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Dated: October 3, 2005.

**Madeleine Clayton,**

Management Analyst, Office of the Chief Information Officer.

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-848]

#### **Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of 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 freshwater crawfish tail meat from the People's Republic of China ("PRC"). The period of review ("POR") is September 1, 2003, through August 31, 2004. The Department has preliminarily determined that sales have been made below normal value. If these preliminary results are adopted in the final results of this review, the Department 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. See the "Preliminary Results of Review" section of this notice.

**DATES:** Effective date: October 7, 2005.

**FOR FURTHER INFORMATION CONTACT:** P. Lee Smith or Scot Fullerton, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1655 or (202) 482-1386, respectively.

### 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 of 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).

Based on timely requests from various interested parties, the Department initiated an administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC with respect to the following companies: China Kingdom International ("China Kingdom"); Qingdao Jinyongxiang Aquatic Foods Co., Ltd. ("JYX Aquatic"); Qingdao Xiyuan Refrigerate Food Co., Ltd. ("Qingdao Xiyuan"); Weishan Zhenyu Foodstuff Co., Ltd. ("Weishan Zhenyu"); Yancheng Hi-King Agriculture Developing Co., Ltd. ("Yancheng Hi-King"); and Yancheng Yaou Seafood Co., Ltd. ("Yancheng Yaou"). See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 69 FR 62022 (October 22, 2004) ("Initiation Notice").

On January 10, 2005, the Crawfish Processors Alliance ("petitioner") withdrew its request for review with respect to Qingdao Xiyuan. The Department rescinded the administrative review of Qingdao Xiyuan on February 11, 2005. See *Freshwater Crawfish Tail Meat from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 7232 (February 11, 2005). On March 31, 2005, the Department found that JYX Aquatic had no entries of subject merchandise during the POR and rescinded the administrative review with respect to JYX Aquatic. See *Freshwater Crawfish Tail Meat from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 16484 (March 31, 2005).

On May 31, 2005, the Department extended the time limit for the completion of the preliminary results of review to no later than September 30, 2005. See *Freshwater Crawfish Tail Meat from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 30926 (May 31, 2005).

On October 29, 2004, the Department issued an antidumping duty questionnaire to each PRC company listed in the above-referenced initiation notice and received responses from China Kingdom, Weishan Zhenyu,

Yancheng Hi-King and Yancheng Yaou between December 6, 2004 and January 18, 2005.

The Department issued supplemental questionnaires to China Kingdom, Weishan Zhenyu, Yancheng Hi-King and Yancheng Yaou and received responses from February 9, 2005 through July 25, 2005.

### 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.

### Non-Market Economy

In every case conducted by the Department involving the PRC, the PRC has been treated as a non-market economy ("NME"). Pursuant to section 771(18)(C)(i) of Tariff Act of 1930, as amended ("the Act"), any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. See *Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission in Part*, 69 FR 70638 (December 7, 2004). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value ("NV") in accordance with section 773(c) of the Act, which applies to NME countries.

### Surrogate Country and Factors

On February 25, 2005, the Department provided interested parties the opportunity to submit comments regarding the selection of a surrogate country and factor valuation in these preliminary results. On April 15, 2005, Weishan Zhenyu submitted publicly

available information for factor valuation. In its submission, Weishan Zhenyu included the financial report of an Indian seafood processor for valuing surrogate selling, general & administrative expenses ("SG&A"), overhead and profit. Weishan Zhenyu also included publicly available Spanish import statistics of non-frozen whole live freshwater crawfish from Portugal. The Department received no other comments regarding surrogate country or factor valuation.

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production ("FOP"), to the extent possible, in one or more market-economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Office of Policy issued a memorandum listing appropriate surrogate countries. See *Memorandum from Ron Lorentzen to Carrie Blozy re: Administrative Review of Freshwater Crawfish Tail Meat ("Tail Meat") from the People's Republic of China (PRC): Request for a List of Surrogate Countries*, dated November 24, 2004. The memorandum listed five countries, including India and Indonesia.

Of the five countries named in the memorandum, none are significant producers of crawfish tail meat. However, India does have a seafood processing industry that is a comparable industry with respect to factory overhead, SG&A and profit. Therefore, we used India as the surrogate country to value all inputs with the exception of the raw material (whole live crawfish) and the by-product (crawfish scrap shell). Since we have determined that other forms of seafood are not sufficiently comparable to serve as surrogate values for the primary input, we have considered other countries in which to value the crawfish input. As done in prior segments of this proceeding, we have decided to use Spain as the surrogate country for the valuation of whole live crawfish because we have found that Spain is a significant producer of comparable merchandise, i.e., whole crawfish. See *Memorandum from Benjamin Kong to The File through Carrie Blozy re: Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Factor Valuation*, dated September 30, 2005 ("Factor Valuation Memo"); 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"). In addition, we have decided to use Indonesia as the surrogate country for the valuation of the crawfish by-product scrap based on the availability of a public price quote from an Indonesian company that has been used in prior segments of this proceeding. 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*, dated August 5, 2002; which was placed on the record of this review in Factor Valuation Memo, Attachment 5. We have not received comments from interested parties suggesting other possible surrogate values for these factors and have found no other data. We note that Weishan Zhenyu also suggested the use of Spanish import data from the period September 2003 through August 2004 to value whole live crawfish. For further discussion of our surrogate country selection, see *Memorandum from P. Lee Smith through Carrie Blozy and James C. Doyle to The File re: Antidumping Duty Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Selection of a Surrogate Country*, dated September 30, 2005.

#### Verification

As provided in section 782(i) of the Act, the Department conducted verification of the responses of Yancheng Hi-King, Weishan Zhenyu and China Kingdom. The Department verified the questionnaire responses of Yancheng Hi-King from July 27 through July 29, 2005 using standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. See *Memorandum to the File re: Antidumping Duty Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Verification of U.S. Sales for Respondent Yancheng Hi-King Agriculture Developing Co., Ltd.* ("Yancheng Hi-King Verification Report"), dated September 30, 2005.

The Department conducted verification of the questionnaire responses of Weishan Zhenyu from August 8 through August 13, 2005, using standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and

financial records. For more information, see the "Application of Adverse Facts Available" section below; and *Memorandum to the File from Carrie Blozy and Scot T. Fullerton through James C. Doyle re: Antidumping Duty New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China (A-570-848): Verification report for Weishan Zhenyu Foodstuff Co., Ltd.*, dated September 30, 2005 ("Weishan Zhenyu Verification Report").

The Department conducted verification of the questionnaire responses of China Kingdom from August 2 through August 5, 2005, using standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. See the "Application of Adverse Facts Available" section below; and *Memorandum to the File from Carrie Blozy and Benjamin Kong re: Antidumping Duty Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China: Verification Report for China Kingdom International Group Co., Ltd.*, dated September 27, 2005 ("China Kingdom Verification Report").

Verification of the questionnaire responses of Yancheng Yaou was scheduled for August 2 through August 5, 2005. However, as described in the "Application of Adverse Facts Available" section above, Yancheng Yaou withdrew from verification on August 5, 2005. See *Memorandum to the File from Scot Fullerton and Kristina Boughton through Carrie Blozy re: Memorandum Discussing the On Site Meetings to Verify the Response of Yancheng Yaou Seafood Co., Ltd. in the Antidumping Duty Review of Freshwater Crawfish Tail Meat from the People's Republic of China*, dated August 17, 2005 ("On Site Meetings with Yancheng Yaou Memo").

The verification results are on file in the main Department of Commerce building, in the Central Records Unit, Room B-099.

#### Separate Rates

To establish whether a company operating in an NME is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994).

Under the separate-rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

As discussed above, Yancheng Yaou withdrew from verification. See *On Site Meetings with Yancheng Yaou Memo*. Yancheng Yaou also filed a letter stating it would no longer participate in the current administrative review. See Letter from Yancheng Yaou Seafood Co., Ltd. to the Department, dated August 5, 2005. Therefore, the Department was unable to verify Yancheng Yaou's questionnaire responses concerning its eligibility for a separate rate. The Department therefore determines that Yancheng Yaou has not established that it is eligible for a separate rate. See "Application of Adverse Facts Available" section below.

#### *De Jure Control*

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

In their questionnaire responses, China Kingdom, Weishan Zhenyu and Yancheng Hi-King stated that they are independent legal entities. Evidence on the record indicates that the government does not have *de jure* control over their export activities. China Kingdom, Weishan Zhenyu and Yancheng Hi-King submitted evidence of their legal right to set prices independent of all governmental oversight. Furthermore, the business licenses of China Kingdom, Weishan Zhenyu and Yancheng Hi-King indicate that they are permitted to engage in the exportation of crawfish. We also found no evidence of *de jure* governmental control restricting China Kingdom, Weishan Zhenyu or Yancheng Hi-King's exportation of crawfish.

In their responses, China Kingdom, Weishan Zhenyu and Yancheng Hi-King stated 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 crawfish 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) (*Ningbo New Shipper Review*).

The following laws, which have been placed on the record of this review, indicate a lack of *de jure* government control. The *Company Law of the People's Republic of China*, made effective on July 1, 1994, with the amended version promulgated on August 28, 2004, 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. Weishan Zhenyu and Yancheng Hi-King also provided copies of the *Foreign Trade Law of the PRC*, promulgated on May 12, 1994, 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. China Kingdom, Weishan Zhenyu and Yancheng Hi-King also provided copies of their business licenses stating their right to conduct business within the scope of their licenses. The Department therefore preliminarily determines that there is an absence of *de jure* control over the export activities of China Kingdom, Weishan Zhenyu and Yancheng Hi-King.

#### *De Facto Control*

*De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management.

China Kingdom, Weishan Zhenyu and Yancheng Hi-King each has asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations;

(3) it makes its own personnel decisions; and (4) it 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. The Department verified these responses and found no information contradicting them. As a result, there is a sufficient basis to preliminarily determine that China Kingdom, Weishan Zhenyu and Yancheng Hi-King have demonstrated *de facto* absence of governmental control of their export functions and are entitled to separate rates. Consequently, the Department has preliminarily determined that China Kingdom, Weishan Zhenyu and Yancheng Hi-King have met the criteria for the application of separate rates based on the documentation each has submitted on the record.

#### **Application of Adverse Facts Available**

1. *China Kingdom*. Pursuant to sections 776(a)(2)(A),(C) and (D), and section 776(b) of the Act, the Department determines that the application of total adverse facts available ("AFA") is warranted for respondent China Kingdom. When an interested party withholds information that has been requested by the Department, significantly impedes the proceeding or provides unverifiable information, sections 776(a)(2)(A),(C) and (D) of the Act require the use of facts otherwise available.

Information discovered at verification indicates that China Kingdom withheld certain sales documentation over the course of the administrative review and at verification regarding its single POR sale of subject merchandise to the United States. See *China Kingdom Verification Report*. Where a company's request for an antidumping administrative review is based entirely on a single sale of subject merchandise during the POR, it is essential that the company provide all documentation related to that sale.

The Department specifically asked China Kingdom in several questionnaires to describe in full the sales-transaction process and to provide all sales-related documentation. See China Kingdom's original questionnaire response, dated January 19, 2005 ("CK Original Response"), at page 14; China Kingdom's first supplemental questionnaire response, dated March 25, 2005, at page 9; and China Kingdom's second supplemental questionnaire response, dated July 20, 2005, at page 1. In response to all of these requests, China Kingdom never provided any documentation identifying any other parties to the transaction under review

besides the importer of record. *See* CK Original Response, at exhibits 12–15.

At verification, the Department again requested that China Kingdom provide the verification team with all U.S. sales documentation. Despite claims by company officials present at verification that all such documentation for China Kingdom's U.S. sale had been provided, in the course of reviewing China Kingdom's sales documentation file, the verification team found several documents pertaining to the sale under review that had not previously been provided, including evidence of a previously undisclosed financial arrangement with a third company not previously reported as a party to the transaction. These documents contradicted the information provided by China Kingdom in its questionnaire responses, thereby making China Kingdom's questionnaire responses unverifiable.

Additionally, China Kingdom refused to provide invoices to this third party and other information which had been requested by the Department. As such, the Department finds that China Kingdom withheld information specifically requested by the Department, and significantly impeded the investigation.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of the respondent, if it determines that a party has failed to cooperate to the best of its ability. The Department finds that China Kingdom has failed to cooperate to the best of its ability because it could have complied with the Department's request to respond accurately to the Department's questionnaires, requests for supplemental information, and questions asked at verification. Moreover, at no point in the administrative review, prior to or during verification, did China Kingdom notify the Department of the existence of any inaccuracies in information it reported to the Department, or seek guidance on the applicable reporting requirements, as contemplated in section 782(c)(1) of the Act. In sum, despite the Department's detailed requests for information in questionnaires and at verification, China Kingdom gave insufficient attention to its statutory duty to reply accurately to requests for factual information. For all of the aforementioned reasons, the Department finds that China Kingdom failed to cooperate to the best of its ability. For a detailed analysis of the Department's decision to apply AFA, *see Memorandum from James C. Doyle to*

*Barbara E. Tillman: Application of Adverse Facts Available to China Kingdom*, dated September 30, 2005.

Therefore, in selecting from the facts available, the Department determines that an adverse inference is warranted. In accordance with section 776(b) of the Act, because of the breadth of the missing, unsupported and unverifiable data, the Department is applying total AFA to China Kingdom.

2. *Weishan Zhenyu*. Pursuant to sections 776(a)(2)(A),(C) and (D), and section 776(b) of the Act, the Department determines that the application of total AFA is warranted for respondent *Weishan Zhenyu*. When an interested party withholds information that has been requested by the Department, significantly impedes the proceeding, or provides information, but that information cannot be verified, sections 776(a)(2)(A),(C) and (D) of the Act provide for the use of facts otherwise available.

In the instant case, the Department has determined that facts available is warranted due to *Weishan Zhenyu*'s withholding of information concerning the actual location of its production facilities. Throughout the review, the Department relied on *Weishan Zhenyu*'s repeated assertions as to the specific location of the company's production facility, as well as the assertion that the company had only one production facility. At verification however, only after the Department discovered that the address where the plant was physically located was different from the location reported to the Department, did company officials state that its responses to the Department's questions on the location of its production facility were incorrect. *See Weishan Zhenyu Verification Report*. This information was discovered by the Department only after it inquired as to the location of the facilities where the Department had been taken for verification. In addition, *Weishan Zhenyu*'s explanations for the discrepancy could also not be verified, as the company offered inconsistent explanations as to the significance of the address originally provided to the Department and offered no supporting documentation, which was requested by the Department. As the Department has incomplete information regarding the location and number of production facilities used by *Weishan Zhenyu* during the POR, the Department could not verify that the factors of production submitted to the Department were related to *Weishan Zhenyu* or to another company, and is thus precluded from calculating a margin for *Weishan Zhenyu*.

*Weishan Zhenyu* also was unable to provide the Department with the original source documentation for its purchases of the whole crawfish input, the most significant input in the production of freshwater crawfish tail meat. Given that the Department normally reviews such documentation at verifications of crawfish tail meat, and also given the inconsistencies provided to the Department regarding payment for *Weishan Zhenyu*'s whole crawfish purchases, the Department requested the original source documentation for the company's purchases of crawfish tail meat. Although company officials stated that the company did not retain such documentation, the Department found that the company had retained the documentation for other time periods. Given that the Department could not verify the reported factors of production due to both the withholding of information regarding the location of *Weishan Zhenyu*'s production facilities, as well as the company's failure to provide the Department with source documents for the whole crawfish input, the Department finds that *Weishan Zhenyu* significantly impeded the proceeding and facts available, pursuant to sections 776(a)(2)(A), (C) and (D), is warranted.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of the party, if it determines that a party has failed to cooperate to the best of its ability. The Department finds that by not providing accurate information regarding the location of its production facilities despite multiple opportunities to do so and by failing to provide the Department with the original source documentation for the whole crawfish input, *Weishan Zhenyu* failed to cooperate to the best of its ability. *Weishan Zhenyu* could have accurately and completely replied to the Department's requests for information. Because the Department concludes that *Weishan Zhenyu* failed to cooperate to the best of its ability, in applying the facts otherwise available, the Department finds that an adverse inference is warranted, pursuant to section 776(b) of the Act. For a detailed analysis of the Department's decision to apply AFA, *see Memorandum from James C. Doyle to Barbara E. Tillman: Application of Adverse Facts Available to Weishan Zhenyu*, dated September 30, 2005.

3. *Yancheng Yaou*. As further discussed below, pursuant to sections 776(a)(2)(D) and 776(b) of the Act, the Department determines that the

application of total AFA, as part of the PRC-wide entity, is warranted for respondent Yancheng Yaou, as part of the PRC-wide entity, because Yancheng Yaou failed to allow the Department to verify its questionnaire responses. Section 776(a)(2)(D) warrants the use of facts otherwise available in reaching a determination when information is provided, but cannot be verified. The Department attempted to conduct verification of the questionnaire responses of Yancheng Yaou from August 2 through August 5, 2005. On August 5, 2005, Yancheng Yaou withdrew from verification and reclaimed all of its verification exhibits. *See On Site Meetings with Yancheng Yaou Memo*. On August 5, 2005, Yancheng Yaou also submitted a letter stating that it was withdrawing from the current administrative review. *See Letter from Yancheng Yaou Seafood Co., Ltd. to the Department, dated August 5, 2005.*

Verification is integral to the Department's analysis because it allows the Department to satisfy itself that the information upon which the Department relies in calculating a margin is accurate and therefore enables the Department to comply with its mandate to calculate the dumping margin as accurately as possible. In the *Initiation Notice*, the Department stated that if one of the companies for which we initiated a review does not qualify for a separate rate, all other exporters of freshwater crawfish tail meat from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part. *See Initiation Notice*, at fn. 3. Yancheng Yaou notified the Department that it would no longer participate in the current administrative review and therefore could not establish its eligibility for a separate rate. The Department therefore finds Yancheng Yaou to be part of the PRC-wide entity. As a result, the Department determines that it is necessary to review the single PRC-wide entity, including Yancheng Yaou, in this proceeding.

4. *PRC-wide Entity.* The PRC-wide entity (including Yancheng Yaou) did not provide verifiable information to the Department. Pursuant to section 776(a)(2)(D) of the Act, as the information provided by the PRC-wide entity is unverifiable, the Department must resort to the facts otherwise available. According to section 776(b) of the Act, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information

that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See Statement of Administrative Action ("SAA")* accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Rep. No. 103-316 at 870 (1994). Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." Antidumping Duties; Countervailing Duties: Final Rule, 62 FR 27296, 27340 (May 19, 1997). As explained above, the PRC-wide entity (including Yancheng Yaou) withdrew from verification and informed the Department that it would not participate further in this review. Because the PRC-wide entity indicated it would no longer cooperate in the proceeding, the Department finds it necessary, pursuant to sections 776(a)(2)(D) and 776(b) of the Act, to use AFA as the basis for these preliminary results of review for the PRC-wide entity.

#### Selection of AFA Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In reviews, it is the Department's practice to select, 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 the Department's 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 (Ct. Int'l Trade 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a LTFV investigation); *see also Compass 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 February 17, 2005) (upholding a 223.01 percent total AFA rate, the highest

available dumping margin from a different respondent in a previous administrative review).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See SAA* at 870. *See also Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004); *See also D&L Supply Co. v. United States*, 113 F. 3d 1220, 1223 (Fed. Cir. 1997). In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin "reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less." *Rhone Poulenc*, 899 F.2d at 1190.

Consistent with the statute, court precedent, and its practice, the Department has assigned the rate of 223.01 percent, the highest rate calculated in any segment of the proceeding, to China Kingdom, Weishan Zhenyu, and the PRC-wide entity as AFA. *See, e.g., Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review: Brake Rotors from the People's Republic of China*, 64 FR 61581 61584 (November 12, 1999). *See 1999-2000 Final Results*. As discussed further below, this rate has been corroborated.

#### Corroboration of Secondary Information Used as AFA

Section 776(c) of the Act provides that when the Department relies on the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The SAA states that "corroborate" means to

determine that the information used has probative value. *See SAA* at 870. The Department has determined that to have probative value, information must be reliable and relevant. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan*, 61 FR 57391, 57392 (November 6, 1996). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See 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 *Final Determination of Sales at Less Than Fair Value: Live Swine from Canada*, 70 FR 12181 (March 11, 2005).

The reliability of the AFA rate was determined by the calculation of the margin based on sales and production data of a respondent in a prior review, and on the most appropriate surrogate value information available to the Department, chosen from submissions by the parties in that review, as well as information gathered by the Department itself. Furthermore, the calculation of this margin was subject to comment from interested parties in the proceeding. *See 1999–2000 Final Results*. The Department has received no information to date that warrants revisiting the issue of the reliability of the rate calculation itself. This rate has been used as AFA in every subsequent segment of this proceeding and the Department has received no comments challenging the reliability of the margin. No information has been presented in the current review. Thus, the Department finds that the margin calculated in the 1999–2000 review is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the

Department does not apply a margin that has been discredited. *See D & L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present here. As there is no information on the record of this review that indicates that this rate is not relevant as AFA for China Kingdom, Weishan Zhenyu and the PRC-wide entity, we determine that this rate has probative value.

Accordingly, we determine that the highest rate determined in any segment of this administrative proceeding (*i.e.*, 223.01 percent) is in accord with section 776(c)'s requirement that secondary information be corroborated (*i.e.*, that it have probative value).

#### Normal-Value Comparisons

To determine whether Yancheng Hi-King's sales of the subject merchandise to the United States were made at prices below NV, Yancheng Hi-King's United States prices were compared to NV, as described in the "United States Price" and "Normal Value" sections of this notice.

#### United States Price

For Yancheng Hi-King, the Department based United States price on export price ("EP") in accordance with section 772(a) of the Act, because the first sales to unaffiliated purchasers were made prior to importation, and constructed export price ("CEP") was not otherwise warranted by the facts on the record. We calculated EP based on packed prices from the exporter to the first unaffiliated purchaser in the United States. Where applicable, foreign inland freight, foreign brokerage and handling expenses, and ocean freight were deducted from the starting price (gross unit price) in accordance with section 772(c) of the Act.

#### 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. The Department will base NV on the factors of production because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under its normal methodologies. *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 29744, 39754 (July 11, 2005).

For purposes of calculating NV, we selected surrogate values for the PRC factors of production in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to, hours of labor required, quantities of raw materials employed, amounts of energy and other utilities consumed, and representative capital costs, including depreciation. *See* section 773(c)(3) of the Act. In choosing surrogate values, we selected, where possible, a publicly available value which was an average non-export value, representative of a range of prices within the POR or most contemporaneous with the POR, product-specific, and tax-exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People's Republic of China*, 69 FR 75294, 75300 (December 16, 2004) ("*Chlorinated Isocyanurates*"). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. *See Manganese Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12442 (March 13, 1998). We used the usage rates reported by the respondents for materials, energy, labor, by-products, and packing. For a more detailed explanation of the methodology used in calculating various surrogate values, *see Factor Valuation Memo*.

#### Factor Valuations

In accordance with section 773(c) of the Act, the Department calculated NV based on the FOPs reported by the Yancheng Hi-King for the POR. To calculate NV, the reported per-unit factor quantities was multiplied by publicly available surrogate values (except where noted below). As appropriate, we adjusted input prices by including freight costs to reflect delivered prices. For a detailed explanation of all surrogate values used for respondents, *see Factor Valuation Memo*.

Except where discussed below, we valued raw material inputs using September 2003–August 2004 weighted-average Indian import values derived from the *World Trade Atlas* online ("WTA") (*see Factor Valuation Memo*). The Indian import statistics we obtained from the WTA were published by the



DGCI&S, Ministry of Commerce of India and are contemporaneous with the POR. As the Indian surrogate values were denominated in rupees, they were converted to U.S. dollars using the exchange rate for India on the date of the applicable sale. The daily exchange rate was the exchange rate data from the Department's website, which are taken from publicly available data from the Federal Reserve and Dow Jones. See <http://www.ia.ita.doc.gov/exchange/index.html>. Where we could not obtain publicly available information contemporaneous with the POR with which to value factors, we adjusted the publicly available information for inflation using Indian wholesale price indices ("WPIs") as published in the International Monetary Fund's *International Financial Statistics* ("IFS"). See *Factor Valuation Memo*.

In instances where we relied on Indian import data to value inputs, in accordance with the Department's practice, we excluded imports from both 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) from our surrogate value calculations. 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 the Department's final determination at 69 FR 20594 (April 16, 2004). Also consistent with our policy, we excluded, in a few instances, import data that appeared to be aberrational when compared to the average import value of all countries not excluded. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594, April 16, 2004, and accompanying Issues and Decision Memorandum at Comment 5. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from

either an NME or a country with general export subsidies.

#### *Surrogate Valuations*

To value the input of whole live crawfish we used publicly available data for Spanish imports of whole live crawfish from Portugal. The Department obtained the data from "aduanas e I.especiales," the Spanish Customs database for foreign trade statistics (Estadísticas Comercio Exterior).

The Department derived a price for polyethylene bags during the POR from Indian import statistics for HTS subheading 3923.2100 from the WTA.

To value a by-product, crawfish scrap, the Department used a price quote from Indonesia for wet crab and shrimp shells. See *Factor Valuation Memo*, Attachment 5. The Department has used this surrogate value in previous segments of this proceeding and interested parties have not submitted any additional information for valuing this by-product.

Section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. Therefore, to value the labor input, the Department used the regression-based wage rate for China published by Import Administration on its Web site. See <http://www.ia.ita.doc.gov/wages/index.html>.

To calculate the cost of coal, the Department used Indian import data for steam coal (HTS subheading 2701.1902) during the POR from the WTA.

To value water, the Department used the industrial water rates within the Maharashtra Province of India from June 2003. To achieve comparability of water prices to the factors reported for the POR, we adjusted this factor value to reflect inflation to the POR using the WPI for India, as published in the 2005 IFS.

To value SG&A, factory overhead and profit, the Department used the 2002–2003 financial statements from Nekkanti Sea Foods Ltd. ("Nekkanti"). See *Factor Valuation Memo*, at Attachment 13.

For foreign inland freight, respondent reported that all raw materials were delivered by truck. Respondent reported the distance of the material inputs in kilometers, from the supplier of the material input to the factory. In calculating the freight rate, the Department used the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997). To value the cost of truck freight, we used an average

truck freight cost based on Indian market truck freight rates on a per-metric ton basis published in the Iron and Steel Newsletter, April 2002, and inflated the value to be contemporaneous to the POR. To derive the freight cost for each material input, the Department multiplied the surrogate freight value by the freight distance and subsequently multiplied this value by the reported quantity of the input consumed in the production of one unit of the subject merchandise during the POR. The Department added the freight expense to the cost of the material input to determine gross material costs.

To value the inland freight expense for packaged crawfish tail meat from the producer to the port of export, the Department used an Indian refrigerated truck freight rate based on price quotations from CTC Freight Carriers of Delhi, India, placed on the record of the antidumping investigation of Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China. This rate was contemporaneous with the POR. The Department has placed this information on the record of this proceeding (see *Factor Valuation Memo*, Attachment 10).

To value brokerage and handling, the Department used a simple average of the publicly summarized version of the average value for brokerage and handling expenses reported in the U.S. sales listings in the February 28, 2005, submission from Essar Steel Ltd. ("Essar Steel") in the antidumping duty administrative review of Certain Hot-Rolled Carbon Steel Flat Products from India, and the March 9, 2004, submission from Pidilite Industries Ltd. ("Pidilite") in the antidumping duty investigation of Carbazole Violet Pigment 23 from India. See Public version of section C questionnaire response from Essar Steel Limited, dated February 28, 2005; and Public version of section C questionnaire response from Pidilite Industries Ltd., dated March 9, 2004. The reported rate of Essar Steel was contemporaneous with the POR. Since the Pidilite rate was dated from October 2002 through September 2003, it was necessary to inflate the rate to be contemporaneous with the POR. The Department has placed this information on the record of this proceeding (see *Factor Valuation Memo*, Attachment 11).

Where respondent used an NME shipper, we valued international freight expenses using freight quotes from Maersk Sealand, a market-economy shipper. These quotes have been used in prior 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 Administrative Review*, 66 FR 20634 (April 24, 2001). We obtained quotes for each month of the POR, from the PRC to Long Beach, and took a simple average. See Factor Valuation Memo, Attachment 12.

### Currency Conversions

We made currency conversions using exchange rates obtained from the Web site of Import Administration at <http://ia.ita.doc.gov/exchange/index.html>.

### Preliminary Results of the Review

The Department preliminarily finds that the following margins exist for the following exporters under review during the period September 1, 2003, through August 31, 2004:

#### FRESHWATER CRAWFISH TAIL MEAT FROM THE PRC

Manufacturer/exporter	Weighted-average margin (percent)
China Kingdom International .... Weishan Zhenyu Foodstuff Co., Ltd. ....	223.01
Yancheng Hi-King Agriculture Developing Co., Ltd. ....	223.01
PRC-wide Rate (including Yancheng Yaou Seafood Co., Ltd.) .....	32.53
	223.01

The Department will disclose the calculations used in our analysis to parties to this proceeding within five days of the date of publication of this notice. Case briefs from interested parties may be submitted not later than October 31, 2005, pursuant to 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, will be due not later than November 7, 2005, pursuant to 19 CFR 351.309(d). Parties who submit case briefs 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, Room B-099, within 30 days of the date of publication of this notice. Requests should include (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 case briefs and rebuttal briefs.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, no later than 120 days after the date of publication of this notice.

### Assessment of Antidumping Duties

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review. 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.

### Cash Deposits

The following cash-deposit requirements will be effective upon publication of the final results for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by China Kingdom and Weishan Zhenyu, the cash-deposit rate will be equal to 223.01 percent; (2) for subject merchandise exported by Yancheng Hi-King, we will establish a per-kilogram cash deposit rate which will be equivalent to the company-specific cash deposit established in this review; (3) the cash-deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding; (4) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate (including Yancheng Yaou), the cash-

deposit rate will be the PRC-wide rate of 223.01 percent; (5) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC exporter that supplied that exporter.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

### 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.

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

Dated: September 30, 2005.

**Barbara E. Tillman,**

*Acting Assistant Secretary for Import Administration.*

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**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-893]

#### Certain Frozen Warmwater Shrimp From the People's Republic of China: Initiation of New Shipper Review

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

**EFFECTIVE DATES:** October 7, 2005.

**SUMMARY:** The Department of Commerce (the "Department") has determined that a request for a new shipper review of the antidumping duty order on certain frozen warmwater shrimp from the People's Republic of China ("PRC"), received before August 31, 2005,<sup>1</sup> meets

<sup>1</sup> The Order for certain frozen warmwater shrimp from the PRC was published on February 1, 2005. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China*, 70 FR 05149 (February 1, 2005) ("PRC Shrimp Order"). Therefore, a request for a new shipper review based on the semi-annual anniversary month, August, was due to the Department by the final day of August 2005. See 19 CFR 351.214(d)(1).