

DEPARTMENT OF COMMERCE**International Trade Administration**

A-570-893

Third Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp ("shrimp") from the People's Republic of China ("PRC"), covering the period of review ("POR") of February 1, 2007, through January 31, 2008. As discussed below, we preliminarily determine that certain respondents in this review made sales in the United States at prices below normal value ("NV"). If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which importer-specific assessment rates are above de minimis.

EFFECTIVE DATE: March 9, 2009.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482-0413.

SUPPLEMENTARY INFORMATION:**Background**

The Department received timely requests from both Petitioners¹ and certain PRC companies, in accordance with 19 CFR 351.213(b), during the anniversary month of February, for administrative reviews of the antidumping duty order on shrimp from the PRC. On April 7, 2008, the Department initiated an administrative review of 482 producers/exporters of subject merchandise from the PRC.² See *Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Frozen Warmwater Shrimp from the Socialist Republic of Vietnam and the People's Republic of China*, 73 FR 18739 (April 7, 2008) ("*Initiation*").

¹ The petitioners are the members of the Ad Hoc Shrimp Trade Action Committee (hereinafter referred to as "Petitioners").

² See *Initiation* for a listing of these companies.

Respondent Selection

On June 16, 2008, in accordance with section 777A(c)(2) of the Tariff Act of 1930, as amended ("Act"), the Department selected Hilltop International ("Hilltop") and Zhanjiang Go-Harvest Aquatic Products Co., Ltd. ("Go-Harvest") for individual examination in this review, since they were the two largest exporters by volume during the POR, based on CBP data of U.S. imports. See Memorandum to James Doyle, Director, Office IX, from Susan Pulongbarit, International Trade Analyst, "2007-2008 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Selection of Respondents for Individual Review," dated June 16, 2008. On July 1, 2008, the Department issued antidumping duty questionnaires to Hilltop and Go-Harvest.

On July 3, 2008, Hilltop withdrew its request for review, and on July 7, 2008, Petitioners withdrew their request for review of Yelin Enterprise Co., Ltd. Hong Kong (the predecessor in interest to Hilltop International); Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd.; Fuqing Yihua Aquatic Food Co., Ltd.; and Fuqing Minhua Trade Co., Ltd. (collectively referred to hereafter as "Hilltop/Yelin"). Since both withdrawal requests were timely, and no other party requested a review of Hilltop/Yelin, in accordance with section 351.213(d)(1) of the Department's regulations, the Department is rescinding the administrative review with respect to Hilltop/Yelin. See the "Partial Rescission of Review" section below. Consequently, on August 25, 2008, in accordance with section 777A(c)(2) of the Act, the Department selected Zhanjiang Regal Integrated Marine Resources Co., Ltd. ("Regal") for individual examination in this review, because Regal was the next largest exporter by volume during the POR, based on CBP data of U.S. imports. See Memorandum to James Doyle, Director, Office IX, from Erin Begnal, Senior International Trade Analyst, "2007-2008 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Selection of Additional Mandatory Respondent," dated August 25, 2008. On August 29, 2008, the Department issued the antidumping duty questionnaire to Regal.

Regal

Between October 3, 2008, and January 21, 2009, Regal responded to the Department's original and supplemental questionnaires. Pursuant to 19 CFR

351.307(b)(iv), from January 19-23, 2009, the Department conducted verification of Regal's questionnaire responses. See Memorandum to the File through Scot Fullerton, Program Manager, Office IX, from Paul Walker, Senior Case Analyst, "Third Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China: Verification of Zhanjiang Regal Integrated Marine Resources Co., Ltd.," dated concurrently with this notice ("Regal Verification Report").

Go-Harvest

In response to the Department's July 1, 2008, questionnaire, on August 8, 2008, Go-Harvest submitted a certification to the Department stating that it had no shipments of subject merchandise during the POR. However, as noted above in the "Respondent Selection" section, the Department placed information on the record obtained from CBP which showed that shipments of subject merchandise had been made by Go-Harvest during the POR. On October 22, 2008, the Department issued a second antidumping duty questionnaire to Go-Harvest. On November 5, 2008, Go-Harvest submitted a second no shipment certification. On November 12, 2008, the Department issued Go-Harvest a third questionnaire to resolve the discrepancies between the CBP data and Go-Harvest's no shipment certifications of August 8, 2008, and November 5, 2008. On November 17, 2008, Go-Harvest submitted a letter stating that it would not respond to the Department's questionnaire of November 12, 2008. On November 19, 2008, the Department provided Go-Harvest an additional opportunity to respond to the Department's November 12, 2008, questionnaire. Go-Harvest made no response to this additional opportunity.

Separate Rates

On May 30, 2008, we received a separate rate application from Shantou Longsheng Aquatic Product Foodstuff Co., Ltd. ("Shantou Longsheng"). Go-Harvest did not demonstrate eligibility for a separate rate during the course of this proceeding. Thus, Go-Harvest will be considered part of the PRC-wide entity for purposes of this review.

Rescission of Reviews

As noted above, on July 7, 2008, the Petitioners made a timely withdrawal of review request on Hilltop/Yelin. Between April 17, 2008, and April 30, 2008, the following companies submitted no shipment certifications:

Allied Pacific Group (comprised of Allied Pacific Food (Dalian) Co., Ltd.; Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd.;³ Zhanjiang Allied Pacific Aquaculture Co., Ltd.; Allied Pacific (H.K.) Co., Ltd.; and King Royal Investments Ltd.); Gallant Ocean (Nanhai), Ltd.; Luk Ka Paper Industrial Ltd.; Shantou Yelin Frozen Seafood Co., Ltd.; and Shantou Yuexing Enterprise Company.

Surrogate Country and Surrogate Values

On October 21, 2008, the Department sent interested parties a letter requesting comments on the surrogate country and information pertaining to valuing factors of production ("FOPs"). On January 16, 2009, Petitioners submitted surrogate value comments regarding various Thai sources. No other interested party submitted comments on the surrogate country or information pertaining to valuing FOPs.

Case Schedule

On October 8, 2008, in accordance with section 751(a)(3)(A) of the Act, we extended the time period for issuing the preliminary results by 120 days, until March 2, 2008. See *Certain Frozen Warmwater Shrimp from Ecuador, India, the People's Republic of China, and Thailand: Notice of Extension of Time Limits for the Preliminary Results of the Third Administrative Reviews*, 73 FR 58931 (October 8, 2008).

Partial Rescission of Review

Final Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within ninety days of the date of publication of notice of initiation of the requested review. Because the Petitioner's and Hilltop's withdrawals of requests for review were timely and no other party requested a review of the following companies, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review with respect to Hilltop/Yelin.

³ The Department in its initiation notice included "Allied Pacific Aquatic Products (Zhangjiang) Co., Ltd." due to the Petitioners' misspelling of the company's name in its review request. See Letter from Dewey & LeBouef to the Secretary of Commerce, "Request for Administrative Reviews," (Feb. 29, 2008). In its April 17, 2008, letter, Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd. clarified the correct spelling of its name. See Letter from Trade Pacific to the Secretary of Commerce, "Frozen Warmwater Shrimp from the People's Republic of China." The Department notes that the review is preliminarily rescinded for both the proper name and the misspelled name of this company.

Preliminary Partial Rescission

As discussed in the "Supplementary Information" section above, several companies indicated they did not export PRC origin shrimp to the United States during the POR. In order to corroborate these submissions, we reviewed PRC shrimp shipment data obtained from CBP, and found no discrepancies with the statements made by these firms.

Therefore, for the reasons mentioned above, we are preliminarily rescinding the administrative review with respect to: Allied Pacific Group (comprised of Allied Pacific Food (Dalian) Co., Ltd.; Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd.; Zhanjiang Allied Pacific Aquaculture Co., Ltd.; Allied Pacific (H.K.) Co., Ltd.; and King Royal Investments Ltd.); Gallant Ocean (Nanhai), Ltd.; Luk Ka Paper Industrial Ltd.; Shantou Yelin Frozen Seafood Co., Ltd.; and Shantou Yuexing Enterprise Company because each reported having made no shipments of subject merchandise during the POR, and the Department found no information to indicate otherwise. See, e.g., *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 72 FR 53527, 53530 (September 19, 2007), unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission*, 73 FR 15479, 15480 (March 24, 2008) ("*Third Fish Fillets Review*").

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,⁴ deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTS"), are products which are processed from warmwater shrimp and prawns through freezing 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

⁴ "Tails" in this context means the tail fan, which includes the telson and the uropods.

examples of the farmed and wild-caught warmwater species include, but are not limited to, white-leg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), 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 this 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 this investigation.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.1020); (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 (HTS subheadings 0306.23.0020 and 0306.23.0040); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.0510); (5) dried shrimp and prawns; (6) Lee Kum Kee's shrimp sauce; (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.1040); (8) certain dusted shrimp; and (9) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen ("IQF") freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this investigation are currently classified under the following HTS subheadings:

0306.13.0003, 0306.13.0006, 0306.13.0009, 0306.13.0012, 0306.13.0015, 0306.13.0018, 0306.13.0021, 0306.13.0024, 0306.13.0027, 0306.13.0040, 1605.20.1010 and 1605.20.1030. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this investigation is dispositive.

Facts Available

Sections 776(a)(1) and 776(a)(2) of the Act, provide that, if necessary information is not available or on the record, or 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 sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding 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.

Section 782(c)(1) of the Act provides that if an interested party “promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information,” the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed “deficient” under section 782(d) if: (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 in providing the information and meeting the requirements established by the Department; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states that if the Department “finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission . . . , in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.” See also Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316 at 870 (1994) (“SAA”). Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” *Id.* An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. See section 776(b) of the Act.

Regal’s Water Consumption

For these preliminary results, in accordance with sections 776(a)(1) and 776(a)(2)(B) of the Act, we have determined that the use of facts available is appropriate for Regal’s consumption of water. As noted above, consistent with section 782(c)(1) of the Act, if an interested party promptly notifies the Department that it is unable to submit the information in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the Department will take into consideration the ability of the party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.

Consistent with section 773(c)(1)(B) of the Act, the Department values FOPs that a respondent uses to produce the subject merchandise. See, e.g., *Third Fish Fillets Review* at Comment 8E. In past cases the Department has specifically stated that water which is pumped from a well, regardless of whether the respondent incurs a cost for

that water, will be treated as a FOP and valued accordingly. See, e.g., *Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews*, 72 FR 34438 (June 22, 2007) at Comment 8. In its questionnaire responses, Regal stated that it used water during the farming and processing of shrimp. Regal also stated that it did not track the amount of water used because it incurred no cost for pumping the water from either wells (at the processing factory) or the ocean (at the farms). At verification the Department found no evidence that Regal tracks the amount of water it consumes in its normal course of business. See Regal Verification Report at 2. However, at verification Regal was able to provide estimates of the water it consumed. *Id.* Because information regarding the actual amount of water consumed is not available and Regal was unable to provide the data regarding actual water consumption, and in the form and manner required, we are applying facts available to Regal’s water consumption in accordance with sections 776(a)(1), 776(a)(2)(B) and 782(c)(1) of the Act.

As noted above, Regal consumes water at its shrimp farms. As facts available, we are applying the average amount of water consumed at the farms, as estimated by Regal’s farming production manager, to the NV. See Regal Verification Report at 2. In addition, Regal uses water at its processing factory to make ice, to clean the shrimp during the production process, and to pack the shrimp. Also, as facts available, to account for the ice consumed by Regal at its processing plant, we are applying the average amount of ice reported by Regal⁵ in transporting the shrimp from the farm to the factory. See Regal’s October 23, 2008 submission. In addition, as facts available, to calculate the water used to pack the shrimp we are deducting from the gross weight of the sale, the weight of the shrimp and packing. Moreover, we are using an average of these water weights to estimate the amount of water Regal used to wash the shrimp during the production process. Because these usage rates are proprietary, see Memorandum to the File, through Scot Fullerton, Program Manager, Office IX, from Paul Walker, Senior Analyst, “Third Administrative Review of Frozen Warmwater Shrimp from the People’s Republic of China: Zhanjiang Regal

⁵ Regal purchases ice to keep the shrimp fresh as they are transported from the farm to the factory. Regal reported an FOP usage rate for this purchased ice.

Integrated Marine Resources Co., Ltd.,” dated concurrently with this notice (“Regal Analysis Memo”) for further details.

Moreover, we note that for future reviews of this order, Regal must comply with all requests for information by the Department and should, therefore, maintain the appropriate records to comply with these requests. If Regal, or any other Respondents, are unable to comply with such requests, the Department may resort to the use of adverse facts available (“AFA”) absent the information on the record that is required by the Department to conduct its proceedings in accordance with section 776(b) of the Act.

Regal’s Unreported FOP and Movement Expense

For these preliminary results, in accordance with section 776(a)(2)(A) of the Act, we have determined that the use of facts available is appropriate for Regal’s unreported consumption of diesel oil and movement expenses it paid for filing U.S. Food and Drug Administration (“USFDA”) paperwork in the United States for certain sales.

Regal did not report diesel oil consumption or certain movement expenses in its submissions of FOP and sales data dated October 3, 2008, December 16, 2008, and January 21, 2009. At verification, Regal attempted to submit data regarding its diesel oil consumption and other movement expenses as minor corrections. However, the Department did not accept this new information as minor corrections. See Regal Verification Report at 2. Unlike water, the usage of which is not currently recorded in Regal’s books and records, we note diesel oil consumption and this particular movement expense are recorded in Regal’s books and records and were readily available to Regal. Because Regal did not report this data in a timely manner, and failed to report its diesel oil consumption and the movement expense to the Department, despite multiple opportunities to provide complete FOP and sales data, we are applying facts available to Regal’s unreported diesel oil consumption and movement expense pursuant to section 776(a)(2)(A) of the Act.

As noted above, section 776(b) of the Act states that if the Department “finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission, in reaching the applicable

determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.” See also SAA accompanying the URAA at 870. An adverse inference may include reliance on information derived from the Petition, the final determination in the investigation, any previous review, or any other information placed on the record. See section 776(b) of the Act.

In this instance, Regal failed to act to the best of its ability to comply with the Department’s repeated requests for information regarding all of its FOPs and sales expenses, *i.e.*, diesel oil and the movement expenses it paid for filing USFDA paperwork. See, *e.g.*, the Department’s letter dated August 29, 2008, at c–25 and d–8, where we asked Regal to report all U.S. movement expenses and all energy inputs, respectively. Only at verification did it become clear that these two previously unreported costs existed. As noted above, these factors are reported in Regal’s books and records and were readily available to Regal. Regal did not indicate that it was unable to submit complete FOP and sales information in the requested form and manner. Therefore, we find that Regal failed to cooperate to the best of its ability and we are applying AFA to this FOP and movement expense incurred by Regal in these preliminary results, pursuant to section 776(b) of the Act. As partial AFA for Regal’s diesel oil FOP, we are using the highest single monthly usage rate for diesel oil and applying this monthly usage rate to all months during the POR. In addition, as partial AFA for Regal’s movement expense, we are using the highest single fee incurred by Regal and applying this fee to all sales invoices for which this fee was incurred.

Go–Harvest/PRC–wide Entity

As noted above in the “Supplementary Information” section, the Department selected Go–Harvest for individual examination in this review, based on CBP data of U.S. imports which showed that Go–Harvest was one of the largest exporters by volume during the POR. Although Go–Harvest submitted certifications that it had no shipments, it refused to answer our questions regarding the discrepancies between its no shipments claims and the CBP data. Accordingly, based on the CBP data, and Go–Harvest’s failure to refute that data, we find that Go–Harvest made shipments of subject merchandise during the POR, and consequently, as a selected respondent, was required to answer the full questionnaire. By not

responding to the Department’s questionnaire, Go–Harvest failed to demonstrate that it qualifies for separate rate status. Accordingly, we consider Go–Harvest to be a part of the PRC–wide entity.

We find that the PRC–wide entity, including Go–Harvest, withheld requested information, failed to provide information in a timely manner and in the form requested, and significantly impeded this proceeding. Moreover, by refusing to answer the Department’s questionnaire, the PRC–wide entity, including Go–Harvest, failed to cooperate to the best of its ability. Therefore, the Department must rely on adverse facts otherwise available in order to determine a margin for the PRC–wide entity, pursuant to section 776(a)(2)(A), (B), (C) and 776(b) of the Act. See *e.g.*, *Non–Malleable Cast Iron Pipe Fittings from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 69546 (December 1, 2006) and accompanying Issues and Decision Memorandum at Comment 1. See also *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review and New Shipper Review*, 72 FR 10689, 10692 (March 9, 2007) (decision to apply total AFA to the NME–wide entity unchanged in *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review*, 72 FR 52052 (September 12, 2007) (“*First Vietnamese Shrimp Review*”). By doing so, we ensure that the companies that are part of the PRC–wide entity will not obtain a more favorable result by failing to cooperate than had they cooperated fully in this review.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In reviews, the Department normally selects, as AFA, the highest rate on the record of any segment of the proceeding. See, *e.g.*, *Certain Steel Nails from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008). The Court of International Trade (“CIT”) and the Federal Circuit have consistently upheld the Department’s practice in this regard. See *Rhone*

Poulenc, Inc. v. United States, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (“*Rhone Poulenc*”); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a LTFV investigation); *see also Kompass Food Trading Int’l v. United States*, 24 CIT 678, 689 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

The Department’s practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse “as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner.” *See Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (February 23, 1998). The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” *See SAA at 870; see also Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910, 76912 (December 23, 2004); *D&L Supply Co. v. United States*, 113 F. 3d 1220, 1223 (Fed. Cir. 1997). In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent’s prior commercial activity, selecting the highest prior margin “reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.” *Rhone Poulenc*, 899 F.2d at 1190. Consistent with the statute, court precedent, and its normal practice, the Department has assigned the rate of 112.81 percent, the highest rate on the record of any segment of the proceeding, to the PRC-wide entity, which includes Go-Harvest, as AFA. *See, e.g., Certain Frozen Warmwater Shrimp from the People’s Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2006 Antidumping Duty*

Administrative and New Shipper Reviews, 72 FR 52049 (September 12, 2007). As discussed further below, this rate has been corroborated.

Corroboration of Facts Available

Section 776(c) of the Act requires that the Department corroborate, to the extent practicable, secondary information on which it relies as facts available. To be considered corroborated, information must be found to be both reliable and relevant. We are applying as AFA the highest rate from any segment of this administrative proceeding, which is the rate currently applicable to all exporters subject to the PRC-wide rate. The AFA rate in the current review (*i.e.*, the PRC-wide rate of 112.81 percent) represents the highest rate from the petition in the LTFV investigation. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People’s Republic of China*, 70 FR 5149 (February 1, 2005).

For purposes of corroboration, the Department will consider whether that margin is both reliable and relevant. The AFA rate we are applying for the current review was corroborated in the LTFV investigation. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People’s Republic of China*, 69 FR 70997 (December 8, 2004). No information has been presented in the current review that calls into question the reliability of this information.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico; Final Results of Antidumping Administrative Review*, 61 FR 6812, 6814 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company’s uncharacteristic business expense resulting in an unusually high margin. The information used in calculating this margin was based on sales and production data submitted by the petitioner in the LTFV investigation, together with the most appropriate surrogate value information available to the Department chosen from submissions by the parties in the LTFV

investigation, as well as information gathered by the Department itself. Furthermore, the calculation of this margin was subject to comment from interested parties in the proceeding. As there is no information on the record of this review that demonstrates that this rate is not appropriately used as AFA, we determine that this rate has relevance.

As the 112.81 percent rate is both reliable and relevant, we determine that it has probative value. Accordingly, we determine that the calculated rate of 112.81 percent, which is the current PRC-wide rate, is in accord with the requirement of section 776(c) that secondary information be corroborated to the extent practicable (*i.e.*, that it have probative value). We have assigned this AFA rate to exports of the subject merchandise by the PRC-wide entity.

NME Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an 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 Brake Rotors From the People’s Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rate Determination

A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate. *See Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People’s Republic of China*, 71 FR 53079 (September 8, 2006); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People’s Republic of China*, 71 FR 29303 (May 22, 2006).

In the *Initiation*, the Department notified parties of the application

process by which exporters and producers may obtain separate rate status in NME investigations. *See Initiation*. It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *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*").

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) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

In this administrative review, only Regal and Shantou Longsheng have placed sufficient evidence on the record that demonstrate an absence of *de jure* control. *See* Regal's submission of October 3, 2008; *see also* Shantou Longsheng's submission of May 30, 2008. The Department has analyzed such PRC laws as the "Foreign Trade Law of the People's Republic of China" and the "Company Law of the People's Republic of China" and has found that they establish an absence of *de jure* control. *See, e.g., Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695, 30696 (June 7, 2001). We have no information in this proceeding that would cause us to reconsider this determination. Thus, we find that the evidence on the record supports a preliminary finding of an absence of *de jure* government control based on: (1) an absence of restrictive stipulations associated with the exporter's business license; (2) the legal authority on the record decentralizing control over the respondent, as demonstrated by the PRC laws placed on the record of this review; and (3)

other formal measures by the government decentralizing control of companies.

Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether the respondent has the authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589.

The Department conducted separate rate analyses for Regal and Shantou Longsheng, which have asserted the following: (1) there is no government participation in setting export prices; (2) sales managers and authorized employees have the authority to create binding sales contracts; (3) they do not have to notify any government authorities of management selections; (4) there are no restrictions on the use of export revenue; and (5) they are responsible for financing their own losses. The questionnaire responses of Regal and Shantou Longsheng do not indicate that pricing is coordinated among exporters. During our analysis of the information on the record, we found no information indicating the existence of government control of export activities. *See* Regal's submission of October 3, 2008; *see also* Shantou Longsheng's submission of May 30, 2008. Consequently, we preliminarily determine that Regal and Shantou Longsheng have met the criteria for the application of a separate rate.

In the *Initiation*, we requested that all companies listed therein wishing to qualify for separate rate status in this administrative review submit, as appropriate, either a separate rate status application or certification. *See Initiation*. As discussed above, the Department initiated this administrative review with respect to 482 companies, and is rescinding the review on five⁶ of those 482 companies. In addition, we are preliminarily rescinding the review with respect to eleven⁷ other companies due to the lack of shipments during the POR. Thus, including Regal and Shantou Longsheng, 466 companies remain subject to this review. Only Regal and Shantou Longsheng provided, as appropriate, either a separate rate application or certification. No other company listed in the *Initiation*, including Go-Harvest discussed above, has demonstrated its eligibility for separate rate status in this administrative review. Therefore, the Department preliminarily determines that there were exports of merchandise under review from PRC exporters that did not demonstrate their eligibility for separate rate status. As a result, the Department is treating these PRC exporters as part of the PRC-wide entity, subject to the PRC-wide rate.

Surrogate Country

When the Department investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, 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 FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are at a level of economic development comparable to that of the NME country and significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Normal Value" section below and in the Memorandum to the File through Scot Fullerton, Program Manager, Office IX, from Paul

⁶ These include Yelin Enterprise Co., Ltd. Hong Kong (the predecessor in interest to Hilltop International); Yangjiang City Yelin Hoitai Quick Frozen Seafood Co., Ltd.; Fuqing Yihua Aquatic Food Co., Ltd.; and Fuqing Minhua Trade Co., Ltd.

⁷ These include Allied Pacific Group (comprised of Allied Pacific Food (Dalian) Co., Ltd.; Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd.; Zhanjiang Allied Pacific Aquaculture Co., Ltd.; Allied Pacific (H.K.) Co., Ltd.; and King Royal Investments Ltd.); Gallant Ocean (Nanhai), Ltd.; Luk Ka Paper Industrial Ltd.; Shantou Yelin Frozen Seafood Co., Ltd.; and Shantou Yuexing Enterprise Company.

Walker, Senior Case Analyst, "Third Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China: Surrogate Factor Valuations for the Preliminary Results," dated concurrently with this notice ("Surrogate Values Memo").

As discussed in the "NME Country Status" section, the Department considers the PRC to be an NME country. The Department determined that India, Indonesia, the Philippines, Colombia, and Thailand are countries comparable to the PRC in terms of economic development. See the Department's letter to all interested parties, dated October 21, 2008. Moreover, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from these countries. See *Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process*, dated March 1, 2004. The Department finds India to be a reliable source for surrogate values because India is at a comparable level of economic development pursuant to 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available and reliable data. Furthermore, the Department notes that India has been the primary surrogate country in past segments. As noted above, the Petitioner submitted surrogate value data for certain, but not all, FOPs for Thailand on January 16, 2009. However, we note that we are placing Indian surrogate value information for all FOPs on the record of this review concurrently with this notice, and that the FOPs which are valued using Indian import statistics are of a greater HTS specificity than the Thai import statistics. See Surrogate Values Memo. Given the above facts, the Department has selected India as the primary surrogate country for this review.

U.S. Price

In accordance with section 772(a) of the Act, we calculated the export price ("EP") for sales to the United States for Regal. We calculated EP based on the price to unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, as appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight, foreign brokerage and handling, customs duties, domestic brokerage and handling and other movement expenses incurred. For the services provided by an NME vendor or paid for using an NME currency we based the deduction of these movement charges on surrogate values. See Surrogate Values Memo for

details regarding the surrogate values for movement expenses. For expenses provided by a market economy vendor and paid in U.S. dollars, we used the actual cost per kilogram of the freight. See Regal Analysis Memo.

Normal Value

Methodology

Section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME 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 bases NV on the FOP because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by Regal for the POR. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available 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. We added to each Indian import surrogate value, a surrogate freight cost calculated from 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. See *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407-1408 (Fed. Cir. 1997).

For these preliminary results, in accordance with the Department's practice, we used data from the *Indian Import Statistics* in order to calculate surrogate values for most of Regal's material inputs. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive. See, e.g., *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*, 69 FR

42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). The record shows that the Indian import statistics represent import data that are contemporaneous with the POR, product-specific, and tax-exclusive. Where we could not obtain publicly available information contemporaneous to the POR with which to value FOPs, we adjusted the surrogate values, where appropriate, using the Indian Wholesale Price Index ("WPI") as published in *OECD Stat* by the Organization for Economic Development and Cooperation.

To value shrimp larvae for Regal, which has an integrated production process, the Department 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. However, because the shrimp larvae prices are dated before the POR, we inflated the price to be contemporaneous with the POR using WPI.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, dated July 2006. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to industries in India. Since the rates are dated before the POR, we inflated the values to be contemporaneous with the POR using WPI. See Surrogate Values Memo.

Consistent with 19 CFR 351.408(c)(3), we valued direct, indirect, and packing labor, using the most recently calculated regression-based wage rate, which relies on 2005 data. This wage rate can currently be found on the Department's website on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in May 2008, ia.ita.doc.gov/wages/05wages/05wages-051608.html. The source of these wage-rate data on the Import Administration's web site is the *Yearbook of Labour Statistics 2002*, ILO (Geneva: 2002), Chapter 5B: Wages in Manufacturing. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by Regal.

To value water, the Department used data from the Maharashtra Industrial Development Corporation (www.midindia.org/www.midindia.org) since it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from June 2003: 193 of the water rates were for the “inside industrial areas” usage category and 193 of the water rates were for the “outside industrial areas” usage category. Because the value was not contemporaneous with the POR, we adjusted the rate for inflation.

We valued truck freight expenses using a per-unit average rate calculated from data on the Info Banc web site: www.infobanc.com/logistics/logtruck.htm. The logistics section of this website contains inland freight truck rates between many large Indian cities. Since this value is dated after the POR, we deflated the values to be contemporaneous with the POR using WPI. See Surrogate Values Memo.

We valued brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. See Surrogate Values Memo. Specifically, we averaged the public brokerage and handling expenses reported by (a) Agro Dutch Industries Ltd. in the antidumping duty administrative review of certain preserved mushrooms from India, (b) Kejirwal Paper Ltd. in the LTFV investigation of certain lined paper products from India, and (c) Essar Steel in the antidumping duty administrative review of hot-rolled carbon steel flat products from India.⁸ See *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006); *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products From India*, 71 FR 19706 (April 17, 2006) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006)), and *Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018, 2021 (January 12, 2006) (unchanged in *Certain Hot-Rolled*

Carbon Steel Flat Products From India: Final Results of Antidumping Administrative Review, 71 FR 40694 (July 18, 2006)). The Department derived the average per-unit amount from each source and adjusted each average rate for inflation. Finally, the Department averaged the average per-unit amounts to derive an overall average rate for the POR.

To value factory overhead, sales, general and administrative expenses, and profit, we relied upon publicly available information in the 2007–2008 annual report of Falcon Marine Exports Ltd., an integrated Indian producer of subject merchandise. See Surrogate Values Memo.

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.

Preliminary Results of the Review

The Department has determined that the following preliminary dumping margins exist for the period February 1, 2007, through January 31, 2008:

HONEY FROM THE PRC

| Manufacturer/Exporter | Margin |
|------------------------------------|---------|
| Regal | 26.30% |
| Shantou Longsheng | 26.30% |
| PRC-wide Entity ⁹ | 112.81% |

⁹The PRC-wide entity includes the 464 companies currently under review that have not established their entitlement to a separate rate, including Zhanjiang Go-Harvest Aquatic Products Co., Ltd.

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results. Interested parties must provide the Department with supporting documentation for the publicly available information to value each FOP. Additionally, in accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department

notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). See *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. See 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the deadline for filing case briefs. See 19 CFR 351.309(d). The Department urges interested parties to provide an executive summary of each argument contained within the case briefs and rebuttal briefs.

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by these reviews. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In accordance with 19 CFR 351.212(b)(1), for Regal we calculated an exporter/importer (or customer)-specific assessment rate for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). See 19 CFR 351.212(b)(1). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, we will apply the assessment rate to the entered value of the importer's/customer's entries during the POR. See 19 CFR 351.212(b)(1).

⁸These data have been placed on the record of this case and can be found in attachments to the Factors Memo.

Where we do not have entered values for all U.S. sales, we calculated a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). See 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific ad valorem ratios based on the estimated entered value. Where an importer (or customer)-specific ad valorem rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. See 19 CFR 351.106(c)(2).

For the companies receiving a separate rate that were not selected for individual review, we will calculate an assessment rate based on the weighted average of the cash deposit rates calculated for the companies selected for individual review pursuant to section 735(c)(5)(B) of the Act.

For those companies for which this review has been preliminarily rescinded,¹⁰ the Department intends to assess antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2), if the review is rescinded for these companies.

For Yelin/Hilltop, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(2). The Department will issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Cash Deposit Requirements

The following cash-deposit requirements will be effective upon publication of these final results for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by Regal and Shantou

Longsheng the cash deposit rate will be 26.30 percent; (2) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, and thus, are a part of the PRC-wide entity, the cash-deposit rate will be the PRC-wide rate of 112.81 percent; and (3) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until further notice.

Notification of Interested Parties

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

This administrative review, and this notice are in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: March 2, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9-4900 Filed 3-6-09; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XN21

Endangered Species; File No. 14272

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Lawrence Wood, Marinelifelife Center of Juno Beach, 14200 U.S. Hwy. #1, Juno Beach, Florida, 33408, has applied in due form for a permit to take hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before April 8, 2009.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public

Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, <https://apps.nmfs.noaa.gov/index.cfm>, and then selecting File No. 14272 from the list of available applications. These documents are also available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)427-2521; and

Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727)824-5312; fax (727)824-5309.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427-2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is NMFS.Pr1Comments@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: File No. 14272.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Malcolm Mohead, (301)713-2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222-226).

The proposed research would continue to describe the abundance and movements of an aggregation of hawksbill sea turtles found on the barrier reefs of Palm Beach County, Florida. Up to 75 animals would be annually captured, measured, flipper and passive integrated transponder tagged, marked, photographed, tissue and blood sampled, and released. Up to 10 of these animals would also have satellite transmitters attached to their carapace. The permit would be issued for five years.

¹⁰ These include Allied Pacific Group (comprised of Allied Pacific Food (Dalian) Co., Ltd.; Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd.; Zhanjiang Allied Pacific Aquaculture Co., Ltd.; Allied Pacific (H.K.) Co., Ltd.; and King Royal Investments Ltd.); Gallant Ocean (Nanhai), Ltd.; Luk Ka Paper Industrial Ltd.; Shantou Yelin Frozen Seafood Co., Ltd.; and Shantou Yuexing Enterprise Company.