

subsequent 15-day period to December 24, 2007.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Yuma County Airport Authority, 2191 E. 32<sup>nd</sup> Street, Suite 218, Yuma, Arizona 85365.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW, Washington, DC 20230.

For further information, contact Elizabeth Whiteman at Elizabeth\_Whiteman@ita.doc.gov or (202) 482-0473.

Dated: September 28, 2007.

**Andrew McGilvray,**

*Executive Secretary.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

(A-570-848)

#### **Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results and Partial Rescission of the 2005-2006 Antidumping Duty Administrative Review and Preliminary Intent to Rescind 2005-2006 New Shipper Reviews**

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

**SUMMARY:** In response to timely requests from four exporters and the petitioner,<sup>1</sup> the Department of Commerce (the Department) is conducting the 2005-2006 administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). In addition, in response to requests from four new shippers, the Department is also concurrently conducting 2005-2006 new shipper reviews of the above-referenced order. We have preliminarily determined that sales have been made below normal value (NV) by certain exporters participating in the administrative review. Also, we have preliminarily determined that none of the sales by the three new shippers currently under review are *bona fide* (one new shipper withdrew its request for review) and have preliminarily rescinded these reviews. If these preliminary results are adopted in our

final results of these reviews, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of subject merchandise during the period of review (POR) for which the importer-specific assessment rates are above *de minimis*.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

**EFFECTIVE DATE:** October 9, 2007.

#### **FOR FURTHER INFORMATION CONTACT:**

Melissa Blackledge or Jeff Pedersen, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3518 and (202) 482-2769, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On September 15, 1997, the Department published an amended final determination and antidumping duty order on freshwater crawfish tail meat from the PRC. *See Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat From the People's Republic of China*, 62 FR 48218 (September 15, 1997). On September 1, 2006, the Department published a notice of opportunity to request an administrative review of the above-referenced order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 52061 (September 1, 2006). Based on timely requests for administrative reviews, the Department initiated administrative reviews of the antidumping duty order on freshwater crawfish tail meat from the PRC with respect to the following companies: China Kingdom Import & Export Co., Ltd. (aka Zhongda Import & Export Co., Ltd.) (China Kingdom), Anhui Tongxin Aquatic Product & Food Co., Ltd. (Anhui), Fujian Pelagic Fishery Group Co. (Fujian), Shanghai Strong International Trading Co., Ltd. (Shanghai Strong), Nanjing Merry Trading Co., Ltd. (Nanjing Merry), Qingdao Jinyongxiang Aquatic Foods Co., Ltd. (Qingdao JYX), Qingdao Wentai Trading Co., Ltd. (Qingdao Wentai), Weishan Zhenyu Foodstuff Co., Ltd. (Weishan Zhenyu), Weishan Hongrun Aquatic Food Co., Ltd. (Weishan Hongrun), Xuzhou Jinjiang Foodstuffs Co., Ltd. (Xuzhou), Yancheng Hi-King Agriculture Developing Co., Ltd. (Yancheng), Huoshan New Three-

Gold Food Trade Co., Ltd. (Huoshan), Leping Lotai Foods Co., Ltd. (Leping), and Xiping Opeck Food Co., Ltd. (Xiping Opeck). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 63752 (October 31, 2006). The period covered by these reviews is September 1, 2005, through August 31, 2006.

Additionally, based on timely requests for new shipper reviews, on October 23, 2006, the Department initiated new shipper reviews of Anhui, Huoshan, Jingdezhen Garay Foods Co., Ltd (Jingdezhen) and Shanghai Now Again International Trading Co., Ltd (Shanghai Now Again) covering the period September 1, 2005, through August 31, 2006. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews*, 71 FR 63284 (October 30, 2006). In accordance with 19 CFR 351.214(j)(3), each of the new shippers agreed to waive the applicable time limits for their new shipper reviews so that the Department could conduct the new shipper reviews concurrently with the 2005-2006 administrative review (see Shanghai Now Again's and Jingdezhen's November 30, 2006, submission, Huoshan's December 7, 2006, and Anhui's January 3, 2007, submission). *See Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Postponement of Time Limits for New Shipper Antidumping Duty Reviews in Conjunction With Administrative Review*, 72 FR 13744 (March 23, 2007).

On November 1, 2006, the Department issued a quantity and value questionnaire to all respondents for which an administrative review was initiated. The Department received responses to the quantity and value questionnaire from the following companies: Xiping Opeck (November 14, 2006), Xuzhou (November 15, 2006), Anhui (November 15, 2006), Huoshan (January 10, 2006), Qingdao JYX (November 9, 2006), Qingdao Wentai (November 15, 2006), China Kingdom (November 29, 2006), Weishan Hongrun (November 30, 2006), Huoshan (January 17, 2007) and Yancheng (November 15, 2006). In response to the quantity and value questionnaire, Qingdao JYX, Qingdao Wentai, China Kingdom, and Yancheng reported that they had no sales, entries or exports of subject merchandise during the POR. Anhui, Huoshan, and Weishan Hongrun noted in their responses to the quantity and value questionnaire that they had reported all of their subject merchandise sales that were made during the POR in

<sup>1</sup> The petitioner is the Crawfish Processors Alliance.

submissions filed in their respective new shipper reviews.

On October 30, 2006, the Department issued antidumping duty questionnaires to the four new shippers: Shanghai Now Again, Huoshan, Jingdezhen, and Anhui. On December 11, 2006, the Department issued antidumping duty questionnaires to Xiping Opeck and Xuzhou, the only non-new shippers reporting sales for which an administrative review was requested. We received timely questionnaire responses from the new shippers in November and December 2006, and January 2007. We issued supplemental questionnaires to, and received responses from, the new shippers from December 2006 to May 2007. Xiping Opeck and Xuzhou submitted responses to the Department's questionnaires in January and February 2007. We issued supplemental questionnaires to, and received responses from, Xuzhou and Xiping Opeck from February to August 2007.

On December 11, 2006, the Department provided parties with an opportunity to submit publicly available information on surrogate countries and values for consideration in these preliminary results. While no parties submitted surrogate values, on December 27, 2006, and again on March 1, 2007, the petitioner argued that the Department should continue, as in prior reviews, to use India as the primary surrogate country, while relying, where appropriate, on Spanish import statistics for the surrogate value for live crawfish.

On March 30, 2007, June 6, 2007, June 12, 2007, and June 18, 2007, the Department placed memoranda on the record regarding potentially unreported subject merchandise sales made by Xuzhou.<sup>2</sup> Xuzhou commented on these memoranda on April 12, 2007, and July 6, 2007.

On November 15, 2006, Weishan Zhenyu withdrew its request for an administrative review pursuant to 19 CFR 351.213(d)(1).

On January 29, 2007, the petitioner withdrew its request for an administrative review of Qingdao JYX, Qingdao Wentai, China Kingdom, Fujian, Leping, Nanjing Merry, and

Shanghai Strong pursuant to 19 CFR 351.213(d)(1).

On March 23, 2007, Shanghai Now Again withdrew its request for a new shipper review. Although Shanghai Now Again withdrew its request after the 60-day deadline, we found it reasonable to accept its withdrawal because the Department had not yet committed significant resources to the new shipper review of Shanghai Now Again. Further, no party opposed Shanghai Now Again's withdrawal. Therefore, on August 6, 2007, the Department rescinded its review of Shanghai Now Again. *See Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Rescission of Antidumping Duty New Shipper Review*, 72 FR 43591 (August 6, 2007).

On September 5, 2007, the petitioner withdrew its request for an administrative review of Huoshan and Weishan Hongrun.

On May 30, 2007, the Department extended the deadline for the preliminary results of the administrative and new shipper reviews until October 1, 2007. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the 2005–2006 Antidumping Duty Administrative Review and New Shipper Reviews*, 72 FR 29970 (May 30, 2007).

#### Period of Review

The POR is September 1, 2005, through August 31, 2006.

#### Scope of Order

The product covered by this antidumping duty order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTSUS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by CBP in 2000, and HTSUS numbers 0306.19.00.10 and 0306.29.00.00, which are reserved for fish and crustaceans in general. The HTSUS subheadings are provided for convenience and customs

purposes only. The written description of the scope of this order is dispositive.

#### Final Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review if a party requesting a review withdraws the request within 90 days of the date of publication of the notice of initiation.<sup>3</sup> As noted above, on November 15, 2006, Weishan Zhenyu withdrew its request for an administrative review, in accordance with 19 CFR 351.213(d)(1). In addition, as noted above, pursuant to 19 CFR 351.213(d)(1), the petitioner withdrew its request for an administrative review of Qingdao JYX, Qingdao Wentai, China Kingdom, Fujian, Leping, Nanjing Merry, and Shanghai Strong on January 29, 2007, and withdrew its request for an administrative review of Weishan Hongrun and Huoshan on September 5, 2007. In accordance with 19 CFR 351.213(d)(1) and consistent with our practice, where the review requests were withdrawn within the 90-day time limit, we have rescinded the review because no other parties requested a review of these companies. Although the petitioner withdrew its request for a review of Weishan Hongrun and Huoshan after the 90-day deadline, we find it reasonable to extend the time limit for withdrawing the request because no other interested party requested a review of the companies and the companies' sales during the POR were already examined by the Department in new shipper reviews. Therefore, we are rescinding the administrative review of Weishan Zhenyu, Qingdao JYX, Qingdao Wentai, China Kingdom, Fujian, Leping, Nanjing Merry, Shanghai Strong, Weishan Hongrun, and Huoshan.

#### Preliminary Partial Rescission of Administrative Review

Yancheng informed the Department that it did not export the subject merchandise to the United States during the POR. Anhui reported that, aside from its sale that is under review in the concurrent new shipper review, it did not have any sales of subject merchandise during the POR. In our examination of CBP entry data, we did not find any information inconsistent with these statements. Further, in response to our request for information relating to these claims, CBP did not provide any information that contradicted the respondents' claims. Lastly, as discussed below, the

<sup>3</sup> The Department may extend this time limit if it is reasonable to do so. *See* 19 CFR 351.213(d)(1).

<sup>2</sup> *See* Memorandum to All Interested Parties Regarding Entry Documents of Xuzhou Jinjiang Foodstuffs Co., Ltd. (March 30, 2007), Memorandum For The File regarding Phone Conversation with the U.S. Customs and Border Protection (June 6, 2007), Memorandum For The File regarding Information Obtained from the Food and Drug Administration (June 12, 2007), and Memorandum For The File regarding Entry Data Obtained from the U.S. Customs and Border Protection's Database (June 18, 2007).

Department has preliminarily found Anhui's one sale during the POR to be non-*bona fide*. Therefore, because the record indicates that Yancheng did not sell subject merchandise to the United States during the POR, and Anhui did not make any *bona fide* sales of subject merchandise to the United States during the POR, we are preliminarily rescinding the instant administrative review with respect to Yancheng and Anhui. See 19 CFR 351.213(d)(3).

### Preliminary Rescission of New Shipper Reviews

The Department has preliminarily determined that the sales made by Anhui, Jingdezhen, and Huoshan, which are under examination in the new shipper reviews, are not *bona fide* sales because: (1) the sales were made at artificially high prices that are not commercially reasonable; (2) the sales quantities are atypical compared to data on other imports of crawfish tail meat into the U.S. market; and, (3) there are other atypical aspects of the sales. Due to the proprietary nature of the information discussed in our *bona fide* sales analysis, please see the separate memorandum addressing this issue for details.<sup>4</sup> Because the Department has found the sales by Anhui, Jingdezhen, and Huoshan to be non-*bona fide*, there are no sales to review. Therefore, the Department is preliminarily rescinding the new shipper reviews of these companies. See, e.g., *Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1249 (CIT 2005).

### Non-Market-Economy ("NME") Treatment

The Department considers the PRC to be an NME country. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (the Act), any determination that a country is an NME country shall remain in effect until revoked by the administering authority.

<sup>4</sup> See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary For Import Administration from Abdelali Elouaradia, Director, Office 4 Import Administration, regarding *Bona Fide Sales Analysis and Intent to Rescind the Review with Respect to Anhui Tongxin Aquatic Product & Food Co., Ltd.* (dated concurrently with this notice), and Memorandum to Stephen J. Claeys, Deputy Assistant Secretary For Import Administration from Abdelali Elouaradia, Director, Office 4 Import Administration, regarding *Bona Fide Sales Analysis and Intent to Rescind the Review with Respect to Houshan New Three-Gold Food Trade Co., Ltd.* (dated concurrently with this notice), and Memorandum to Stephen J. Claeys, Deputy Assistant Secretary For Import Administration from Abdelali Elouaradia, Director, Office 4 Import Administration, regarding *Bona Fide Sales Analysis and Intent to Rescind the Review with Respect to Jingdezhen Garay Foods Co., Ltd.* (dated concurrently with this notice).

See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, (TRBs) From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review, 68 FR 7500 (February 14, 2003), (unchanged in TRBs from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review, 68 FR 70488 (December 18, 2003)). None of the parties to this proceeding has contested such treatment. Therefore, in these preliminary results of review, we have treated the PRC as an NME country and applied our current NME methodology in accordance with section 773(c) of the Act.

### Selection of a Surrogate Country

In antidumping proceedings involving NME countries, the Department, pursuant to section 773(c)(1) of the Act, will generally base NV on the value of the NME producer's factors of production (FOPs). 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 are significant producers of merchandise comparable to the subject merchandise.

The Department has determined that India, Sri Lanka, Egypt, Indonesia, and the Philippines are countries that are at a level of economic development comparable to that of the PRC. See memorandum regarding "Administrative Review of Freshwater Crawfish Tail Meat From the People's Republic of China: Request for a List of Surrogate Countries," dated December 1, 2006. While none of these countries are significant producers of crawfish tail meat,<sup>5</sup> India does have a seafood processing industry that is comparable to the crawfish industry with respect to factory overhead, selling, general, and administrative (SG&A) expenses, and profit. Therefore, we selected India as the primary surrogate country in which to value all inputs with the exception of whole live crawfish (the primary input) and the by-product, crawfish scrap shell. See Surrogate Country Memorandum at 4. Because we have

<sup>5</sup> See Memorandum to Abdelali Elouaradia, Office Director, AD/CVD Operations, Office 4, through Howard Smith, Program Manager, AD/CVD Operations, Office 4, from Jeff Pedersen, International Trade Compliance Specialist, AD/CVD Operations, Office 4, regarding Administrative and New Shipper Reviews of Freshwater Crawfish Tail Meat from the People's Republic of China: Selection of a Surrogate Country (dated concurrently with this notice) (Surrogate Country Memorandum).

determined that other forms of seafood are not sufficiently comparable to crawfish to serve as surrogates for the primary input, and India does not have a crawfish industry, we have looked to countries other than India for a crawfish input value. As was done in prior segments of this proceeding, we have selected Spain as the surrogate country in which to value whole live crawfish because Spain is a significant producer of comparable merchandise, i.e., whole crawfish, and there are publicly available import statistics for Spain that are contemporaneous with the POR. See Surrogate Country Memorandum and *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002) (1999–2000 Final Results).

We have selected Indonesia as the surrogate country in which to value the crawfish scrap shell because Indonesia is at a level of economic development comparable to the PRC, it has significant production of merchandise comparable to the by-product scrap, and has publicly available data (i.e., a public price quote from an Indonesian company) that has been used in prior segments of this proceeding.<sup>6</sup> The petitioner submitted comments supporting the use of India and Spain as surrogate countries. No other parties commented on surrogate country selection. For further discussion, see Surrogate Country Memorandum.

### Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation involving an NME country this single rate unless an exporter can demonstrate that it is

<sup>6</sup> See Memorandum to Barbara E. Tillman from Christian Hughes and Adina Teodorescu through Maureen Flannery re: Surrogate Valuation of Shell Scrap: Freshwater Crawfish Tail Meat from the People's Republic of China, Administrative Review 9/1/00–8/31/01 and New Shipper Reviews 9/1/00–8/31/01 and 9/1/00–10/15/01 (August 5, 2002), which was placed on the record of this review. See Memorandum to the File, through Howard Smith, Program Manager, AD/CVD Operations, Office 4, from Melissa Blackledge, Case Analyst, AD/CVD Operations, Office 4, regarding 2005–2006 Administrative and New Shipper Reviews of Freshwater Crawfish Tail Meat from the People's Republic of China: Factor Valuation (dated concurrently with this notice) (Factor Value Memorandum).

sufficiently independent so as to be entitled to a separate rate. The Department's separate-rate test is not concerned, in general, with macroeconomic/border-type controls, e.g., export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. 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, 72256 (December 31, 1998). The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See *Notice of Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754, 61758 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). In accordance with the separate-rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

#### *Absence of De jure Control*

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20589.

Xiping Opeck and Xuzhou stated that they are independent legal entities and provided copies of their business license which allows each company to engage in the exportation of freshwater crawfish tail meat. Xiping Opeck and

Xuzhou also reported that no export quotas apply to crawfish. Prior verifications have confirmed that there are no commodity-specific export licenses required and no quotas for the seafood category "Other," which includes crawfish, in *China's Tariff and Non-Tariff Handbook* for 1996. In addition, we have previously confirmed that freshwater crawfish tail meat is not on the list of commodities with planned quotas in the 1992 PRC Ministry of Foreign Trade and Economic Cooperation document entitled *Temporary Provisions for Administration of Export Commodities. See Freshwater Crawfish Tail Meat From The People's Republic of China; Preliminary Results of New Shipper Review*, 64 FR 8543 (February 22, 1999), and *Freshwater Crawfish Tail Meat From the People's Republic of China; Final Results of New Shipper Review*, 64 FR 27961 (May 24, 1999). We found no evidence of *de jure* governmental control over Xiping Opeck's or Xuzhou's exportation of freshwater crawfish tail meat.

The following laws, which were placed on the record of this review, also indicate a lack of *de jure* government control. The *Company Law of the People's Republic of China*, made effective on July 1, 1994, states that a company is an enterprise legal person, that shareholders shall assume liability towards the company to the extent of their shareholdings and that the company shall be liable for its debts to the extent of all its assets. Xiping Opeck and Xuzhou also provided copies of the *Foreign Trade Law of the PRC*, which identifies the rights and responsibilities of organizations engaged in foreign trade, grants autonomy to foreign-trade operators in management decisions and establishes the foreign trade operator's accountability for profits and losses. Based on the foregoing, the Department has preliminarily determined that there is an absence of *de jure* governmental control over the export activities of Xiping Opeck and Xuzhou.

#### *Absence of De facto Control*

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or are subject to the approval of, a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes

independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department considers an analysis of *de facto* control to be critical in determining whether a respondent is, in fact, subject to a degree of governmental control that would preclude the Department from assigning the respondent a separate rate.

Xiping Opeck and Xuzhou have each asserted that it: (1) establishes its own export prices; (2) negotiates contracts without guidance from any governmental entities or organizations; (3) makes its own personnel decisions; and (4) retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Based upon the record information, the Department has preliminarily determined that there is an absence of *de facto* governmental control over the export activities of Xiping Opeck and Xuzhou. Because the Department has found that Xiping Opeck and Xuzhou operate free of *de jure* and *de facto* governmental control, it has preliminarily determined that Xiping Opeck and Xuzhou have satisfied the criteria for separate rates.

#### *Use of Facts Available*

Section 776(a)(2) of the Act, provides that, if necessary information is not available on the record or 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 section 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(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), 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; and (5) the information can be used without undue difficulties.

The Department’s quantity and value questionnaire, as well as sections A and C of the antidumping questionnaire, requested that Xuzhou report each of its U.S. sales of subject merchandise that were made during the POR.<sup>7</sup> Xuzhou reported certain sales of subject merchandise during the POR,<sup>8</sup> however, substantial record evidence indicates that Xuzhou made additional, unreported sales of subject merchandise. Due to the proprietary nature of this record evidence, our analysis of the evidence is contained in a separate memorandum.<sup>9</sup>

Pursuant to section 782(d) of the Act, the Department provided Xuzhou with numerous opportunities to fully report all of its U.S. POR sales of subject merchandise. On January 30, 2007, the Department asked Xuzhou whether it had reported all sales of subject merchandise during the POR;<sup>10</sup> on February 12, 2007, the Department requested that Xuzhou provide all of the commercial invoices for, and demonstrate how it recorded the sales of, all subject merchandise sold during the POR;<sup>11</sup> and on February 22, 2007, the Department requested that Xuzhou list all crawfish products sold to the United States during the POR.<sup>12</sup> Xuzhou

did not identify the unreported sales in its responses to these requests.

After we obtained information regarding entries of Xuzhou’s crawfish products from CBP and the U.S. Food and Drug Administration, we placed that information on the record and provided Xuzhou with an opportunity to explain the discrepancy between its responses and this information.<sup>13</sup> For the reasons outlined in the Facts Available Memorandum, we found Xuzhou’s explanations to be unsatisfactory and inconsistent with certain record information.

Because the information necessary to calculate a margin for Xuzhou’s sales of subject merchandise is not on the record and because it is Xuzhou that withheld this information, we have concluded that it is appropriate to base Xuzhou’s dumping margin on facts available. Pursuant to section 782(d) of the Act, the Department provided Xuzhou with several opportunities to correct its deficient responses, but it failed to do so. Given the significant quantity of unreported sales and Xuzhou’s unsatisfactory explanations regarding its reporting failures, we find that the information provided by Xuzhou cannot serve as a reliable basis for reaching a preliminary ruling with respect to Xuzhou, within the meaning of section 782(e)(3) of the Act. Moreover, Xuzhou’s failure to provide the requested information required the Department to expend significant resources to determine whether Xuzhou reported all sales of subject merchandise during the POR, thus impeding this proceeding. Furthermore, Xuzhou’s failure to report all of the requested U.S. sales of subject merchandise prevented the Department from calculating an accurate dumping margin for the company. Therefore, pursuant to sections 776(a)(1) (necessary information is not on the record) and 776(a)(2)(A) and (C) of the Act (withholding requested information and significantly impeding the proceeding), we have based Xuzhou’s preliminary dumping margin on facts otherwise available.

## Use of Adverse Inferences

Once the Department determines that the use of facts available is warranted, section 776(b) of the Act permits the Department to apply an adverse inference if it makes the additional finding that “an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information.” To examine whether the respondent “cooperated” by “acting to the best of its ability” under section 776(b) of the Act, the Department considers, *inter alia*, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–53820 (October 16, 1997). In determining whether a party has cooperated to the best of its ability, “Commerce must necessarily draw some inferences from a pattern of behavior.” *See Borden, Inc. v. United States*, 1998 WL 895890 (CIT 1998) at 1. *See also* Statement of Administrative Action (SAA), H.R. Doc. 103–316 at 870 (1994). The Court of Appeals for the Federal Circuit (CAFC), in *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1380 (Fed. Cir. 2003) (*Nippon Steel*), provided an explanation of the “failure to act to the best of its ability” standard. Specifically, the CAFC held that the Department need not show intentional conduct existed on the part of the respondent, but merely that a “failure to cooperate to the best of a respondent’s ability” existed, ( *i.e.*, information was not provided “under circumstances in which it is reasonable to conclude that less than full cooperation has been shown”). *See id.* The CAFC also noted that the test is “the degree to which the respondent cooperates in investigating (its) records and in providing Commerce with the requested information.” *See Nippon Steel*, 337 F.3d 1373, 1383.

Xuzhou’s failure to report the U.S. sales at issue, despite the fact that it possessed the necessary records regarding these sales, indicates a lack of cooperation on its part. As demonstrated above, the Department provided Xuzhou with numerous opportunities to either submit the requested information or explain why it was unable to do so. Xuzhou did not report the sales in question or indicate that it lacked the records needed to report such sales. Moreover, Xuzhou’s failure to report these sales results in a record that cannot serve as a reliable basis for calculating an accurate

<sup>7</sup> See the Department’s November 1, 2006, quantity and value questionnaire and the December 11, 2006, section A and C questionnaires.

<sup>8</sup> See Xuzhou’s November 15, 2006, quantity and value response, its January 16, 2007, section A response, and its January 31, 2007, section C response.

<sup>9</sup> See the memorandum filed concurrently with this notice titled Memorandum from Abdelali Elouaradia to Stephen J. Claeys Regarding Unreported Sales and the Use of Adverse Facts Available, dated concurrently with this notice (Facts Available Memorandum).

<sup>10</sup> See the Department’s January 30, 2007, supplemental questionnaire at 3.

<sup>11</sup> See the Department’s February 12, 2007, supplemental questionnaire at 1.

<sup>12</sup> See the Department’s February 22, 2007, supplemental questionnaire at 1.

<sup>13</sup> See the Department’s March 30, 2007, memorandum to the file regarding “Entry Documents of Xuzhou Jinjiang Foodstuffs Co., Ltd.,” *see also* the Department’s June 6, 2007, memorandum to the file regarding 2Phone Conversation with the U.S. Customs and Border Protection regarding entries . . . ; the Department’s June 12, 2007, memorandum to the file regarding “Information Obtained from the Food and Drug Administration;” and the Department’s June 18, 2007, memorandum to the file regarding “Entry Data Obtained from the U.S. Customs and Border Protection’s Database.”

dumping margin. Hence, the record shows a pattern of behavior on the part of Xuzhou which indicates that it did not cooperate to the best of its ability within the meaning of section 776(b) of the Act. Therefore, an adverse inference is warranted.

#### Selection of Adverse Facts Available Rate

In deciding which rate to use as adverse facts available (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 determined for any respondent in any segment of the proceeding. *See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (April 21, 2003). The Court of International Trade (CIT) and the Federal Circuit have consistently upheld this practice. *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 the less than fair value investigation); *see also Kompass Food Trading Int'l v. United States*, 24 CIT 678, 689 (2000) (upholding a 51.16% total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, Slip Op. 05–22, at 16 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review). When selecting an adverse rate from among the possible sources of information, the Department's practice is to ensure that the rate 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 Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 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 Notice of Final*

*Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil*, 69 FR 76910 (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." *See Rhone Poulenc*, 899 F.2d at 1190. Consistent with the statute, court precedent, and its normal practice, the Department has selected 223.01 percent as the AFA rate, the highest calculated rate on the record of this proceeding. *See, e.g., 1999–2000 Final Results*. We have corroborated this rate as explained below.

#### Corroboration of Secondary Information

Section 776(c) of the Act requires that the Department, to the extent practicable, corroborate secondary information from independent sources that are reasonably at its disposal. Secondary information is defined as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See SAA at 870*. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See SAA at 870*. As noted in *F.Lii de Cecco di Filippo Fara S. Martino, S.p.A. v. United States*, 216 F.3d 1027, 1030 (2000), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information. *See also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof,*

*From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997)). According to the SAA, independent sources used to corroborate secondary information may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 35627 (June 16, 2003); and *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181 (March 11, 2005).

The AFA rate selected in these preliminary results constitutes secondary information. However, unlike other types of secondary information, such as input costs or selling expenses, there are no independent sources of information from which the Department can derive calculated dumping margins; the only source for dumping margins is administrative determinations. The rate that we are using as AFA is reliable because it was calculated in the 1999–2000 antidumping duty administrative review in this proceeding using respondent data that were accepted by the Department and surrogate values that were selected by the Department. *See 1999–2000 Final Results*. This rate has been used as an AFA rate in every segment of this proceeding since the 1999–2000 antidumping duty administrative review and the Department has received no information that warrants revisiting the issue of its reliability.

With respect relevancy, the Department will consider information reasonably at its disposal to determine whether a dumping margin continues to have relevance. Where circumstances indicate that the selected dumping margin is not appropriate as AFA, the Department will disregard the dumping margin and determine an appropriate dumping margin. For example, in *Fresh Cut Flowers From Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), the Department did not use the highest dumping margin in that case as adverse best information available (the predecessor to facts available) because the dumping margin was based on another company's uncharacteristic business expense resulting in an unusually high dumping margin. Similarly, the Department does not apply a dumping margin that has been discredited. *See D&L Supply Co. v. United States*, 113 F.3d at 1221 (the



Department will not use a dumping margin that has been judicially invalidated).

None of these unusual circumstances are present here. As noted above, the rate that we are using as AFA is based on data from a PRC company in the crawfish industry. These data were accepted by the Department in a prior segment of this proceeding. Moreover, the rate that we are using as AFA is based on surrogate values selected by the Department. Therefore, we consider the 223.01 percent rate (which is the current PRC-wide rate) to be the most probative evidence of the uncooperative respondent's current dumping margin. In addition, however, the Department examined other available information to further demonstrate the relevance of this rate to Xuzhou. Because this data consists of business proprietary information, the Department's analysis is contained in the Facts Available Memorandum.

#### Fair Value Comparisons

To determine whether Xiping Opeck's sales of subject merchandise to the United States were made at prices below NV, we compared the export price (EP) of the sales to NV, as described in the "United States Price" and "Normal Value" sections of this notice.

#### United States Price

In accordance with section 772(a) of the Act, we based Xiping Opeck's U.S. price on EP because the first sales to unaffiliated purchasers were made prior to importation, and constructed export price was not otherwise warranted by the facts on the record. In accordance with section 772(c) of the Act, we calculated EP by deducting, where applicable, the following expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States:

Foreign inland freight, foreign brokerage and handling expenses, ocean freight, and inland freight incurred in the United States. We based all movement expenses on surrogate values because a PRC company either provided the service or Xiping Opeck paid for the service in renminbi (RMB) (see the "NV" section of this notice for further details).

#### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the available 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 and 19 CFR 351.408. The Department uses an FOP methodology because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under its normal methodologies. See *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part*, 70 FR 39744 (July 11, 2005) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003–2004 Administrative Review and Partial Rescission of Review*, 71 FR 2517 (January 17, 2006)). Thus, we calculated NV by adding together the value of the FOPs, general expenses, profit, and packing costs.<sup>14</sup> Specifically, we valued material, labor, energy, and packing by multiplying the amount of the factor consumed in producing subject merchandise by the average unit surrogate value of the factor. In addition, we added freight costs to the surrogate costs that we calculated for material inputs. We calculated freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. This adjustment is in accordance with the CAFC's decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). We increased the calculated costs of the FOPs for surrogate general expenses and profit. See Factor Value Memorandum.

#### Selected Surrogate Values

In selecting surrogate values, we followed, to the extent practicable, the Department's practice of choosing public values which are non-export averages, representative of a range of prices in effect during the POR, or over a period as close as possible in time to 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). We also considered the quality of the source of surrogate information in selecting surrogate values. See *Manganese Metal From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12440 (March 13, 1998). Where we could only obtain surrogate values that were not contemporaneous with the POR, we inflated (or deflated) the surrogate values using, where appropriate, the Indian Wholesale Price Index (WPI) as published in the *International Financial Statistics* of the International Monetary Fund. See Factor Value Memorandum.

In calculating surrogate values from import statistics, in accordance with the Department's practice, we disregarded statistics for imports from NME countries and countries deemed to maintain broadly available, non-industry-specific subsidies which may benefit all exporters to all export markets (i.e., Indonesia, South Korea, and Thailand). See, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From The People's Republic of China*, 67 FR 6482 (February 12, 2002) and accompanying Issues and Decision Memorandum at Comment 1. See also *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 68 FR 66800, 66808 (November 28, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004). Additionally, we excluded from our calculations imports that were labeled as originating from an unspecified country because we could not determine whether they were from an NME country.

We used the following surrogate values in our preliminary results of review (see Factor Value Memorandum for details). Except as noted below, we valued raw and packing materials using September 2005–August 2006 weighted-average Indian import values derived from the *World Trade Atlas* online (WTA). The Indian import statistics that we obtained from the WTA were published by the DGCI&S,

<sup>14</sup> We based the values of the FOPs on surrogate values (see "Selected Surrogate Values" section below).

Ministry of Commerce of India and are contemporaneous with the POR. We valued whole live crawfish using publicly available data for Spanish imports of whole live crawfish from Portugal. We obtained the data from "aduanas e I. especiales," the Spanish Customs database for foreign trade statistics (Estadísticas Comercio Exterior). We valued the crawfish shell scrap by-product using a price quote from Indonesia for wet crab and shrimp shells. We valued diesel fuel using the rates provided by the OECD's International Energy Agency's publication: *Key World Energy Statistics 2005* from the first quarter of 2005. Because these data are not contemporaneous with the POR, we inflated the values using the WPI. We valued water using data from the Maharashtra Industrial Development Corporation ([www.midcindia.org](http://www.midcindia.org)) because this source includes a wide range of industrial water tariffs. Specifically, this source provides 386 industrial water rates within the Maharashtra province from June 2003; 193 for the "inside industrial areas" usage category and 193 for the "outside industrial areas" usage category. Because the water value rates are not contemporaneous with the POR, we inflated the surrogate value for water using the WPI. We valued non-refrigerated truck freight expenses using a per kilometer per kilogram average rate obtained from the web site of an Indian transportation company, InFreight Technologies India Limited. See <http://www.infreight.com>. We valued refrigerated truck freight expenses based on price quotations from CTC Freight Carriers of Delhi, India, placed on the record of the antidumping investigation of Certain Frozen Warmwater Shrimp from the PRC. The Department has placed that information on the record of this proceeding.

We used two sources to calculate the surrogate value for domestic brokerage and handling expenses. We averaged publicly available brokerage and handling data reported by Essar Steel in the antidumping duty administrative review of hot-rolled carbon steel flat products from India with publicly available brokerage and handling data reported by Agro Dutch Industries Limited (Agro Dutch) in the antidumping duty administrative review of certain preserved mushrooms from India. See *Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018, 2022 (January 12, 2006) (Essar Steel's February 28, 2005, submission)

(unchanged in *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 40694 (July 18, 2006)); see also *Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 70 FR 37757 (June 30, 2005) (Agro Dutch's May 24, 2005, submission).

We valued international freight expenses using freight quotes from Maersk Sealand, a market-economy shipper. These quotes have been used in prior antidumping duty administrative reviews of this case. See *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Final Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 20634 (April 24, 2001). We calculated a simple average of quotes for shipments from China to the United States occurring during the POR.

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 2004 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 January 2007, available at <http://ia.ita.doc.gov/wages/index.html>. The source of these wage-rate data on the Import Administration's web site is the Yearbook of Labour Statistics, ILO, 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 Xiping Opeck.

Lastly, we valued SG&A expenses, factory overhead costs, and profit using the 2002–2003 financial statements of Nekkanti Sea Foods Ltd., an Indian seafood processor. See Factor Value Memorandum.

In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit publicly available information with which to value FOPs in the final results of review within 20 days after the date of publication of the preliminary results of review.

#### Currency Conversion

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

be accessed at the website of Import Administration at <http://ia.ita.doc.gov/exchange/index.html>.

#### Preliminary Results of Reviews

We preliminarily determine that the following margins exist for Xiping Opeck and Xuzhou during the period September 1, 2005, through August 31, 2006:

#### FRESHWATER CRAWFISH TAIL MEAT FROM THE PRC

| Company                                    | Weighted-Average Margin (Percent) |
|--------------------------------------------|-----------------------------------|
| Xiping Opeck Food Co., Ltd. ....           | 13.61                             |
| Xuzhou Jinjiang Food-stuffs Co., Ltd. .... | 223.01                            |
| <b>PRC-Wide Rate</b> .....                 | <b>Margin (Percent)</b>           |
| <b>PRC-Wide Rate</b> .....                 | <b>223.01</b>                     |

We will disclose the calculations used in our analysis to parties to these proceedings within five days of the date of publication of this notice.

Case briefs from interested parties may be submitted not later than 30 days of the date of publication of this notice, pursuant to 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

Any interested party may request a hearing within 30 days of publication of this notice. 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 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 briefs.

The Department will issue the final results of these reviews, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

#### Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement



instructions for the companies subject to these reviews directly to CBP 15 days after publication of the final results of these reviews. For assessment purposes for companies with a calculated rate, where possible, the Department calculated importer-specific assessment rates for freshwater crawfish tail meat from the PRC on a per-unit basis. Specifically, the Department divided the total dumping margins (calculated as the difference between normal value and export price) for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per-unit assessment amount. The Department will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (i.e., per-kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR. However, 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 these reviews and for future deposits of estimated duties, where applicable.

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of these reviews for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the exporters listed above, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed review; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 223.01 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) 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.

These administrative and new shipper reviews and notice are in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.213 and 351.214.

Dated: October 1, 2007.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E7-19817 Filed 10-5-02; 8:45 am]

**Billing Code: 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-552-801]

#### Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Reviews

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

**EFFECTIVE DATE:** October 9, 2007.

**SUMMARY:** The Department of Commerce ("Department") has determined that two requests for a new shipper review of the antidumping duty order on certain frozen fish fillets from the Socialist Republic of Vietnam ("Vietnam"), received on June 15, 2007, and August 29, 2007, meet the statutory and regulatory requirements for initiation. The period of review ("POR") for the two new shipper reviews which the Department is initiating is August 1, 2006, through July 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-2243.

#### SUPPLEMENTARY INFORMATION:

##### Background

The notice announcing the antidumping duty order on certain frozen fish fillets from Vietnam was published in the **Federal Register** on August 12, 2003. *See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR

47909(August 12, 2003).<sup>1</sup> On June 15, and August 29, 2007, pursuant to 19 CFR 351.214(c), the Department received two new shipper review requests from Southern Fishery Industries Company, Ltd. ("South Vina") and Binh An Seafood Joint Stock Co. ("Binh An"), respectively. South Vina and Binh An certified that they are both the producer and exporter of the subject merchandise upon which the request for a new shipper review is based. The Catfish Farmers of America and individual U.S. catfish processors ("Petitioners") did not submit comments with regard to these two new shipper requests.

Pursuant to section 751(a)(2)(B)(i)(I) of the Tariff Act of 1930 as amended ("the Act"), and 19 CFR 351.214(b)(2)(i), South Vina and Binh An certified that they did not export certain frozen fish fillets to the United States during the period of investigation ("POI"). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), South Vina and Binh An certified that, since the initiation of the investigation, they have never been affiliated with any Vietnamese exporter or producer who exported certain frozen fish fillets to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), South Vina and Binh An also certified that their export activities were not controlled by the central government of Vietnam.

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), South Vina and Binh An submitted documentation establishing the following: (1) the date on which South Vina and Binh An first shipped certain frozen fish fillets for export to the United States and the date on which the frozen fish fillets were first entered, or withdrawn from warehouse, for consumption; (2) the volume of their first shipment;<sup>2</sup> and (3) the date of their first sale to an unaffiliated customer in the United States.

The Department conducted CBP database queries to confirm that South Vina and Binh An's shipments of subject merchandise had entered the United States for consumption and that liquidation of such entries had been

<sup>1</sup> Therefore, a request for a new shipper review based on the anniversary month, was due to the Department by the final day of August 2007. *See* 19 CFR 351.214(d)(1).

<sup>2</sup> South Vina made one subsequent shipment to the United States, while Binh An made two subsequent shipments during the POR, which the Department corroborated using data from U.S. Customs and Border Protection ("CBP").