

determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

#### Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

#### Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

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 of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(l) of the Act.

Dated: July 28, 2004.

**James J. Jochum,**

Assistant Secretary for Import Administration.

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-549-822]

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

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

**ACTION:** Notice of preliminary determination of sales at less than fair value.

**SUMMARY:** We preliminarily determine that certain frozen and canned warmwater shrimp from Thailand are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). In addition, we preliminarily determine that there is no reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise exported from Thailand.

Interested parties are invited to comment on this preliminary determination. Because we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

**EFFECTIVE DATE:** August 4, 2004.

**FOR FURTHER INFORMATION CONTACT:** Irina Itkin or Elizabeth Eastwood, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0656 or (202) 482-3874, respectively.

#### Preliminary Determination

We preliminarily determine that certain frozen and canned warmwater shrimp from Thailand are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice. In addition, we preliminarily determine that there is no reasonable basis to believe or suspect that critical circumstances exist with respect to the subject merchandise exported from Thailand. The critical circumstances analysis for the preliminary determination is discussed

below under the section "Critical Circumstances."

#### Background

Since the initiation of this investigation (see *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*, 69 FR 3876 (January 27, 2004) (*Initiation Notice*)), the following events have occurred.

On February 17, 2004, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of certain frozen and canned warmwater shrimp from Thailand are materially injuring the United States industry. See ITC Investigation Nos. 731-TA-1063-1068 (Publication No. 3672).

On February 20, 2004, we selected the four largest producers/exporters of certain frozen and canned warmwater shrimp from Thailand as the mandatory respondents in this proceeding. See Memorandum to Louis Apple, Director Office 2, from the Team entitled: "Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from Thailand—Selection of Respondents," dated February 20, 2004. We subsequently issued the antidumping questionnaire to Chanthaburi Seafoods Co., Ltd. (CSF), Thailand Fishery Cold Storage Public Co., Ltd. (TFC), Thai I-Mei Frozen Foods Co., Ltd. (Thai I-Mei), and the Union Frozen Products Co., Ltd. (UFP) on February 20, 2004. From February 11, 2004, through March 16, 2004, Andaman Seafood Co., Ltd. (AMS), CSF, and TFC provided information to the Department related to the affiliation of these companies and a U.S. importer, Rubicon Resources.

During the period February through June 2004, various interested parties, including the petitioners,<sup>1</sup> submitted comments on the scope of this and the concurrent investigations of certain frozen and canned warmwater shrimp concerning whether the following products are covered by the scope of the investigations: a certain seafood mix, dusted shrimp, battered shrimp, salad shrimp sold in counts of 250 pieces or higher, the species *Macrobrachium rosenbergii*, organic shrimp, and peeled

<sup>1</sup> The petitioners in this investigation are the Ad Hoc Shrimp Trade Alliance (an ad hoc coalition representative of U.S. producers of frozen and canned warmwater shrimp and harvesters of wild-caught warmwater shrimp), Versaggi Shrimp Corporation, and Indian Ridge Shrimp Company.

shrimp used in breading.<sup>2</sup> In addition, the Louisiana Shrimp Alliance (LSA), an association of domestic shrimp harvester and processors, requested that the Department expand the scope to include fresh (never frozen) shrimp. See "Scope Comments" section of this notice.

On March 22, 2004, the Department determined that it was appropriate to treat AMS, CSF, and TFC as a single respondent (*i.e.*, the Rubicon Group) for purposes of the investigation, in accordance with 19 CFR 351.401(f). See letter from Louis Apple, Director Office 2 to the Rubicon Group, dated March 22, 2004.

We received section A questionnaire responses from the three respondents in March 2004, and section B and C questionnaire responses in April 2004.

We issued and received responses to our supplemental questionnaires from April through July 2004.

On May 4 and 10, 2004, respectively, the petitioners alleged that UFP and the Rubicon Group made third country sales below the cost of production (COP) and, therefore, requested that the Department initiate a sales-below-cost investigation of these respondents.

On May 18, 2004, pursuant to sections 733(c)(1)(B) and (c)(2) of the Act and 19 CFR 351.205(f), the Department determined that the case was extraordinarily complicated and postponed the preliminary determination until no later than July 28, 2004. See *Notice of Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp from Brazil (A-351-838), Ecuador (A-331-802), India (A-533-840), Thailand (A-549-822)*, the

<sup>2</sup> Specifically, Ocean Duke Corporation (Ocean Duke), an importer and wholesaler of the subject merchandise, requested that the following products be excluded from the scope of this and the concurrent investigations on certain frozen and canned warmwater shrimp: (1) "dusted shrimp," (2) "battered shrimp," and (3) "seafood mix." Another importer, Rubicon Resources LLP, supported Ocean Duke's request regarding dusted and battered shrimp. Eastern Fish Company and Long John Silver's, Inc. also requested that dusted and battered shrimp be excluded from the scope of the investigations. Furthermore, the Seafood Exporters' Association of India requested that the Department find that warmwater salad shrimp in counts of 250 pieces or higher are not within the scope, and that the species *Macrobrachium Rosenbergii* is a separate class or kind of merchandise. Also, Exportadora de Alimentos S.A., one of the respondents in the Ecuador case, requested that the Department find that farm-raised organic shrimp is not covered by the scope of the investigations. Finally, the American Breaded Shrimp Processors Association, comprised of importers of peeled shrimp which they consume in the production of breaded shrimp products, requested that peeled shrimp imported for the sole purpose of breading be excluded from the scope of the investigations.

*People's Republic of China (A-570-893), and the Socialist Republic of Vietnam (A-503-822)*, 69 FR 29509 (May 24, 2004).

On May 21, 2004, the Department denied LSA's request to amend the scope to include fresh (never frozen) shrimp. See Memorandum from Jeffrey A. May, Deputy Assistant Secretary, AD/CVD Enforcement Group I, and Joseph A. Spetrini, Deputy Assistant Secretary AD/CVD Enforcement Group III, to James J. Jochum, Assistant Secretary for Import Administration entitled: "Antidumping Investigations on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, the People's Republic of China, Thailand and the Socialist Republic of Vietnam: Scope Determination Regarding Fresh (Never Frozen) Shrimp," dated May 21, 2004 (Scope Decision Memorandum I).

On May 28, 2004, and June 2, 2004, respectively, the Department initiated a sales-below-cost investigation of UFP and the Rubicon Group and required the parties to respond to section D of the Department's questionnaire. See Memorandum to Louis Apple, Director Office 2, from the Team entitled: "Petitioners" Allegation of Sales Below the Cost of Production for Union Frozen Products Co., Ltd." dated May 28, 2004, and Memorandum to Louis Apple, Director Office 2, from the Team entitled: "Petitioners" Allegation of Sales Below the Cost of Production for Andaman Seafood Co., Ltd., Chanthaburi Seafoods Co., Ltd., and Thailand Fishery Cold Storage Public Co., Ltd." dated June 2, 2004. We received original section D and supplemental section D responses in June and July 2004.

On April 23, 2004, and June 15, 2004, the petitioners objected to the Rubicon Group's and UFP's use of Canada as their third country comparison markets, and they requested that the Department obtain sales data for these companies' second largest third country market, Japan. In July 2004, the Department determined that it is appropriate to use the third country market initially reported by the Rubicon Group and UFP (*i.e.*, Canada). See Memorandum to Louis Apple, Director Office 2, from the Team entitled: "Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from Thailand—Third-Country Market Selection for Two Respondents" dated July 28, 2004. (the Rubicon Group and UFP Third Country Comparison Market Selection Memorandum), for further discussion.

Pursuant to the Department's solicitation, on June 7, 2004, various

interested parties, including the petitioners, submitted comments on the issue of whether product comparisons and margin calculations in this and the concurrent investigations of certain frozen and canned warmwater shrimp should be based on data provided on an "as sold" basis or data converted to a headless, shell-on (HLSO) basis.<sup>3</sup> Additional comments were subsequently submitted on June 15 and 25, 2004. See "Product Comparison Comments" section below.

On July 2, 2004, the Department made preliminary scope determinations with respect to the following shrimp products: Ocean Duke's seafood mix, salad shrimp sold in counts of 250 pieces or higher, *Macrobrachium Rosenbergii*, organic shrimp, peeled shrimp used in breading, dusted shrimp and battered shrimp. See Memorandum from Edward C. Yang, Vietnam/NME Unit Coordinator, Import Administration to Jeffrey A. May, Deputy Assistant Secretary for Import Administration entitled: "Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam: Scope Clarifications: (1) Ocean Duke's Seafood Mix; (2) Salad Shrimp Sold in Counts of 250 Pieces or Higher; (3) *Macrobrachium Rosenbergii*; (4) Organic Shrimp; and (5) Peeled Shrimp Used in Breading," dated July 2, 2004 (Scope Decision Memorandum II); and Memorandum from Edward C. Yang, Vietnam/NME Unit Coordinator, Import Administration to Jeffrey A. May, Deputy Assistant Secretary for Import Administration entitled: "Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam: Scope Clarification: Dusted Shrimp and Battered Shrimp," dated July 2, 2004

<sup>3</sup> Specifically, the Department received comments from the following interested parties, in addition to the petitioners, on June 7: the Brazilian Shrimp Farmers' Association and Central de Industrializacao e Distribuicao de Alimentos Ltda.; Empresa De Armazenagem Frigorifica Ltda.; Camara Nacional de Acuacultura (National Chamber of Aquaculture) of Ecuador; the Rubicon Group (comprised of Andaman Seafood Co., Ltd. Chanthaburi Seafoods Co., Ltd. And Thailand Fishery Cold Storage Public Co., Ltd.); Thai I-Mei Frozen Foods Co., Ltd. and its affiliated reseller Ocean Duke; the Seafood Exporters of India and its members Devi Sea Foods Ltd., Hindustan Lever Limited, and Nekkanti Seafoods Limited; the VASEP Shrimp Committee and its members; and Shantou Red Garden Foodstuff Co., Ltd. In addition to addressing the "as sold"/HLSO issue, some of these parties also commented on the significance of species and container weight in the Department's product characteristic hierarchy.

(Scope Decision Memorandum III). See also “Scope Comments” section below.

#### Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not 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 petitioner. The Department’s regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

Pursuant to section 735(a)(2) of the Act, on June 10, 2004, the Rubicon Group and UFP requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**, and extend the provisional measures to not more than six months.<sup>4</sup> In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the Rubicon Group and UFP account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondents’ request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

#### Period of Investigation

The period of investigation (POI) is October 1, 2002, through September 30, 2003. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, December 2003).

#### Scope of Investigation

The scope of this investigation includes certain warmwater shrimp and prawns, whether frozen or canned, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-

<sup>4</sup> We note that Thai I-Mei also requested a postponement of the final determination until not later than 60 days after the date of the publication of the preliminary determination in the **Federal Register**.

on or head-off, shell-on or peeled, tail-on or tail-off,<sup>5</sup> 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 investigation, 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 stylostris*), 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 investigation. 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 investigation.

Excluded from the scope are (1) breaded shrimp<sup>6</sup> 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 customs purposes only and are not dispositive, but rather the written description of the scope of this investigation is dispositive.

#### Scope Comments

In accordance with the preamble to our regulations, 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 *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) and *Initiation Notice* at 69 FR 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*, (5) organic shrimp, (6) peeled shrimp used in breading, (7) dusted shrimp and (8) battered shrimp. On May 21, 2004, the Department determined that the scope of this and the concurrent investigations remains unchanged, as certain frozen and canned warmwater shrimp, without the addition of fresh (never frozen) shrimp. See Scope Decision Memorandum I.

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 Scope Decision Memorandum II. Based on the information presented by interested parties, the Department determined that Ocean Duke’s seafood mix is excluded from the scope of this and the concurrent investigations; 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 these investigations. See Scope Decision Memorandum II at 33.

Additionally, on July 2, 2004, the Department made a scope determination with respect to dusted shrimp and battered shrimp. See Scope Decision Memorandum III. Based on the information presented by interested parties, the Department preliminarily finds that while substantial evidence

<sup>5</sup> “Tails” in this context means the tail fan, which includes the telson and the uropods.

<sup>6</sup> Pursuant to our scope determination on battered shrimp, we find that breaded shrimp includes battered shrimp as discussed in the “Scope Comments” section below. See Scope Memorandum III.

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 consider excluding this merchandise from the scope of these proceedings provided an appropriate description can be developed. *See Scope Decision Memorandum III* 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. *See Scope Decision Memorandum III* at 23.

#### Fair Value Comparisons

To determine whether sales of certain frozen and canned warmwater shrimp from Thailand to the United States were made at LTFV, we compared the export price (EP) or constructed export price (CEP) to the normal value (NV), as described in the "Export Price/Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs and CEPs to NVs.

For this preliminary determination, we have determined that the Rubicon Group and UFP did not have a viable home market during the POI. Therefore, as the basis for NV, we used third country sales to Canada for these companies when making comparisons in accordance with section 773(a)(1)(C) of the Act. *See the Rubicon Group and UFP Third Country Comparison Market Selection Memorandum.*

In addition, we have determined that Thai I-Mei did not have a viable home or third country market during the POI. Therefore, as the basis for NV, we used constructed value (CV) when making comparisons for Thai I-Mei in accordance with section 773(a)(4) of the Act.

#### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the Rubicon Group and UFP in Canada during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the third country, where appropriate. Where

there were no sales of identical merchandise in the third country made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. For Thai I-Mei, and where there were no sales of identical or similar merchandise, we made product comparisons using CV.

In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: processed form, cooked form, head status, count size (on an "as sold" basis), shell status, vein status, tail status, other shrimp preparation, frozen form, flavoring, container weight, presentation, species, and preservative.

#### Product Comparison Comments

##### *As Sold v. HLSO Methodology*

We received comments from various interested parties concerning whether to perform product comparisons and margin calculations using data provided on an "as sold" basis or on data converted to an HLSO basis.<sup>7</sup>

The petitioners argue that using a consistent HLSO equivalent measure permits accurate product comparisons and margin calculations whereas the "as sold" measures do not. In particular, the petitioners emphasize that it is necessary to translate the actual sold volumes (weights) and count sizes to a uniform unit of measure that takes into account the various levels of processing of the different shrimp products sold and the allegedly large difference in value between the shrimp tail meat and other parts of the shrimp that may constitute "as sold" weight or count size, such as the head or shell. The petitioners' contention is premised upon their belief that the shrimp tail meat is the value-driving component of the shrimp. The respondents disagree, maintaining generally that using HLSO-equivalent data violates the antidumping duty law and significantly distorts product comparisons and margin calculations. In particular, they argue that: (1) Shrimp is sold based on its actual size and form, not on an HLSO basis, and it is the Department's practice

to use actual sales/cost data in its margin analysis; (2) the rates used to convert price, quantity and expense data to an HLSO basis are uncertain as they are not maintained by the respondents in the ordinary course of business, and are generally based on each individual company's experience rather than any accepted industry-wide standard; and (3) the HLSO methodology introduces a significant distortion through the incorrect assumption that the value of the product varies solely in direct proportion to the change in weight resulting from production yields, when in fact the value of the product depends also on other factors such as quality and form.

Our analysis of the company responses shows that: (1) No respondent uses HLSO equivalents in the normal course of business, for either sales or cost purposes; and (2) there is no reliable or consistent HLSO conversion formula for all forms of processed shrimp across all companies, as each company defined its conversion factors differently and derived these factors based on its own production experience. Therefore, we preliminarily determine it is appropriate to perform product comparisons and margin calculations using data "as sold." This approach is in accordance with our normal practice and precludes the use of conversion rates, the accuracy of which is uncertain. Given the variety and overlap of the "as sold" count size ranges reported by the respondents, we also preliminarily determine that it is appropriate to standardize product comparisons across respondents by fitting the "as sold" count sizes into the count size ranges specified in the questionnaire.

#### *Product Characteristics Hierarchy*

We also received comments from various interested parties regarding the significance of the species and container weight criteria in the Department's product comparison hierarchy.

Various parties requested that the species criterion be ranked higher in the Department's product characteristic hierarchy—as high as the second most important characteristic, rather than the thirteenth—based on their belief that species is an important factor in determining price. One party provided industry publications indicating price variations according to species type. Another party requested further that the Department revise the species categories specified in the Department's questionnaire to reflect characteristics beyond color (*i.e.*, whether the shrimp was farm-raised or wild-caught). In addition, several parties requested that

<sup>7</sup> In this notice, we address only those comments pertaining to market-economy dumping calculation methodology. Any comments pertaining to non-market-economy dumping calculation methodology are separately addressed in the July 2, 2004, preliminary determinations in the antidumping duty investigations of certain frozen and canned warmwater shrimp from the People's Republic of China and the Socialist Republic of Vietnam (*see* 69 FR 42654 (July 16, 2004) and 69 FR 42672 (July 16, 2004), respectively).

container weight, the eleventh characteristic in the Department's product characteristic hierarchy, be eliminated altogether as a product matching criterion, as they believe it is commercially insignificant and relates to packing size or form, rather than the physical attributes of the product.

With respect to the arguments regarding the species criterion, the petitioners disagree, maintaining that there is no credible evidence that species drives pricing to such a significant extent that buyers consider it more important than product characteristics such as head and cooked status. Rather, the petitioners contend that once shrimp is processed (e.g., cooked, peeled, etc.), the species classification becomes essentially irrelevant. Therefore, the petitioners assert that while species type has some, not entirely insignificant effect on shrimp prices, it is appropriately captured in the Department's product matching hierarchy. Furthermore, with respect to the container weight criterion, the petitioners assert that, while the shrimp inside the container may be identical, in many cases the size of the container is an integral part of the product and an important determinant of the markets and channels through which shrimp can be sold. For this reason, the petitioners maintain that the Department should continue to include container weight as a product matching characteristic.

Regarding the species criterion, we have not changed the position of this criterion in the product characteristic hierarchy for the preliminary determination. We agree that the physical characteristic of species type may impact the price or cost of processed shrimp. For that reason, we included species type as one of the product matching criteria. However, based on our review of the record evidence, we find that other physical characteristics of the subject merchandise, such as head status, count size, shell status, and frozen form, appear to be more significant in setting price or determining cost. The information provided by the parties, which suggests that price may be affected in some cases by species type, does not provide sufficient evidence that species type is more significant than the remaining physical characteristics of the processed shrimp. Therefore, we find an insufficient basis to revise the ranking of the physical characteristics established in the Department's questionnaire for the purpose of product matching.

With respect to differentiating between species types beyond the color

classifications identified in the questionnaire, we do not find that such differentiations reflect meaningful differences in the physical characteristics of the merchandise. In particular, we note that whether shrimp is farm-raised or wild-caught is not a physical characteristic of the shrimp, but rather a method of harvesting. Therefore, we have not accepted the additional species classifications proposed by the respondents. Accordingly, in those cases where the respondents reported additional species classifications for their processed shrimp products, we reclassified the products into one of the questionnaire color classifications. We made an exception for the shrimp identified as "scampi" (or *Macrobrachium rosenbergii*) and "red ring" (or *Aristeus alcocki*), where appropriate, because they represent species distinct from those associated by color in the Department's questionnaire. Regarding this exception, we note that while scampi and red ring are sufficiently distinct for product matching purposes, they are not so distinct as to constitute a separate class or kind of merchandise (see Scope Memorandum II). We also made an exception for the shrimp identified as "mixed" (e.g., "salad" shrimp), where appropriate, because there is insufficient information on the record to classify these products according to the questionnaire color classifications.

Regarding the container weight criterion, we have included it as the eleventh criterion in the product characteristic hierarchy because we view the size or weight of the packed unit as an integral part of the final product sold to the customer, rather than a packing size or form associated with the shipment of the product to the customer. Moreover, we find it appropriate, where possible (other factors being equal), to compare products of equivalent container weight (e.g., a one-pound bag of frozen shrimp with another one-pound bag of frozen shrimp, rather than a five-pound bag), as the container weight may impact the per-unit selling price of the product.

#### *Broken Shrimp/Mixed Seafood Products*

Two of the respondents in this case, the Rubicon Group and UFP, reported sales of broken shrimp in both their Canadian and U.S. markets. In addition, UFP reported sales of mixed seafood products in both markets. Because: (1) The matching criteria for this investigation do not currently account for broken shrimp or mixed seafood products; (2) no interested parties have provided comments on the appropriate

methodology to match these sales; and (3) the quantity of such sales does not constitute a significant percentage of the respondents' databases, we have excluded these sales from our analysis for purposes of the preliminary determination. Nonetheless, we are seeking comments from interested parties regarding our treatment of these sales for consideration in the final determination.

#### **Export Price/Constructed Export Price**

##### *A. The Rubicon Group*

In accordance with section 772(a) of the Act, we calculated EP for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States. We based EP on the packed price to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for billing adjustments and discounts. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign warehousing expenses, foreign inland insurance, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. brokerage and handling, gate charges, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland insurance, U.S. inland freight expenses (i.e., freight from port to warehouse and freight from warehouse to the customer), container charges, customs inspection and storage fees, and U.S. warehousing expenses.

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. We used the earlier of shipment date from Thailand to the customer or the U.S. affiliate's invoice date as the date of sale for CEP sales, in accordance with our practice. See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002) (*SS Beams from Germany*) and accompanying Issues and Decision Memorandum at *Comment 2*.

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for billing adjustments and discounts. We

made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign warehousing expenses, foreign inland insurance, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. brokerage and handling, gate charges, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland insurance, U.S. inland freight expenses (*i.e.*, freight from port to warehouse and freight from warehouse to the customer), container charges, customs inspection and storage fees, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, bank charges, advertising, imputed credit expenses, and repacking), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses). Although the Rubicon Group reported imputed interest revenue related to accruals, we have not increased the reported gross unit price by this amount, in accordance with the Department's practice.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by the Rubicon Group and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

#### B. Thai I-Mei

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. We used the earlier of shipment date from Thailand to the customer or the U.S. affiliate's invoice date as the date of sale for CEP sales, in accordance with our practice. *See e.g., SS Beams from Germany and accompanying Issues and Decision Memorandum at Comment 2.*

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for billing adjustments. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of

the Act; these included, where appropriate, foreign inland freight, foreign warehousing expenses, foreign inland insurance, foreign brokerage and handling expenses, ocean freight, marine insurance, U.S. brokerage and handling, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland insurance, U.S. inland freight expenses (*i.e.*, freight from port to warehouse and freight from warehouse to the customer), and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, imputed credit expenses), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Thai I-Mei and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

#### C. UFP

In its U.S. and third country sales listings, UFP reported sales of frozen shrimp purchased from other countries and further processed in Thailand before exportation. Where we were able to identify these sales, we excluded them from our analysis because we find that the country of origin for these products is not Thailand.

In accordance with section 772(a) of the Act, we calculated EP for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States. We based EP on the packed price to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for billing adjustments. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign warehousing, foreign inland freight, foreign brokerage and handling expenses, and international freight (offset by destination delivery charge revenue).

#### Duty Drawback

The Rubicon Group, Thai I-Mei, and UFP claimed a duty drawback adjustment based on their participation in the Thai government's Duty Compensation on Exported Goods

Manufactured in the Kingdom. Such adjustments are permitted under section 772(c)(1)(B) of the Act.

The Department will grant a respondent's claim for a duty drawback adjustment where the respondent has demonstrated that there is (1) a sufficient link between the import duty and the rebate, and (2) a sufficient amount of raw materials imported and used in the production of the final exported product. *See Rajinder Pipe Ltd. v. United States*, 70 F. Supp. 2d 1350, 1358 (CIT 1999) (Rajinder Pipes). In Rajinder Pipes, the Court of International Trade upheld the Department's decision to deny a respondent's claim for duty drawback adjustments because there was not substantial evidence on the record to establish that part one of the Department's test had been met. *See also Viraj Group, Ltd. v. United States*, Slip Op. 01-104 (CIT August 15, 2001).

In this investigation, the Rubicon Group, Thai I-Mei, and UFP have failed to demonstrate that there is a link between the import duty paid and the rebate received, and that imported raw materials are used in the production of the final exported product. Therefore, because they have failed to meet the Department's requirements, we are denying the respondents' requests for a duty drawback adjustment.

The Rubicon Group has argued that, if the Department chooses not to grant it a duty drawback adjustment, the Department should make a circumstance of sale adjustment for the amounts it received as duty drawback. In support of this assertion, the Rubicon Group cites *Certain Hot-Rolled Carbon Steel Flat Products From Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 69 FR 19388 (April 13, 2004) and accompanying Issues and Decision Memorandum at Comment 2 (*Hot-Rolled Steel from Thailand*). However, we find that Rubicon's reliance on *Hot-Rolled Steel from Thailand* is misplaced. That case merely stands for the proposition that when we make a duty drawback adjustment to EP, we will consider whether an increase in NV is warranted, as a circumstance of sale adjustment, in order to account for the effect of the duty drawback on home market sales. That case does not signify that in the absence of a duty drawback adjustment, we will make a circumstance of sale adjustment to NV.

Finally, Thai I-Mei has argued that, if the Department chooses not to grant it a duty drawback adjustment, the Department should reduce its raw material costs by the amount of the duty drawback. As support for its proposed

methodology, Thai I-Mei cites *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip From India*, 67 FR 34899 (May 12, 2002) and accompanying Issues and Decision Memorandum at *Comment 3 (PET Film from India)*. However, we note that Thai I-Mei's reliance on that case is also misplaced because in *PET Film from India*, the respondent demonstrated that it used a portion of the duty drawback it received to pay import duties on raw materials used in the production of the subject merchandise. In this investigation, we find that Thai I-Mei is unable to tie the import duty paid to the rebate received, and thus any cost adjustment for duty drawback would be unwarranted.

## Normal Value

### A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

In this investigation, we determined that the Rubicon Group's and UFP's aggregate volume of home market sales of the foreign like product was insufficient to permit a proper comparison with U.S. sales of the subject merchandise. Therefore, we used sales to the Rubicon Group's and UFP's largest third country market (*i.e.*, Canada) as the basis for comparison-market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404. Further, we determined that Thai I-Mei's aggregate volume of home and third country market sales of the foreign like product was insufficient to permit a proper comparison with U.S. sales of the subject merchandise. Therefore, we used CV as the basis for calculating NV for Thai I-Mei, in accordance with section 773(a)(4) of the Act.

### B. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP. Pursuant to 19 CFR 351.412(c)(1), the NV LOT is that of the starting-price sales in the comparison market or, when

NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. *See* 19 CFR 351.412(c)(2). If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In this investigation, we obtained information from each respondent regarding the marketing stages involved in making the reported third country, as applicable, and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

We examined the chain of distribution and the selling activities associated with sales reported by the Rubicon Group to distributors/wholesalers and retailers in the Canadian market. The Rubicon Group's sales to different customer categories did not differ from each other with respect to selling activities (*i.e.*, sales forecasting/market research, sales promotion/trade shows/advertising, inventory maintenance, order processing/invoicing, freight and delivery arrangements, and direct sales personnel). Based on our overall analysis, we found that all of the Rubicon Group's sales in the Canadian market constituted one LOT.

In the U.S. market, the Rubicon Group reported both EP and CEP sales to distributors/wholesalers, retailers, and food service industry customers. The Rubicon Group reported sales through

two channels of distribution: (1) Direct sales from the Thai exporters to unaffiliated U.S. customers; and (2) sales made to the affiliated U.S. importer. According to the Rubicon Group, its Canadian and U.S. EP sales are at the same LOT and this LOT is more advanced than that of its CEP sales.

We examined the selling activities performed for each channel. Specifically, for direct sales (*i.e.*, EP sales), the Rubicon Group reported the following selling functions: sales forecasting/market research, sales promotion/trade shows/advertising, inventory maintenance, order processing/invoicing, freight and delivery arrangements, and direct sales personnel. For sales to the U.S. affiliate, the Rubicon Group reported the following selling functions: sales promotion/trade shows/advertising, inventory maintenance, order processing/invoicing, freight and delivery arrangements, and direct sales personnel. Regarding CEP sales, although the Rubicon Group reported that it performed fewer selling functions for sales to its U.S. affiliate, we do not find that these selling functions differ significantly from those performed for the direct sales.

After analyzing the selling functions performed for each sales channel, we find that the distinctions in selling functions are not material. We acknowledge that the Rubicon Group provides sales forecasting/market research for sales to Canada and direct U.S. sales, but not for sales to its U.S. affiliate. However, we do not find that this difference, combined with the claimed difference in the levels of the common selling functions, amounts to a significant difference in the selling functions performed for the two channels of distribution. Further, we note that the Rubicon Group has reported a higher level of indirect selling expenses for sales made to Rubicon Resources. Therefore, we do not find that the U.S. LOT for CEP sales is less advanced than the LOT for Canadian sales.

Based on the above analysis, we find that the Rubicon Group performed essentially the same selling functions when selling in both Canada and the United States (for both the EP and CEP sales). Therefore, we determine that these sales are at the same LOT and no LOT adjustment is warranted. Because we find that no difference in the LOT exists between markets, we have not granted a CEP offset to the Rubicon Group.

UFP made sales to distributors through three channels of distribution

in the Canadian market and two channels of distribution in the U.S. market. UFP's two channels of distribution in the U.S. market are the same as two of the three channels of distribution in the Canadian market. Further, UFP sales through these two channels of distribution did not differ from each other with respect to selling activities (*i.e.*, sales forecasting, sales promotion, order processing, sales and marketing support, freight and delivery, packing, and payment processing).

Regarding UFP's third channel of distribution in the Canadian market, sales made through its affiliate Bright Sea, we note that UFP performs the same selling activities to sell to Bright Sea as it does to sell through its other sales channels. While Bright Sea also provides order and payment processing, we do not find these additional selling functions to be significant. Therefore, we find that all of UFP's sales channels are at the same LOT. Accordingly, all comparisons are at the same LOT for UFP and an adjustment pursuant to section 773(a)(7)(A) is not warranted.

With respect to Thai I-Mei, this exporter had no viable home or third country market during the POI. Therefore, we based NV on CV. When NV is based on CV, the NV LOT is that of the sales from which we derive SG&A expenses and profit. (*See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Atlantic Salmon from Chile*, 63 FR 2664 (January 16, 1998)). In accordance with 19 CFR 351.412(d), the Department will make its LOT determination under paragraph (d)(2) of this section on the basis of sales of the foreign like product by the producer or exporter. Because we based the selling expenses and profit for Thai I-Mei on the weighted-average selling expenses incurred and profits earned by the other respondents in the investigation, we are able to determine the LOT of the sales from which we derived selling expenses and profit for CV.

Thai I-Mei reported making sales through six channels of distribution in the United States; however, it stated that the selling activities it performed did not vary by channel of distribution.<sup>8</sup> Thai I-Mei reported performing the following selling functions for sales to its U.S. affiliate: order input/processing, direct sales personnel, freight and delivery arrangements, and packing. We find that the Rubicon Group's and UFP's

selling functions performed for third country sales are more significant than those performed by Thai I-Mei to sell to its U.S. affiliate. Therefore, we determine that the NV LOT for Thai I-Mei is more advanced than the LOT of Thai I-Mei's CEP sales. However, because the Rubicon Group and UFP only made sales at one LOT in their third country markets, and there is no additional information on the record that would allow for an LOT adjustment, no LOT adjustment is possible for Thai I-Mei. Because we find that the NV LOT is more advanced than the CEP LOT, we have preliminarily granted a CEP offset to Thai I-Mei.

#### C. Cost of Production Analysis

Based on our analysis of the petitioners' allegation, we found that there were reasonable grounds to believe or suspect that the Rubicon Group's and UFP's sales of frozen and canned warmwater shrimp in the third country were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated sales-below-cost investigations to determine whether the Rubicon Group's and UFP's sales were made at prices below their respective COPs. *See Memorandum to Louis Apple, Director Office 2, from the Team entitled: "Petitioners" Allegation of Sales Below the Cost of Production for Andaman Seafood Co., Ltd., Chanthaburi Seafoods Co., Ltd., and Thailand Fishery Cold Storage Public Co., Ltd.,* dated June 2, 2004, and *Memorandum to Louis Apple, Director Office 2, from the Team entitled: "Petitioners" Allegation of Sales Below the Cost of Production for Union Frozen Products Co., Ltd.,* dated May 28, 2004.

#### 1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses (G&A), interest expenses, and third country packing costs. *See "Test of Third Country Sales Prices" section below for treatment of third country selling expenses.* We relied on the COP data submitted by the Rubicon Group, Thai I-Mei, and UFP except in the following instances.

#### A. The Rubicon Group

1. We revised Rubicon Group's producer-specific G&A expense rates in order to exclude revenue offsets which did not relate to the general operations of the company.

2. We revised Rubicon Group's producer-specific financial expense

rates in order to include an interest income offset for one of the entities.

3. For each of the six producers in the Rubicon Group, we deducted the total "excludable" costs from the cost of goods sold (COGS) denominators instead of a portion of them.

*See Memorandum from Gina Lee to Neal Halper, Director Office of Accounting, entitled: "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination—the Rubicon Group," dated July 28, 2004.*

#### B. Thai I-Mei

1. We used the COGS shown on Thai I-Mei's fiscal year 2003 financial statements net of packing expense and scrap offset as the denominator of the G&A and interest expense rate calculations.

2. Thai I-Mei did not report direct packaging costs for certain control numbers. For these control numbers, we assigned the direct packaging costs for PE bags and film submitted by Thai I-Mei.

3. Thai I-Mei did not provide the Department with cost data for all of its U.S. sales, as instructed in both the original questionnaire and in the Department's section D supplemental questionnaire issued on June 16, 2004. Thai I-Mei's failure to provide this necessary information meets the requirements for application of adverse facts available set forth in *Nippon Steel Corp. v. United States*, 337 F. 3d 1373 (Fed. Cir. 2003) (*Nippon Steel*). As stated by the Court of Appeals for the Federal Circuit during its discussion of section 776(a) of the Act in *Nippon Steel*, "[t]he focus of subsection (a) is respondent's failure to provide information. The reason for the failure is of no moment. The mere failure of a respondent to furnish requested information—for any reason—requires Commerce to resort to other sources of information to complete the factual record on which it makes its determination." *See Id.* at 1381. In regard to the use of an adverse inference, section 776(b) of the Act states that the Department may use an adverse inference if "an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. \* \* \*." In *Nippon Steel*, the Court set out two requirements for drawing an adverse inference under section 776(b) of the Act. First, the Department "must make an objective showing that a reasonable and responsible importer would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and

<sup>8</sup> Thai I-Mei states that its U.S. affiliate, Ocean Duke, did not provide inventory maintenance for those sales which were shipped directly to the U.S. customer (*i.e.*, two of the six sales channels).

regulations." *See Nippon Steel*, 337 F. 3d 1382–83. Next the Department must "make a subjective showing that the respondent \* \* \* has failed to promptly produce the requested information" and that "failure to fully respond is the result of the respondent's lack of cooperation in either: (a) Failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records." *See Id.* Because: (1) Thai I-Mei reasonably should have known that the necessary information was required to be kept and maintained and it did not report this information; and (2) it failed to put forth its maximum effort as required by the Department's questionnaire, we find that Thai I-Mei's failure to provide complete cost information in this case clearly meets these standards. As facts available, we have applied the highest cost reported for any control number, in accordance with our practice. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Carbon Steel Flat Products From Brazil*, 67 FR 31200, 31202 (May 9, 2002).

For further discussion of these adjustments, see Memorandum from Oh Ji to Neal Halper, Director Office of Accounting, entitled: "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination—Thai I-Mei Frozen Foods Co., Ltd.," dated July 28, 2004.

#### C. UFP

1. We revised UFP's G&A expense rate to include the "Expense in previous accounting period," because we find this expense was recorded in the company's current year audited financial statements and represents a current period expense.

See Memorandum from Ernest Gziryan to Neal Halper, Director Office of Accounting entitled: "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination—The Union Frozen Products Co., Ltd.," dated July 28, 2004.

#### 2. Test of Third Country Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the third country sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable billing adjustments, movement charges, and direct and indirect selling expenses. In

determining whether to disregard third country market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

#### 3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product during the POI are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's sales of a given product during the POI are at prices less than the COP, we determine that the below-cost sales represent substantial quantities within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of the Rubicon Group's and UFP's third country sales during the POI were at prices less than the COP and, in addition, the below-cost sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act. Where there were no sales of any comparable product at prices above the COP, we used CV as the basis for determining NV.

#### D. Calculation of Normal Value Based on Comparison Market Prices

##### 1. The Rubicon Group

For the Rubicon Group, we calculated NV based on delivered prices to unaffiliated customers. We also made deductions for movement expenses, including inland freight (plant to warehouse and warehouse to port), warehousing, foreign inland insurance, gate charges, international freight, and foreign brokerage and handling under section 773(a)(6)(B)(ii) of the Act.

For third country price-to-EP comparisons, we made circumstance of sale adjustments for differences in credit

expenses and commissions, pursuant to section 773(a)(6)(C) of the Act.

For third country price-to-CEP comparisons, we made deductions for third country credit expenses, commissions, and repacking, pursuant to 773(a)(6)(C) of the Act.

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted third country packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

#### 2. UFP

For UFP, we calculated NV based on delivered prices to unaffiliated customers. We made adjustments, where appropriate, to the starting price for billing adjustments. We also made deductions for movement expenses, including foreign warehousing, foreign inland freight, foreign brokerage and handling expenses, and international freight (offset by destination delivery charge revenue), under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for credit expenses (offset by interest revenue), payment insurance, bank charges, discounting charges, and commissions.

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted third country packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

#### E. Calculation of Normal Value Based on Constructed Value

In accordance with section 773(a)(4) of the Act, for Thai I-Mei, we based NV on CV because there was no viable home or third country market.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Thai I-Mei's cost of materials and fabrication for the foreign like product, plus amounts for SG&A, profit, and U.S. packing costs. We calculated the cost of materials and fabrication, SG&A and interest based on the methodology described in the "Calculation of COP" section of this notice.

Because Thai I-Mei does not have a viable comparison market, the Department cannot determine profit

under section 773(e)(2)(A) of the Act, which requires sales by the respondent in question in the ordinary course of trade in a comparison market. Likewise, because Thai I-Mei does not have sales of any product in the same general category of products as the subject merchandise, we are unable to apply alternative (i) of section 773(e)(2)(B) of the Act. Further, the Department cannot calculate profit based on alternative (ii) of this section because the other two respondents in this investigation do not have viable home markets and 19 CFR 351.405(b) requires a profit ratio under this alternative be based on home market sales. Therefore, we calculated Thai I-Mei's CV profit and selling expenses based on the third alternative, any other reasonable method, in accordance with section 773(e)(2)(B)(iii) of the Act. As a result, as a reasonable method, we calculated Thai I-Mei's CV profit and selling expenses as a weighted-average of the profit and selling expenses incurred by the two other respondents in this investigation. Specifically, we calculated the weighted-average profit and selling expenses incurred on third country sales by the Rubicon Group and UFP.

Pursuant to alternative (iii), the Department has the option of using any other reasonable method, as long as the amount allowed for profit is not greater than the amount realized by exporters or producers "in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise," the "profit cap." We are unable to calculate the profit cap because the available data (*i.e.*, the Rubicon Group and UFP data) are based solely on the third country sales, and thus cannot be used under 19 CFR 351.405(b). Therefore, as facts available we are applying option (iii), without quantifying a profit cap. *See the Memorandum from Alice Gibbons to the file entitled, "Calculations Performed for Thai I-Mei Frozen Foods Co., Ltd. for the Preliminary Determination in the Investigation of Certain Frozen and Canned Warmwater Shrimp from Thailand" dated July 28, 2004.*

For comparisons to CEP, we deducted from CV the weighted-average third country direct selling expenses. Finally, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the weighted-average third country indirect selling expenses or the indirect selling expenses deducted from the starting price in calculating CEP.

### Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

### Critical Circumstances

On May 19, 2004, 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 Thailand. 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) Exporter-specific shipment data requested by the Department; (ii) information presented by the respondents in their May 26, 2004, and June 14, 2004, submissions, and (iii) the ITC preliminary injury determination.

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 Thailand, the petitioners make no specific mention of a history of dumping for Thailand. We are not aware of any antidumping order in the United States or in any country on certain frozen and canned warmwater shrimp from Thailand. For this reason, the Department does not find a history of injurious dumping of the subject merchandise from Thailand 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 EP sales, or 15 percent or more for CEP 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).

For the Rubicon Group, Thai I-Mei, and UFP, we preliminarily determine that there is not a sufficient basis to find that importers 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 pursuant to section 733(e)(1)(A)(ii) of the Act, because the calculated margins were not 25 percent or more for EP sales, or 15 percent or more for CEP sales. Because

the knowledge criterion has not been met, we have not addressed the second criterion of whether or not imports were massive in the comparison period when compared to the base period.

Regarding the companies subject to the "all others" rate, it is the Department's normal practice to conduct its critical circumstances analysis for these companies based on the experience of investigated companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey*, 62 FR 9737, 9741 (March 4, 1997). However, the Department does not automatically extend an affirmative critical circumstances determination to companies covered by the "all others" rate. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan*, 64 FR 30574 (June 8, 1999) (*Stainless Steel from Japan*). Instead, the Department considers the traditional critical circumstances criteria with respect to the companies covered by the "all others" rate. Consistent with *Stainless Steel from Japan*, the Department has, in this case, applied

the traditional critical circumstances criteria to the "all others" category for the antidumping investigation of shrimp from Thailand.

The dumping margin for the "all others" category in the instant case, 6.39 percent, does not exceed the 15/25 percent thresholds necessary to impute knowledge of dumping. Therefore, we do not find that importers knew or should have known that there would be material injury from the dumped merchandise.

In summary, we find that there is no reasonable basis to believe or suspect importers had knowledge of dumping and the likelihood of material injury with respect to certain frozen and canned warmwater shrimp from Thailand. Given the analysis summarized above, and described in more detail in the Critical Circumstances Memo, we preliminarily determine that critical circumstances do not exist for imports of certain frozen and canned warmwater shrimp produced in and exported from Thailand.

We will make a final determination concerning critical circumstances for all producers and exporters of subject

merchandise from Thailand 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) of the Act, we will verify all information relied upon in making our final determination.

#### Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all imports of subject merchandise that are 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 NV exceeds EP or CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage	Critical circumstances
The Rubicon Group .....	5.56	No.
Thai I-Mei .....	5.91	No.
UFP .....	10.25	No.
All Others .....	6.39	No.

#### ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

#### Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

#### Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table

of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

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 of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: July 28, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

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