

request to the Assistant Secretary for Import Administration, Room 1870, within 30 days of the date of 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 issues to be discussed. *Id.* Issues raised in the hearing will be limited to those raised in the respective case briefs. *Id.* The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

#### Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b)(1). The Department will issue appropriate appraisal instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

For Devi and Falcon we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales. *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 will calculate importer-specific *ad valorem* ratios based on the estimated entered value.

For the companies which 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 excluding any which are *de minimis* or determined entirely on AFA.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis*. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable. *See* 751(a)(2)(C) of the Act.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

#### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: 1) the cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; 2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 10.17 percent, the all-others rate made effective by the LTFV investigation. *See Shrimp Order*, 70 FR at 5148. These deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the

relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

Dated: March 2, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

A-549-822

#### Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results of Antidumping Duty Administrative Review

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

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp from Thailand with respect to 136 companies. The two respondents which the Department selected for individual examination are Andaman Seafood Co., Ltd. (Andaman), Wales & Co. Universe Limited, Chanthaburi Frozen Food Co., Ltd. (CFF), Chanthaburi Seafoods Co., Ltd. (CSF), Phattana Seafood Co., Ltd. (PTN), Phattana Frozen Food Co., Ltd. (PFF), Thailand Fishery Cold Storage Public Co., Ltd. (TFC), Thai International Seafoods Co., Ltd. (TIS), and Sea Wealth Frozen Food Co., Ltd. (Sea Wealth) (collectively, the Rubicon Group), and Pakfood Public Company Limited and its affiliates, Asia Pacific (Thailand) Company, Limited and Takzin Samut Company, Limited (collectively, Pakfood). The respondents which were not selected for individual examination are listed in the "Preliminary Results of Review" section of this notice. This is the third administrative review of this order. The review covers the period February 1, 2007, through January 31, 2008.

We preliminarily determine that sales were made by Pakfood and the Rubicon Group below normal value (NV). In addition, based on the preliminary results for the respondents selected for

individual examination, we have preliminarily determined a weighted-average margin for those companies that were not individually examined.

If the preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on the preliminary results.

**EFFECTIVE DATE:** March 9, 2009.

**FOR FURTHER INFORMATION CONTACT:** Kate Johnson or David Goldberger, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482-4929 and (202) 482-4136, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

In February 2005, the Department published in the **Federal Register** an antidumping duty order on certain frozen warmwater shrimp from Thailand. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Thailand*, 70 FR 5145 (Feb. 1, 2005). On February 4, 2008, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order of certain frozen warmwater shrimp from Thailand for the period February 1, 2007, through January 31, 2008. See *Antidumping and Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 73 FR 6477 (February 4, 2008). In response to timely requests from interested parties, pursuant to 19 CFR 351.213(b)(1) and (2), to conduct an administrative review of the sales of certain frozen warmwater shrimp made by numerous companies during the period of review (POR), the Department initiated an administrative review for 165 companies. These companies are listed in the Department's notice of initiation. See *Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, and Thailand: Notice of Initiation of Administrative Reviews*, 73 FR 18754 (April 7, 2008).

Between March and May 2008, the Department received submissions from certain companies that indicated they had no shipments of subject merchandise to the United States during the POR.

Based upon the resources available to the Department, we determined that it

was not practicable to examine all exporters/producers of subject merchandise for which a review was requested. As a result, on May 27, 2008, we selected the two largest producers/exporters of certain frozen warmwater shrimp from Thailand during the POR, Pakfood and the Rubicon Group, for individual examination in this segment of the proceeding. See Memorandum to James Maeder from Irina Itkin entitled, "2007-2008 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Thailand: Selection of Respondents for Individual Review," dated May 27, 2008. On May 28, 2008, we issued the antidumping duty questionnaire to Pakfood and the Rubicon Group.

On July 7, 2008, in accordance with 19 CFR 351.213(d)(1), the petitioner withdrew its request for review for the following eighteen companies: Anglo-Siam Seafoods Co., Ltd.; Applied DB Ind; Chonburi LC; Gallant Ocean (Thailand) Co., Ltd. (Gallant Ocean)<sup>1</sup>; Haitai Seafood Co., Ltd.; High Way International Co., Ltd.; Li-Thai Frozen Foods Co., Ltd.; Merkur Co., Ltd.; Ming Chao Ind Thailand; Nongmon SMJ Products; Queen Marine Food Co., Ltd.; SCT Co., Ltd.; Search & Serve; Smile Heart Foods Co., Ltd.; Shianlin Bangkok Co., Ltd.; Star Frozen Foods Co., Ltd.; Thai World Imports & Exports; and Wann Fisheries Co., Ltd.

We received responses to sections A, B, C, and D of the questionnaire from Pakfood and the Rubicon Group in July and August 2008.

On October 8, 2008, the Department postponed the preliminary results in this review until no later than 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).

During the period September 2008 through January 2009, we issued to Pakfood and the Rubicon Group supplemental questionnaires regarding sections A, B, C, and D of the original questionnaire. We received responses to these questionnaires during the period October 2008 through February 2009.

On October 27, 2008, the Department issued a memorandum indicating that it intended to rescind the administrative review with respect to 29 respondent companies, and it invited comments on this action from interested parties. See Memorandum to The File from Kate Johnson entitled "Intent to Rescind in

Part the Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Thailand," dated October 27, 2008 (Intent to Rescind Memorandum). On November 3, 2008, and November 13, 2008, the Department received comments from 32 U.S. producers opposing the rescission with respect to the companies for which the petitioner withdrew its review request. On November 6, 2008, the petitioner responded to the comments filed on November 3, 2008.

On December 19, 2008, we published a notice rescinding the administrative review with respect to 29 companies for the following reasons, where applicable: 1) the request for an administrative review for the company was withdrawn in a timely manner; 2) the company had no shipments of subject merchandise to the United States during the POR; or 3) although there appeared to be U.S. customs entries of subject merchandise, we determined that the entries were not reportable transactions. See *Certain Frozen Warmwater Shrimp from Thailand; Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 77612 (December 19, 2008). See also Intent to Rescind Memorandum.

We conducted a verification of the Rubicon Group's cost responses in February 2009.

**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,<sup>2</sup> 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 order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), 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 examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn

<sup>1</sup> Gallant Ocean has not withdrawn its February 29, 2008, request for review.

<sup>2</sup> "Tails" in this context means the tail fan, which includes the telson and the uropods.

(*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 order. 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 order.

Excluded from the scope are: 1) breaded shrimp and prawns (HTSUS subheading 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 (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); 7) certain dusted shrimp; and 8) 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 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 order are currently classified 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, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes

only and are not dispositive, but rather the written description of the scope of this order is dispositive.

#### Period of Review

The POR is February 1, 2007, through January 31, 2008.

#### Comparisons to Normal Value

To determine whether sales of certain frozen warmwater shrimp from Thailand to the United States were made at less than NV, we compared the export price (EP) or constructed export price (CEP) to the NV, as described in the "Constructed Export Price/Export Price" and "Normal Value" sections of this notice, below.

Pursuant to section 777A(d)(2) of the Tariff Act of 1930, as amended (the Act), for Pakfood and the Rubicon Group we compared the EPs or CEPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section, below.

#### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Pakfood and the Rubicon Group covered by the description in the "Scope of the Order" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared U.S. sales of shrimp to sales of shrimp made in the comparison market for Pakfood (home market) and the Rubicon Group (Canada) within the contemporaneous window period, which extends from three months prior to the month of the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales of shrimp to sales of shrimp of the most similar foreign like product made in the ordinary course of trade. For the Rubicon Group, where there were no sales of identical or similar merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we made product comparisons using constructed value (CV).

With respect to sales comparisons involving broken shrimp, we compared Pakfood's and the Rubicon Group's sales of broken shrimp in the United States to its sales of comparable quality shrimp in the comparison market. Where there were no sales of identical broken shrimp in the comparison market made in the ordinary course of trade to compare to

U.S. sales, we compared U.S. sales of broken shrimp to sales of the most similar broken shrimp made in the ordinary course of trade. Where there were no sales of identical or similar broken shrimp, we made product comparisons using CV.

In making the product comparisons, we matched foreign like products based on the physical characteristics reported by Pakfood and the Rubicon Group in the following order: cooked form, head status, count size, organic certification, shell status, vein status, tail status, other shrimp preparation, frozen form, flavoring, container weight, presentation, species, and preservative.

#### Constructed Export Price/Export Price

For all U.S. sales made by Pakfood, as well as certain U.S. sales made by the Rubicon Group, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of record.

For certain U.S. sales made by the Rubicon Group, we calculated CEP in accordance with section 772(b) of the Act because the subject merchandise was sold for the account of the Rubicon Group by its subsidiary in the United States to unaffiliated purchasers.

#### A. Pakfood

We based EP on FOB, C&F or DDP (delivered, duty paid) prices to the first unaffiliated purchaser in the United States. Where appropriate, we made adjustments to the starting price for discounts. We made deductions, where appropriate, for foreign inland freight expenses, pre-sale warehousing expenses, survey fees, foreign brokerage expenses, ocean freight expenses (offset by freight adjustments, where appropriate), marine insurance expenses, U.S. brokerage and handling expenses, and U.S. customs duties (including harbor maintenance fees and merchandise processing fees) in accordance with section 772(c)(2)(A) of the Act.

#### B. 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. Where appropriate, we made adjustments to the starting price 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 expenses, foreign warehousing expenses, foreign inland insurance expenses, foreign brokerage and handling expenses, ocean freight expenses (offset by freight refunds, where appropriate), marine insurance expenses, U.S. brokerage and handling expenses, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), and U.S. inland freight expenses (*i.e.*, freight from port to warehouse).

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 to the customer as the date of sale for CEP sales, in accordance with our practice. *See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 11; *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10 (*Thai Shrimp LTFV Investigation Final*); *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

Where appropriate, we made adjustments for billing adjustments, discounts and rebates. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight expenses, foreign warehousing expenses, foreign inland insurance expenses, foreign brokerage and handling expenses, ocean freight expenses (offset by freight refunds, where appropriate), marine insurance expenses, U.S. brokerage and handling expenses, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland insurance expenses, 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 (*e.g.*, bank charges, advertising, commissions, and 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 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.

#### Normal Value

##### A. Home Market Viability and Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the 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. Based on this comparison, we determined that Pakfood had a viable home market during the POR. Consequently, we based NV on home market sales for Pakfood.

Regarding the Rubicon Group, we determined that this respondent'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 the Rubicon Group's sales to Canada, its largest third-country market, as the basis for comparison-market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

##### B. Affiliated-Party Transactions and Arm's-Length Test

During the POR, Pakfood sold the foreign like product to affiliated customers. To test whether these sales were made at arm's-length prices, we compared, on a product-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all discounts and rebates, movement charges, direct selling expenses, and packing expenses. Pursuant to 19 CFR 351.403(c) and in accordance with the

Department's practice, where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (Nov. 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 percent and 102 percent in order for sales to be considered in the ordinary course of trade and used in the NV calculation). Sales to affiliated customers in the comparison market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade. *See* 19 CFR 351.102(b).

##### C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *See Id.*; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),<sup>3</sup> we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001). When the Department is unable to match U.S.

<sup>3</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.

sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Plate from South Africa*, 62 FR at 61732–33.

In this administrative review, we obtained information from each respondent regarding the marketing stages involved in making the reported foreign market 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.

#### 1. Pakfood

Pakfood reported that it made EP sales in the U.S. market through a single channel of distribution (*i.e.*, direct sales to distributors). We examined the selling activities performed for this channel and found that Pakfood performed the following selling functions: sales forecasting/market research, sales promotion/advertising, price negotiation, order processing, invoice issuance, payment receipt, delivery services, and packing. Accordingly, we find that Pakfood performed sales and marketing, and freight and delivery services at the same relative level of intensity for all U.S. sales. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market. With respect to the home market, Pakfood made sales to processors, distributors, retailers, and end-users. Pakfood stated that its home market sales were made through a single channel of distribution, regardless of customer category. We examined the selling activities performed for this channel, and found that Pakfood performed the following selling functions: sales forecasting/market research, sales promotion/advertising, price negotiation, order processing, invoice issuance, delivery services, payment receipt, and packing. Accordingly, we find that Pakfood

performed sales and marketing, and freight and delivery services at the same relative level of intensity for all customers in the home market. Because all sales in the home market are made through a single distribution channel, we preliminarily determine that there is one LOT in the home market.

Finally, we compared the EP LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers are virtually identical. Therefore, we determined that sales to the U.S. and home markets during the POR were made at the same LOT, and as a result, no LOT adjustment was warranted.

#### 2. The Rubicon Group

The Rubicon Group reported that it made both EP and CEP sales in the U.S. market to distributors/wholesalers, retailers, and food service industry customers. For EP sales, the Rubicon Group reported sales through one channel of distribution (*i.e.*, direct from the Thai exporters to unaffiliated U.S. customers). For CEP sales, the Rubicon Group reported that its U.S. affiliate made sales through two channels of distribution: 1) from a warehouse; and 2) direct shipments to customers (“drop shipments”).

We examined the selling activities performed for each channel. For direct EP sales, the Rubicon Group reported the following selling functions: sales forecasting/market research, sales promotion/trade shows, inventory maintenance, order input/processing, freight and delivery arrangements, visits/calls and correspondence to customers, development of new packaging (with customer), packing and after-sales services. Accordingly, we found that the Rubicon Group performed sales and marketing, freight and delivery, and inventory maintenance and warehousing activities. As there was only one channel of distribution for EP sales, we found that there was one LOT for EP sales.

For both warehoused and drop-shipment CEP sales, the Rubicon Group reported the following selling functions: inventory maintenance, order input/processing, freight and delivery arrangements, and packing. As the selling functions performed for both warehoused and drop-shipment sales were identical, we found that there was one LOT for CEP sales.

With respect to the Canadian market, the Rubicon Group reported sales to distributors/wholesalers, retailers, and end users. The Rubicon Group stated that its Canadian sales were made through two channels of distribution: 1)

direct to Canadian customers; and 2) through its U.S. affiliate from a Canadian warehouse. We examined the reported selling activities and found that the Rubicon Group performed the following selling functions for direct sales to Canada: sales forecasting; market research; sales promotion; trade shows; inventory maintenance; order input/processing; freight and delivery arrangements; visits, calls and correspondence to customers; development of new packaging (with customer); packing; and after-sales services. For warehoused sales to Canada, we found that the Rubicon Group, via its U.S. affiliate, performed the following selling functions: sales forecasting; market research; advertising; sales promotion; trade shows; inventory maintenance; order input/processing; freight and delivery arrangements; visits, calls and correspondence to customers; development of new packaging and new markets (with customer); and after-sales services. Furthermore, we found that the Rubicon Group performed selling functions related to sales and marketing, freight and delivery, and inventory maintenance and warehousing at the same relative level of intensity for all customers in the comparison market. Therefore, based on our overall analysis, we found that all of the Rubicon Group’s sales in the Canadian market constituted one LOT and that this LOT was the same as the LOT for EP sales. Consequently, we matched EP sales to comparison-market sales at the same LOT and no LOT adjustment was warranted.

In comparing the Canadian LOT to the CEP LOT, we found that the selling activities performed by the Thai packers<sup>4</sup> for CEP sales were significantly fewer than the selling activities that were performed for the Canadian sales. The Thai packers provided the following selling functions: sales forecasting; market research; sales promotion; advertising; trade shows; inventory maintenance; order input/processing; freight and delivery arrangements; visits, calls and correspondence to customers; development of new packaging and new markets (with customer); packing; and after-sales services for Canadian sales. The only selling functions that the Thai packers provided for CEP sales were inventory maintenance, order input/processing, freight and delivery

<sup>4</sup> The following companies in the Rubicon Group produced subject merchandise during the POR and are collectively referred to as the “Thai packers”: Andaman, CSF, CFF, PTN, PFF, TFC, TIS, and Sea Wealth.

arrangements, and packing. Therefore, the Thai packers provided many more selling functions for Canadian sales than they provided for CEP sales, thus making the Canadian LOT more advanced than the CEP LOT.

The Rubicon Group provided evidence on the record of this review supporting its contention that the selling activities that the Thai packers performed for Canadian customers were much more extensive than those performed for U.S. sales to its affiliate Rubicon Resources. While sales to Canada consumed a great deal of the Thai packers' time and resources, the interaction between the Thai packers and Rubicon Resources appeared to be perfunctory, consuming very little of the Thai packers' time and resources. See pages 11 through 20 of the Rubicon Group's October 29, 2008, response to the Department's supplemental Sections A, B, and C questionnaire.

The record of this review also contains information concerning Wales & Co. Universe Ltd.'s (Wales)<sup>5</sup> activities with respect to sales made by the Thai packers to Rubicon Resources. According to Wales, it had limited communications with Rubicon Resources on behalf of the Thai packers because the Thai packers did not communicate directly with Rubicon Resources regarding U.S. sales made during the POR. As stated above, the Thai packers regularly communicated with unaffiliated customers to provide market analysis, negotiate sales opportunities, promote products, schedule in-person meetings, and develop new packaging designs. The Thai packers engaged in this level of service because it was necessary in order to compete for sales to unaffiliated customers. However, because the Thai packers created Rubicon Resources for the purpose of marketing and distributing their seafood products in the United States, and Rubicon Resources is required to purchase shrimp from the Thai packers, the Thai packers did not need to compete for business with Rubicon Resources as they did with unaffiliated customers. Accordingly, the Thai packers did not need to perform the same high level of service (e.g., market analysis, sales forecasting, or packaging design) for Rubicon Resources that they provided to unaffiliated customers, including Canadian customers, because Rubicon Resources performed these services for U.S. customers itself, using its sales and

marketing staff based in the United States.

Finally, the Rubicon Group provided documentation on the record of this review confirming the limited selling activities with respect to the Thai packers' sales to Rubicon Resources (i.e., invoices and documentation associated with the shipment of the merchandise to Rubicon Resources) as well as documentation concerning Rubicon Resources' sales to Canada (e.g., a sample report Rubicon Resources prepared to help a customer identify sales trends and make informed judgments on future purchases).

Based on the above analysis, we considered the CEP LOT to be different from the Canadian LOT and to be at a less advanced stage of distribution than the Canadian LOT. Accordingly, we could not match CEP sales to sales at the same LOT for Canadian sales, nor could we determine a LOT adjustment based on the Rubicon Group's Canadian sales because there was only one LOT in Canada. Therefore, it is not possible to determine if there was a pattern of consistent price differences between the sales on which NV is based and Canadian sales at the LOT of the export transaction. See section 773(a)(7)(A) of the Act. Furthermore, we have no other information that provides an appropriate basis for determining a LOT adjustment. Consequently, because the data available did not form an appropriate basis for making a LOT adjustment but the Canadian LOT was at a more advanced stage of distribution than the CEP LOT, we made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Act. The CEP offset was calculated as the lesser of: (1) the indirect selling expenses incurred on the third-country sales, or (2) the indirect selling expenses deducted from the starting price in calculating CEP.

#### D. Cost of Production Analysis

We found that Pakfood had made sales below the cost of production (COP) in the 2004–2006 administrative review, the most recently completed segment of this proceeding as of the date of the initiation of the 2007–2008 administrative review, and such sales were disregarded. See *Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 10669 (March 9, 2007); unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007). Thus, in accordance with section 773(b)(2)(A)(ii)

of the Act, there are reasonable grounds to believe or suspect that Pakfood made sales in the home market at prices below the cost of producing the merchandise in the current review period.

We found that the Rubicon Group had made sales below the COP in the LTFV investigation, the most recently completed segment of this proceeding as of the date of the initiation of the 2007–2008 administrative review, and such sales were disregarded. See *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Preliminary Critical Circumstances Determination: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 47100, 47107 (Aug. 4, 2004); unchanged in the *Thai Shrimp LTFV Investigation Final*. Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that the Rubicon Group made sales in the third-country market at prices below the cost of producing the merchandise in the current review period.

#### 1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondents' COPs based on the sum of their costs of materials and conversion for the foreign like product, plus amounts for G&A expenses and interest expenses (see "Test of Comparison Market Sales Prices" section below for treatment of comparison market selling expenses).

The Department relied on the COP data submitted by Pakfood and the Rubicon Group for the cost reporting period in their most recent supplemental section D questionnaire responses for the COP calculations, except for the following instances where the information was not appropriately quantified or valued:

#### Pakfood

We did not make any adjustments to Pakfood's reported COP data.

#### The Rubicon Group

For CFF and CSF, we offset the total reported G&A expenses by the value of packaging scrap sold during the cost reporting period. In addition, for CFF, CSF and PTN, we adjusted the respective financial expense rate calculations to correct a minor calculation error and to reduce the applied interest income offset amount by the interest income earned from non-current assets. See Memorandum to Neal Halper, Director, Office of Accounting from Angela Strom, "Cost of Production and Constructed Value

<sup>5</sup> Wales and Co. Universe Ltd. is a member of the Rubicon Group.

Calculation Adjustments for the Preliminary Results the Rubicon Group," dated March 2, 2009.

## 2. Test of Comparison-Market Sales Prices

On a product-specific basis, we compared the weighted-average COP to the home market sales (for Pakfood) or third-country sales (for the Rubicon Group) of the foreign like product, adjusted where applicable, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices, adjusted for any applicable billing adjustments, were exclusive of any applicable movement charges, rebates, discounts, and direct and indirect selling expenses, and packing expenses.

## 3. Results of the COP Test

In determining whether to disregard comparison-market sales made at prices below the COP, we examine, in accordance with sections 773(b)(1)(A) and (B) of the Act: 1) whether, within an extended period of time, such sales were made in substantial quantities; and 2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent's comparison-market sales of a given product 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 within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales because: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act, and 2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain specific products, more than 20 percent of Pakfood's and the Rubicon Group's comparison-market sales were at prices less than the COP and, in addition, such 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 as the basis for

determining NV, in accordance with section 773(b)(1) of the Act.

For those U.S. sales of subject merchandise for which there were no useable comparison-market sales in the ordinary course of trade, we compared EPs or CEPs to the CV in accordance with section 773(a)(4) of the Act. See "Calculation of Normal Value Based on Constructed Value" section below.

## E. Calculation of Normal Value Based on Comparison-Market Prices

### 1. Pakfood

We based NV for Pakfood on ex-factory or delivered prices to unaffiliated customers in the home market, or prices to affiliated customers in the home market that were determined to be at arm's length. Where appropriate, we made adjustments for billing adjustments and discounts. We made deductions, where appropriate, from the starting price for inland freight and pre-sale warehousing expenses, under section 773(a)(6)(B)(ii) of the Act.

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 imputed credit expenses, bank/wire fee charges, commissions, and express mail charges, where appropriate. We also made adjustments in accordance with 19 CFR 351.410(e) for indirect selling expenses incurred on comparison-market or U.S. sales where commissions were granted on sales in one market but not the other. Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of: 1) the amount of commission paid in the U.S. market; or 2) the amount of indirect selling expenses incurred in the comparison market.

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 home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

### 2. The Rubicon Group

For the Rubicon Group, we calculated NV based on prices to unaffiliated customers. Where appropriate, we made adjustments for billing adjustments and rebates. We also made deductions for movement expenses, including inland freight (plant to warehouse and warehouse to port), warehousing, inland insurance, brokerage and handling, ocean freight (offset by freight refunds,

where appropriate), third-country inland insurance, third-country customs fees, third-country brokerage and handling expenses, and third-country warehousing expenses, 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, bank charges, 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, bank charges, commissions, advertising expenses, and repacking expenses, pursuant to 773(a)(6)(C) of the Act. In addition, we made a CEP offset in accordance with section 773(a)(7)(B) of the Act, as discussed above in the "Level of Trade" section.

We also made adjustments in accordance with 19 CFR 351.410(e) for indirect selling expenses incurred on comparison-market or U.S. sales where commissions were granted on sales in one market but not the other. Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of: 1) the amount of commission paid in the U.S. market; or 2) the amount of indirect selling expenses incurred in the comparison market. If the commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV for the lesser of: 1) the amount of commission paid in the comparison market; or 2) the amount of indirect selling expenses incurred in the U.S. market.

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.

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

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for those frozen warmwater shrimp products for Pakfood and the Rubicon Group for which we could not determine the NV based on comparison-market sales, either because there were no useable sales of a comparable product or all sales of comparable products failed the COP test, we based NV on CV.

Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for SG&A expenses, profit, and U.S. packing costs. For the Rubicon Group, we calculated the cost of materials and fabrication based on the methodology described in the "Cost of Production Analysis" section, above, and we based SG&A and profit for each respondent on the actual amounts incurred and realized by it in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act. For comparisons to the Rubicon Group's EP, we made circumstances-of-sale adjustments by deducting direct selling expenses incurred on comparison-market sales from, and adding U.S. direct selling expenses to CV, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410.

**Currency Conversion**

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415 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**

We preliminarily determine that weighted-average dumping margins exist for the respondents for the period February 1, 2006, through January 31, 2007, as follows:

Manufacturer/Exporter	Percent Margin
Pakfood Public Company Limited / Asia Pacific (Thailand) Company Limited / Takzin Samut Company Limited (collectively, Pakfood) .....	4.25
Andaman Seafood Co., Ltd. / Chanthaburi Frozen Food Co., Ltd. / Chanthaburi Seafoods Co., Ltd. / Phattana Seafood Co., Ltd. / Phattana Frozen Food Co., Ltd. / Seawalth Frozen Food Co. Ltd. / Thailand Fishery Cold Storage Public Co., Ltd. / Thai International Seafoods Co., Ltd. / Wales & Co. Universe Limited (collectively, the Rubicon Group) .....	4.64

Manufacturer/Exporter	Percent Margin	Manufacturer/Exporter	Percent Margin
Review-Specific Average Rate Applicable to the Following Companies: <sup>6</sup>		Gulf Coast Crab Intl .....	4.51
		H.A.M. International Co., Ltd. ....	4.51
		Heng Seafood Limited Partnership .....	4.51
		Heritrade Co., Ltd. ....	4.51
		HIC (Thailand) Co., Ltd. ....	4.51
		I.T. Foods Industries Co., Ltd. ....	4.51
		Inter-Oceanic Resources Co., Ltd. ....	4.51
		Inter-Pacific Marine Products Co., Ltd. ....	4.51
		Intersia Foods Co., Ltd. ....	4.51
		K .D. Trading Co., Ltd. ....	4.51
		K Fresh .....	4.51
		KF Foods .....	4.51
		K.L. Cold Storage Co., Ltd. ....	4.51
		Kiang Huat Sea Gull Trading Frozen Food Public Co., Ltd. ....	4.51
		Kingfisher Holdings Ltd. ....	4.51
		Kibun Trdg .....	4.51
		Klang Co., Ltd. ....	4.51
		Kitchens of the Ocean (Thailand) Ltd. ....	4.51
		Kongphop Frozen Foods Co., Ltd. ....	4.51
		Kosamut Frozen Foods Co., Ltd. ....	4.51
		Lee Heng Seafood Co., Ltd. ....	4.51
		Leo Transports .....	4.51
		Maersk Line .....	4.51
		Magnate & Syndicate Co., Ltd. ....	4.51
		Mahachai Food Processing Co., Ltd. ....	4.51
		Marine Gold Products Limited .....	4.51
		May Ao Co., Ltd. ....	4.51
		May Ao Foods Co., Ltd. ....	4.51
		N&N Foods Co., Ltd. ....	4.51
		Namprik Maesri Ltd. Part. ....	4.51
		Narong Seafood Co., Ltd. ....	4.51
		Ongkorn Cold Storage Co., Ltd. ....	4.51
		Pacific Queen Co., Ltd. ....	4.51
		Penta Impex Co., Ltd. ..	4.51
		Pinwood Nineteen Ninety Nine .....	4.51
		Piti Seafoods Co., Ltd. ....	4.51
		Premier Frozen Products Co., Ltd. ....	4.51
		Preserved Food Specialty Co., Ltd. ....	4.51
		Rayong Coldstorage (1987) Co., Ltd. ....	4.51
		S&D Marine Products Co., Ltd. ....	4.51
		S&P Aquarium .....	4.51
		S&P Syndicate Public Company Ltd. ....	4.51
		S. Chaivaree Cold Storage Co., Ltd. ....	4.51
		S.C.C. Frozen Seafood Co., Ltd. ....	4.51
		S. Khonkaen Food Industry Public Co., Ltd. ....	4.51
		SMP Foods Products Co., Ltd. ....	4.51
ACU Transport Co., Ltd. ....	4.51		
Ampai Frozen Food Co., Ltd. ....	4.51		
A.S. Intermarine Foods Co., Ltd. ....	4.51		
Asian Seafoods Coldstorage Public Co., Ltd. ....	4.51		
Asian Seafoods Coldstorage (Suratthani) Co., Ltd. ....	4.51		
Assoc. Commercial Systems .....	4.51		
A. Wattanachai Frozen Products Co., Ltd. ....	4.51		
Bangkok Dehydrated Marine Product Co., Ltd. ....	4.51		
Bright Sea Co., Ltd. ....	4.51		
C P Mdse .....	4.51		
C Y Frozen Food Co., Ltd. ....	4.51		
Chaiwarut Co., Ltd. ....	4.51		
Chaivaree Marine Products Co., Ltd. ....	4.51		
Charoen Pokphand Foods Public Co., Ltd. ....	4.51		
Chue Eie Mong Eak Ltd. Part. ....	4.51		
Core Seafood Processing Co., Ltd. ....	4.51		
Crystal Seafood .....	4.51		
Daedong (Thailand) Co. Ltd. ....	4.51		
Daiei Taigen (Thailand) Co., Ltd. ....	4.51		
Daiho (Thailand) Co., Ltd. ....	4.51		
Earth Food Manufacturing Co., Ltd. ....	4.51		
Euro-Asian International Seafoods Co., Ltd. ....	4.51		
F.A.I.T. Corporation Limited .....	4.51		
Far East Cold Storage Co., Ltd. ....	4.51		
Findus (Thailand) Ltd. ..	4.51		
Fortune Frozen Foods (Thailand) Co., Ltd. ...	4.51		
Frozen Marine Products Co., Ltd. ....	4.51		
Gallant Ocean (Thailand) Co., Ltd. ....	4.51		
Gallant Ocean Seafood Corporation .....	4.51		
Good Fortune Cold Storage Co., Ltd. ....	4.51		
Good Luck Product Co., Ltd. ....	4.51		

<sup>6</sup>This rate is based on the weighted average of the margins calculated for those companies selected for individual examination, excluding de minimis margins or margins based entirely on AFA.

Manufacturer/Exporter	Percent Margin	Manufacturer/Exporter	Percent Margin
Samui Foods Company Limited .....	4.51	V Thai Food Product ....	4.51
Sea Bonanza Food Co., Ltd. ....	4.51	Wales & Co. Universe Ltd. ....	4.51
Seafoods Enterprise Co., Ltd. ....	4.51	Xian-Ning Seafood Co., Ltd. ....	4.51
Seafresh Fisheries .....	4.51	Y2K Frozen Foods Co., Ltd. ....	4.51
Seafresh Industry Public Co., Ltd. ....	4.51	Yeenin Frozen Foods Co., Ltd. ....	4.51
Siam Food Supply Co., Ltd. ....	4.51	YHS Singapore Pte .....	4.51
Siam Intersea Co., Ltd. ....	4.51	ZAFCO TRDG .....	4.51
Siam Marine Products Co. Ltd. ....	4.51		
Siam Ocean Frozen Foods Co. Ltd. ....	4.51		
Siam Union Frozen Foods .....	4.51		
Siamchai International Food Co., Ltd. ....	4.51		
Southport Seafood .....	4.51		
STC Foodpak Ltd. ....	4.51		
Suntechthai Intertrading Co., Ltd. ....	4.51		
Surapon Foods Public Co., Ltd. ....	4.51		
Surapon Nichirei Foods Co., Ltd. ....	4.51		
Surapon Seafood .....	4.51		
Suratthani Marine Products Co., Ltd. ....	4.51		
Suree Interfoods Co., Ltd. ....	4.51		
T.S.F. Seafood Co., Ltd. ....	4.51		
Tanaya International Co., Ltd. ....	4.51		
Teppitak Seafood Co., Ltd. ....	4.51		
Tey Seng Cold Storage Co., Ltd. ....	4.51		
Thai-Ger Marine Co., Ltd. ....	4.51		
Thai Agri Foods Public Co., Ltd. ....	4.51		
Thai I-Mei Frozen Foods Co., Ltd. ....	4.51		
Thai Mahachai Seafood Products Co., Ltd. ....	4.51		
Thai Ocean Venture Co., Ltd. ....	4.51		
Thai Patana Frozen .....	4.51		
Thai Prawn Culture Center Co., Ltd. ....	4.51		
Thai Royal Frozen Food Co. Ltd. ....	4.51		
Thai Spring Fish Co., Ltd. ....	4.51		
Thai Union Frozen Products Public Co., Ltd. ....	4.51		
Thai Union Seafood Co., Ltd. ....	4.51		
Thai Yoo Ltd., Part. ....	4.51		
The Siam Union Frozen Food Co., Ltd. ....	4.51		
The Union Frozen Products Co., Ltd. ....	4.51		
Trang Seafood Products Public Co., Ltd. ....	4.51		
Transmut Food Co., Ltd. ....	4.51		
Tung Lieng Trdg .....	4.51		
United Cold Storage Co., Ltd. ....	4.51		

#### Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. See 19 CFR 351.224(b). Pursuant to 19 CFR 351.309, interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs. Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities.

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, Room 1870, within 30 days of the date of 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 issues to be discussed. See 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the respective case briefs.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

#### Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

For the majority of the Rubicon Group's and Pakfood's U.S. sales, we note that these companies reported the

entered value for the U.S. sales in question. We will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer.

For certain of the Rubicon Group's and Pakfood's U.S. sales, we note that these companies did not report the entered value for the U.S. sales in question. We will calculate importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. With respect to Pakfood's and the Rubicon Group's U.S. sales of shrimp with sauce, for which no entered value was reported, we will include the total quantity of the merchandise with sauce in the denominator of the calculation of the importer-specific rate because CBP will apply the per-unit duty rate to the total quantity of merchandise entered, including the sauce weight. 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 will calculate importer-specific *ad valorem* ratios based on the estimated entered value.

For the responsive companies which were not selected for individual examination, we will calculate an assessment rate based on the weighted average of the cash deposit rates calculated for the companies selected for individual examination excluding any which are *de minimis* or determined entirely on AFA.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (i.e., at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (i.e., less than 0.50 percent). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise

during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate effective during the POR (i.e., 5.95 percent) if there is no rate for the intermediary involved in the transaction. See *Assessment Policy Notice* for a full discussion of this clarification.

### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: 1) the cash deposit rate for each specific company listed above<sup>7</sup> will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; 2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will be 5.34 percent, the all-others rate made effective by the *Section 129 determination*. These requirements, when imposed, shall remain in effect until further notice.

### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the

relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

Dated: March 2, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E9-4924 Filed 3-6-09; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**A-552-802**

#### **Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results, Preliminary Partial Rescission and Request for Revocation, In Part, of the Third Administrative Review**

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

**SUMMARY:** The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam ("Vietnam"), covering the period of review ("POR") of February 1, 2007, through January 31, 2008. As discussed below, we preliminarily determine that sales have been made 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 the importer-specific assessment rates are above *de minimis*.

**EFFECTIVE DATE:** March 9, 2009.

**FOR FURTHER INFORMATION CONTACT:** Irene Gorelik, 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) 482-6905.

#### **SUPPLEMENTARY INFORMATION:**

#### **General Background**

On February 1, 2005, the Department published in the *Federal Register* the antidumping duty order on frozen

warmwater shrimp from Vietnam. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam*, 70 FR 5152 (February 1, 2005) ("Order"). On February 4, 2008, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on frozen warmwater shrimp from Vietnam for the period February 1, 2007, through January 31, 2008. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 6477 (February 4, 2008).

On February 29, 2008, we received requests to conduct administrative reviews of 145 companies from Petitioner,<sup>1</sup> two companies from the Louisiana Shrimp Association ("LSA"), and requests by certain Vietnamese companies.<sup>2</sup> 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 Notice").

On April 7, 2008, the Department initiated an administrative review of 170 producers/exporters of subject merchandise from Vietnam. See *Initiation Notice*. However, after accounting for duplicate names and additional trade names associated with certain exporters, the number of companies upon which we initiated is actually 110 companies/groups. On April 8, 2008, the Department posted the separate rate certification and separate rate application on its website for Vietnamese exporters for whom a review was initiated to complete and submit to the Department.

On April 14, 2008, May 5, 2008, and May 7, 2008, the Department received letters from Vinh Hoan Corporation (formerly Vinh Hoan Co., Ltd.) ("Vinh Hoan"), Kim Anh Co., Ltd. ("Kim Anh"), Quoc Viet Seaproducts Processing Trading Import and Export Co., Ltd., ("Quoc Viet"), and C.P. Vietnam Livestock Company Limited ("CP Vietnam"), respectively, indicating that they made no shipments of subject merchandise during the POR.

Of the 110 companies/groups upon which we initiated an administrative review, 78 companies did not submit separate rate certifications or

<sup>1</sup> The Ad Hoc Shrimp Trade Action Committee is the Petitioner.

<sup>2</sup> Some of these requests created an overlap in the number of companies upon which an administrative review was requested.

<sup>7</sup> Effective January 16, 2009, there is no longer a cash deposit requirement for certain producers/exporters in accordance with the *Implementation of the Findings of the WTO Panel in United States Antidumping Measure on Shrimp from Thailand: Notice of Determination under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Thailand*, 74 FR 5638 (January 30, 2009) (*Section 129 Determination*).