Vietnam Association of Seafood Exporters and Producers (''VASEP'') and the Vietnamese Shrimp Committee (''VSC'') submitted comments regarding industry support. On January 13, 2004, the Department requested that all interested parties submit comments on the Petitioners' calculation of industry support.

On January 13, 2004, the Petitioners filed a supplement to the petition.

On January 15, 2004, the Department received affidavits in support of the Petitioners' calculation of industry support. On January 15, 2004, VSC submitted additional comments regarding industry support. On January 16, 2004, the Petitioners submitted rebuttal comments to VSC's January 12, 2004, comments regarding industry support. On January 20, 2004, the Petitioners submitted supplemental information to the petition and revised comments to their January 16, 2004, submission.

On January 20, 2004, the Department initiated antidumping duty investigations on certain frozen and canned warmwater shrimp from Brazil, Ecuador, India, Thailand, the PRC and Vietnam. *See Notice of Initiation of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam* (''*Initiation Notice*'') 69 FR 3876 (January 27, 2004). On January 20, 2004, the Department notified the International Trade Commission (''ITC'') of the antidumping investigation initiation and the intent to publish in the **Federal Register** a notice of such initiation.

Post-Initiation General Case Issues and Letters From Outside Parties

On February 4, 2004, the Petitioners filed an amendment to their December 31, 2003 petition adding two other individuals as petitioners: Versaggi Shrimp Corporation and Indian Ridge Shrimp Company.

On February 10, 2004, the Department issued initiation instructions to U.S. Customs and Border Protection (''CBP'').

On March 2, 2004, the 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 reasons of imports from Vietnam of certain frozen and canned warmwater shrimp. *See Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand and Vietnam* (''*ITC Injury Notice*'') 69 FR 9842 (March 2, 2004).

On March 18, 2004, VSC submitted comments regarding reporting requirements.

On May 24, 2004, the Department published in the **Federal Register** a notice postponing the preliminary determination in this investigation. *See*