70 FR 5149, February 1, 2005

A-570-893
Investigation
Proprietary Document
Public Version
IA/AD/CVD/9: JH, JDAL

January 26, 2005

MEMORANDUM TO: James C. Doyle
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AD/CVD Enforcement, Office 9

THROUGH: Alex Villanueva
Program Manager
AD/CVD Enforcement, Office 9

FROM: Julia Hancock
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Case Analysts

RE: Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China: Analysis of Ministerial Error Allegations[1]

I. SUMMARY

The Department of Commerce ("the Department") is amending the weighted-average dumping margins listed in the Final Determination for respondent Allied Pacific Group[2] ("Allied Pacific"), four Section A Respondents, Zhoushan Xifeng Aquatic Co., Ltd. ("Zhoushan Xifeng"), Zhejiang Cereals, Oils & Foodstuff Import & Export Co., Ltd. ("Zhejiang Cereals"), Jinfu Trading Co., Ltd. ("Jinfu Trading"), Zhoushan Diciyuan Aquatic Products Co., Ltd. ("Zhoushan Diciyuan"), and the weighted-average Section A rate for all other respondents granted a separate rate. See Notice of Final Determination of

[1] On January 21, 2005, the International Trade Commission ("ITC") notified the Department of its final determination that two domestic like products exist for the merchandise covered by the Department's investigation: (i) certain non-canned warmwater shrimp and prawns, as defined above, and (ii) canned warmwater shrimp and prawns. The ITC determined that there is no injury regarding imports of canned warmwater shrimp and prawns from China, therefore, canned warmwater shrimp and prawns will not be covered by the antidumping order.

[2] Allied Pacific Food (Dalian) Co., Ltd., Allied Pacific (H.K.) Co., Ltd., King Royal Investments, Ltd., Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd., and Allied Pacific Aquatic Products (Zhongshan) Co., Ltd. (collectively, "Allied Pacific")

Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China, 69 FR 70997 (December 8, 2004) ("Final Determination"). The weighted-average margins for Yelin Entprise Co. Hong Kong ("HK Yelin") and its suppliers, Shantou Yelin Frozen Seafood Co., Ltd., Yangjiang City Yelin Hoi Tat Quick Frozen Seafood Co., Ltd., and Fuqing Yihua Aquatic Food Co., Ltd. (collectively, "Yelin"), Shantou Red Garden Foodstuff Co., Ltd. ("Red Garden") and Zhanjiang Guolian Aquatic Products Co., Ltd. ("Zhanjiang Guolian") and the PRC-wide entity remain unchanged.

II. BACKGROUND

On December 8, 2004, the Department published its final determination of sales at less than fair value in the investigation of certain frozen and canned warmwater shrimp from the People's Republic of China ("PRC"). See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China, 69 FR 70997 (December 8, 2004) ("Final Determination") and accompanying "Issues and Decision Memorandum" dated November 29, 2004; see also Memorandum from Julia Hancock, Case Analyst, through Alex Villanueva, Program Manager, to James Doyle, Office Director, Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China: Section A Respondents Issue Memorandum, dated November 29, 2004 ("Section A Respondents Issues Memorandum").

Between December 7, 2004, and December 13, 2004, parties filed timely allegations that the Department made various ministerial errors in the Final Determination. On December 7, 2004, 16 of the 18 Section A Respondents that had been denied a separate rate by the Department in Final Determination, filed timely comments alleging ministerial errors in the Final Determination: Shantou Sez Xuhao Fastness Freeze Aquatic Factory Co., Ltd., with respect to its denial of a separate rate on the basis of an untranslated sample sales package; ZJ CNF Sea Products Engineering Ltd., Zhoushan Xifeng Aquatic Co., Ltd., Zhejiang Daishan Baofa Aquatic Product Co., Ltd., Zhejiang Taizhou Lingyang Aquatic Products Co., Zhoushan Zhenyang Developing Co., Ltd., Zhejiang Cereals, Oils & Foodstuff Import & Export Co., Ltd., Zhoushan Diciyuan Aquatic Products Co., Ltd., Zhejiang Zhenlong Foodstuffs Co., Ltd., Jinfu Trading Co., Ltd., Taizhou Zhonghuan Industrial Co., Ltd., Zhoushan Haichang Food Co., Zhoushan Putuo Huafa Sea Products Co., Ltd., Zhoushan Industrial Co., Ltd., and Shanghai Linghai Fisheries Economic and Trading Co. with respect to their denial for separate rates on the basis of insufficient evidence of price negotiation; and Zhejiang Evernew Seafood Co., Ltd., with respect to its denial of a separate rate for insufficient evidence of price negotiation and discrepancies with its corporate affiliations.

Also on December 7, 2004, Allied Pacific and Yelin filed timely allegations that the Department made ministerial errors in the Final Determination in the margin calculation of each respondent. On December 8, 2004, Shantou Red Garden Foodstuff Co., Ltd. ("Red Garden") filed a timely allegation that the Department made ministerial errors in the Final Determination with respect to its margin calculation and the use of partial adverse facts available.

From December 7, 2004, to December 14, 2004, the Ad Hoc Shrimp Trade Action Committee, Versaggi Shrimp Corporation, and Indian Ridge Shrimp Company (collectively "Petitioners") filed timely allegations that the Department made ministerial errors in the Final Determination and rebuttal comments to ministerial error allegations made by the interested parties.'

On December 13, 2004, Allied Pacific, Yelin, Red Garden, and Zhanjiang Guolian Aquatic Products Co., Ltd. ("Zhanjiang Guolian"), hereinafter referred to collectively as "the Mandatory Respondents," filed rebuttal comments to ministerial error allegations submitted by the Petitioners.

A ministerial error is defined in section 351.224(f) of the Department's regulations as "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial."

III. GENERAL COMMENTS:

I. Shrimp Surrogate Value

Comment 1: Use of Absolute Value
Comment 2: Calculation of the 13.24 Weighted-Average Percent Difference
Comment 3: Application to Finished Product
Comment 4: Base Price was Applied to Wrong Count Size
Comment 5: Separate Weighted-Average Count Sizes for Each Respondent
Comment 6: Base Price is Inflated by Purchases of Processed Shrimp
Comment 7: Base Price is Inflated by Excise Duties and Sales Tax

II. Mandatory Respondents

Comment 8: Red Garden's Surrogate Value for Input Shrimp
Comment 9: Red Garden's Partial Adverse Facts Available
Comment 10: Inclusion of Procured Shrimp in Calculation of Surrogate Financial Ratios
Comment 11: Inclusion of Devi[3] and Sandhya[4] in Calculation of Surrogate Financial Ratios
Comment 12: Application of Incorrect Surrogate Value to Certain Count Size for Allied Pacific

III. Section A Respondents

[3] Devi Sea Foods, Ltd.

[4] Sandhya Marines, Ltd.

Comment 13: Shantou Sez Xu's[5] Separate Rate
Comment 14: Certain[6] Section A Respondents' Separate Rate
Comment 15: Shanghai Linghai's, Zhoushan Xifeng's, Zhejiang Cereals', Jinfu Trading's, and Zhoushan Diciyuan's Separate Rate
Comment 16: Zhejiang Evernew's Separate Rate
Comment 17: Shantou Ocean's Separate Rate

IV: Scope Comments

Comment 18: Dusted Shrimp

I. Shrimp Surrogate Value

Comment 1: Use of Absolute Value

Petitioners argue that the Department should use the actual value of the percentage price difference between count sizes rather than the absolute value of the percentage price difference between count sizes. Petitioners state that correcting this arithmetical error results in a change in the weighted-average percentage price difference used in the Department's calculation of its input shrimp surrogate values from 13.24 percent to 10.32 percent.

Yelin and Allied Pacific reply that the language in the Department's analysis memoranda very clearly signals the Department's intention to use the absolute value rather than the actual percentage price difference, and that the Department's calculations are therefore not in error. Yelin and Allied Pacific note that Petitioners' argument rests entirely on the assertion that the Department did not intend to use the absolute value, which Respondents argue, is directly contradicted by the evidence on the record.

Department's Position:

The Department finds that this is not a ministerial error. The Petitioners allege that the Department's shrimp surrogate value analysis regarding the proper percentage price difference (absolute value versus actual value) between count sizes for the input shrimp surrogate values is an arithmetic error. This is not an arithmetical error or ministerial error within the meaning of 19 CFR 351.224(f). The Department's

[5] Shantou Sez Xuhao Fastness Freeze Aquatic Factory Co., Ltd.

[6] The Section A Respondents include: ZJ CNF Sea Products Engineering Ltd. and CNF Zhanjiang (Tong Lian) Fisheries Co., Ltd., Zhoushan Xifeng, Zhejiang Daishan Baofa Aquatic Product Co., Ltd., Zhejiang Taizhou Lingyang Aquatic Products Co. and Zhoushan Juntai Foods Co., Ltd., Zhoushan Zhenyang Developing Co., Ltd., Zhejiang Cereals, Zhoushan Diciyuan Aquatic Products Co., Ltd., Zhejiang Zhenlong Foodstuffs Co., Ltd., Zhejiang Evernew Seafood Co., Ltd., Jinfu Trading, Taizhou Zhonghuan Industrial Co., Ltd., Zhoushan Haichang Food Co., Zhoushan Putuo Huafa Sea Products Co., Ltd., Zhoushan Industrial Co., Ltd., and Shanghai Linghai.

use of the absolute value of the difference in price between count sizes in its Final Determination reflects the Department's intended methodological decision. The Department explicitly explained in its analysis memoranda for Yelin and Allied Pacific, that "the Department determined the absolute value of the difference between the price{s}." See, e.g., Memorandum to the File from John D. A. LaRose, Case Analyst, to Alex Villanueva, Program Manager, Regarding Analysis for the Final Determination of Certain Frozen and Canned Warmwater Shrimp from China: Yelin Enterprise Co., Hong Kong, November 29, 2004 ("Yelin Analysis Memorandum"), at 4; Memorandum to the File from Julia Hancock, Case Analyst, to Alex Villanueva, Program Manager, Regarding Analysis for the Final Determination of Certain Frozen and Canned Warmwater Shrimp from China: The Allied Pacific Group, November 29, 2004 ("Allied Pacific Analysis Memorandum"), at 4.

Comment 2: Application of the 13.24 Weighted-Average Percent Difference

Petitioners allege that the Department improperly applied the weighted-average percentage price difference between count sizes to its input shrimp base price for count sizes larger than the weighted-average count size, and that this constitutes an arithmetical error. Petitioners argue that the pricing relationship between all count sizes below (smaller than) the weighted-average count size in the Department's raw shrimp surrogate value exists, but that this pricing relationship does not exist for count sizes above (larger than) the weighted-average count size calculated by the Department. As an example, Petitioners note that the price differential between the surrogate value assigned to count size 1/8 and the surrogate value assigned to count size 9/12 is only 11.67 percent, when calculated using the methodology employed by the Department. Petitioners argue that to correct this, the Department should replace the surrogate values assigned to all of the count sizes above the weighted-average count size with the calculated figures presented in attachment 3 of their submission.

Yelin and Allied Pacific reply that the Department's calculations are not in error because the Department clearly stated that its methodology was to increase or decrease the base price by 13.24 percent. Respondents conclude that the Department's calculation therefore does not constitute a ministerial error.

Department's Position:

The Department finds that this is not a ministerial error. The Petitioners allege that the Department's application of the 13.24 percent weighted-average difference to the base input shrimp surrogate value is an arithmetic error. This is not an arithmetic error or a ministerial error within the meaning of 19 CFR 351.224(f). The Department's application of the weighted-average difference in price between count sizes to the base input shrimp surrogate value reflects its intended methodology. The Department's deliberate decision is not an error in addition, subtraction, or other arithmetic function, nor is it a clerical error resulting from inaccurate copying, duplication, or the like, nor is it an unintentional error considered by the Department to be ministerial.

The Department agrees with Yelin and Allied Pacific that it clearly explained its application of "the average price difference to the Nekkanti base price and count size, adjusting the surrogate value **upward and downward from the base.**" See Final Determination at Comment 1 (emphasis added). Additionally, the Department explained in its analysis memoranda for Yelin and Allied Pacific that:

> The Department, recognizing the importance of count size specific surrogate values for shrimp, the main input, but unable to rely on the surrogate value data submitted by Respondents, has calculated count size specific surrogate values for shrimp... using the shrimp surrogate value derived from the Nekkanti financial statement and adjusting this Nekkanti base price by the average difference in price between count sizes as reported by Urner Barry. The Department ... increased or decreased the Nekkanti base price by 13.24% upward or downward for each consecutive count size. See e.g., Yelin Analysis Memorandum and Allied Pacific Analysis Memorandum at 1-4.

The percentage weighted-average difference in value between the count-size specific surrogate values is 13.24 percent, in accordance with the Department's stated methodology. This variance was applied to all count-sizes to establish count-size specific values for shrimp input. See Final Determination at Comment 1; Yelin Analysis Memorandum and Allied Pacific Analysis Memorandum at 1-4. The Department's Final Determination reflects its intended methodology.

Comment 3: Application to Finished Product

Petitioners allege that the Department applied its count-size specific input shrimp surrogate values to the individual CONNUMs of Yelin and Allied Pacific on the basis of the finished product count sizes reported by Respondents, rather than input shrimp count sizes. Petitioners also allege that the Department failed to convert the count sizes to a count per pound basis. Petitioners argue that the Department should correct this ministerial error by converting the input shrimp count sizes reported by Respondents to a count per pound basis, and by applying count-size specific input shrimp surrogate values to individual CONNUMs on the basis of those input shrimp count sizes, as per the Department's methodology.

Yelin and Allied Pacific argue that the Department did not commit a ministerial error in this regard. Yelin and Allied Pacific note that Petitioners' argument is factually incorrect, as the Department correctly applied count-size specific input shrimp surrogate values to individual CONNUMs on the basis of Respondents' reported input shrimp count sizes, as per its methodology. Moreover, Yelin and Allied Pacific note that the count sizes used by the Department in its application of input shrimp surrogate values are already reported on a count per pound basis.

Department's Position:

The Department finds that this is not a ministerial error. The Petitioners' allegation incorrectly asserts

that the Department's shrimp surrogate value analysis applied count-size specific input shrimp surrogate values to Respondents' individual CONNUMs. This is factually incomplete. The Department assigned its input shrimp surrogate values to Respondents' CONNUMs on the basis of the input shrimp count size for each CONNUM and on a head-on, shell-on ("HOSO") count per pound basis. See Yelin Analysis Memorandum at 3; Final Determination at Comment 1. The Petitioners' argument that the Department failed to convert the count sizes reported by Respondents to a per-pound basis is also factually incorrect. As explained in the memoranda accompanying the Final Determination, the application of surrogate values to Respondents' CONNUMs was conducted on the basis of input shrimp count sizes reported by Respondents which, in the case of Allied Pacific, were converted to a HOSO count per pound basis prior to application of count size specific input shrimp surrogate values for each CONNUM. See Yelin Analysis Memorandum and Allied Pacific Analysis Memorandum at Footnote 4.

Comment 4: Base Price was Applied to Wrong Count Size

Yelin and Allied Pacific argue that the Department committed a mathematical error by failing to draw a rational connection or link between the average cost of input shrimp for Nekkanti Sea Foods Limited ("Nekkanti") and the average size of input shrimp consumed by Yelin and Allied Pacific. In order to correct this error, Yelin and Allied Pacific argue that the Department should rely on the ranged data submitted by Yelin and Allied Pacific in their September 8, 2004, surrogate value submission. Yelin and Allied Pacific include a detailed analysis of these ranged data on Nekkanti's input shrimp purchases, and argue that their analysis, which should be adopted by the Department, demonstrates that the Department's base price should be applied to the 21/25 count size range.

Petitioners argue that this is not a ministerial error. Noting that the Department described in detail the methodology employed to calculate its weighted-average count size for both companies, Petitioners contend that Respondents are merely arguing for the use of a methodology different from the one used by the Department. Petitioners also state that the Department normally relies on factors of production information provided by a respondent, and that the "correction" offered by Respondents is flawed because it relies on ranged data that has already been rejected by the Department.

Department's Position:

The Department finds that its methodological decision to develop the weight-average count-size input values is not a ministerial error. This is not a ministerial error within the meaning of 19 CFR 351.224(f) because it is not an error in addition, subtraction, or other arithmetic function, nor is it a clerical error resulting from inaccurate copying, duplication, or the like, nor is it an unintentional error considered by the Department to be ministerial. The Department's Final Determination reflects its intended methodology, which was to "calculate the weighted average count size range for the PRC." See Final Determination at Comment 1. Furthermore, the Department explained its reasons for not utilizing the Respondents' ranged data of Nekkanti's input shrimp purchases. As explained in the Final

Determination, the Department found that "Nekkanti's publicly ranged data was not appropriate since the record of {the} proceeding did not indicate how the data was ranged" pursuant to section 351.304(c) of the Department's regulations. See Final Determination at Comment 1.

Comment 5: Separate Weighted-Average Count Sizes for Each Respondent

Yelin and Allied Pacific argue that because Yelin and Allied Pacific are not otherwise treated as a single entity or collapsed, the Department should calculate a separate weighted-average count size for each Respondent. Yelin and Allied Pacific assert that the Department's calculation of a single weighted-average count size is therefore a mathematical error and should be corrected by calculating a separate weighted-average count size for each Respondent.

Petitioners reply that Yelin's and Allied Pacific's assertions that the calculation of a single weighted average count size is a mathematical error are in fact not true, arguing that the Department took deliberate steps to combine the purchase data. Petitioners further demonstrate that the Department's single weighted average count size is accurate for Yelin and Allied Pacific.

Department's Position:

The Department finds that this is not a ministerial error. The Department's shrimp surrogate value analysis, specifically calculating a single weighted average count size for both Yelin and Allied Pacific, was an intentional methodological decision. It is not a ministerial error within the meaning of 19 CFR 351.224(f) because it is not an error in addition, subtraction, or other arithmetic function, nor is it a clerical error resulting from inaccurate copying, duplication, or the like, nor is it an unintentional error considered by the Department to be ministerial. The Department's Final Determination explained that its intended methodology was to calculate a single surrogate value for each standard count size of input shrimp for all Respondents that purchased input shrimp on a count size specific basis. See Final Determination at Comment 1; Yelin Analysis Memorandum at 1-3.

Comment 6: Base Price is Inflated by Purchases of Processed Shrimp

Yelin and Allied Pacific argue that the Department's failure to adjust for the portion of Nekkanti's input shrimp purchases that included processed shrimp results in an improperly inflated input shrimp base price and constitutes a ministerial error. Yelin and Allied Pacific further note that the Department's margin calculations also double-count the labor and processing expenses for input shrimp. Citing the ranged input shrimp purchase data placed on the record by Yelin and Allied Pacific in its September 8, 2004, surrogate value submission, Respondents argue that processed shrimp accounted for 32.14 percent, by value, of Nekkanti's input shrimp purchases, and contend that the Department should adjust its input shrimp base price accordingly.

Petitioners argue that the Department did not commit a ministerial error in this regard because the

Department weighed all available record evidence in its consideration of the issue, and decided according to its evaluation of the evidence. Moreover, Petitioners argue, the vast majority of Nekkanti's input shrimp purchases were of HOSO shrimp. Petitioners also note that the record contains no reliable information regarding the actual amount of input shrimp purchases that were made on other than an HOSO basis, and that Respondents proposed correction is based on ranged data that the Department has previously rejected for use in its antidumping duty calculations.

Department's Position:

The Department finds that the Department's inclusion of processed shrimp in its calculation of the shrimp surrogate value is not a ministerial error. Yelin and Allied Pacific's allegation is not a ministerial error within the meaning of 19 CFR 351.224(f) because it is not an error in addition, subtraction, or other arithmetic function, nor is it a clerical error resulting from inaccurate copying, duplication, or the like, nor is it an unintentional error considered by the Department to be ministerial. Although the Department did not explicitly address the inclusion of processed shrimp in its calculation of the input shrimp surrogate value in its Final Determination, the Department's calculation of the Nekkanti base value is identical to that used in the Preliminary Determination. As explained in the Department's Amended Preliminary Determination, there is no information on the record of this investigation that would allow the Department to make a reasonable adjustment. See Memorandum to the File from Paul Walker, Case Analyst, to Edward Yang, Senior Enforcement Coordinator, Regarding the Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from the PRC: Analysis of Allegations of Ministerial Error from the Mandatory Respondents (August 24, 2004), at Comment 1. As it did in its Preliminary Determination, the Department clearly and deliberately did not make an adjustment for processed shrimp. Furthermore, as explained in the Final Determination, the Department found that Nekkatini's input purchases are not reliable and were intentionally not used for several reasons. See Final Determination at Comment 1.

Comment 7: Base Price is Inflated by Excise Duties and Sales Tax

Yelin and Allied Pacific argue that the Department failed to deduct excise duties and sales taxes from the Nekkanti base price for input shrimp. They note that the Department's practice is to use prices that are net of taxes and import duties, and cite recent cases wherein the Department made adjustments of 16 percent and 4 percent for excise duties and sales taxes, respectively. See Notice of Preliminary Results and Preliminary Partial Rescission of the Antidumping Administrative Review: Petroleum Wax Candles From the People's Republic of China, 68 FR 53109, 53114 (September 9, 2003). Yelin and Allied Pacific conclude that the Department should adjust its input shrimp base price by both 16 percent and 4 percent.

Petitioners argue that the Department did not commit a ministerial error in not adjusting its input shrimp base price. Petitioners argue that the Nekkanti financial statements are not clear as to whether input shrimp costs specifically are reported on a tax-inclusive basis. Additionally, citing documents available

on the world-wide web from the Government of India, Ministry of Finance that are also on the record, Petitioners demonstrate that input shrimp is not subject to excise tax in India. See Petitioners' Ministerial Error Rebuttal at 14. Petitioners argue that Respondents seek a re-evaluation of argument and evidence, and that the Department has not committed a ministerial error in this regard.

Department's Position:

The Department finds that this is not a ministerial error. The Department made a methodological decision to not adjust the input shrimp base price for excise or sales taxes. See Final Determination at Comment 1. In its Final Determination, the Department considered the issue of whether to adjust the input shrimp base price for excise and sales taxes, and acknowledged Respondents' argument in this regard. See Final Determination at Comment 1; Yelin Analysis Memorandum at 2; Allied Pacific Analysis Memorandum at 2. Yelin and Allied Pacific's allegation is not a ministerial error within the meaning of 19 CFR 351.224(f) because it is not an error in addition, subtraction, or other arithmetic function, nor is it a clerical error resulting from inaccurate copying, duplication, or the like, nor is it an unintentional error considered by the Department to be ministerial. Accordingly, no correction for the alleged ministerial error is warranted.

Comment 8: Red Garden's Surrogate Value for Input Shrimp

Red Garden alleges that the Department's conclusion that Ming Feng does not purchase input shrimp on a count-size basis is the result of a ministerial error. Red Garden claims that the verification did not concern itself with the issue of whether Ming Feng purchases shrimp on a count-specific basis, and states that the verification team did not ask for, and Ming Feng did not provide, sales invoices or delivery notes showing purchases of raw shrimp. Thus, Red Garden concludes that the Department's decision was based on a misunderstanding of the facts, and, thus, is a ministerial error.

Petitioners argue that Red Garden's allegation rests on the erroneous premise that it is the Department's burden to establish the basic facts surrounding Ming Feng's shrimp purchases. Petitioners note that the burden, in fact, belongs to the company, not the Department, and that Ming Feng failed to demonstrate or provide evidence that its input shrimp purchases are made on the basis of count-size. Petitioners conclude that the Department correctly evaluated the available record evidence, and that its decision in this regard was not the result of a ministerial error.

Department's Position:

The Department finds that it did not make a ministerial error with regard to Red Garden's shrimp surrogate value.

Red Garden's allegation challenges the Department's consideration of the information available on the record. In the Final Determination, the Department made an intentional decision and cited the relevant

information on the record that served as the basis of its finding that Red Garden did not purchase input shrimp on a count size specific basis.

> Unlike the shrimp surrogate values applied to Yelin Enterprise Co., Hong Kong and the Allied Pacific Group where the Department used a count size specific surrogate value, the Department is not applying a count size specific surrogate value to that portion of Red Garden's sales that used the whole shrimp as an input.
> The Department is not using the whole shrimp input based on our findings at verification where we found that Red Garden did not purchase shrimp on a count-size specific basis. See Red Garden Verification Report at MF Exhibit 17: Processing Stage.

See Red Garden Analysis Memo (November 29, 2004), at 3. Given that this is not a ministerial error within the meaning of section 351.224(f) of the Department's regulations, no correction for this alleged error is warranted.

Comment 9: Red Garden's Partial Adverse Facts Available

Red Garden asserts a two part allegation that the Department made ministerial errors when it applied adverse facts available ("AFA") to Red Garden in the Final Determination. Specifically, Red Garden argues that the Department made a ministerial error when it stated that: "during the time period that Meizhou completed its own responses, company officials had access to the records needed by Red Garden." See Final Determination, 69 FR at 71002. Red Garden also argues that the Department made a ministerial error when it found that "despite its [* * *] information to the contrary, by not contacting current ownership of Meizhou, or the ownership that was in place when Red Garden was responding to the Department's questionnaires, did not act to the best of its ability to obtain the FOP information from Meizhou." Id.

Regarding the first argument, Red Garden contends that the old owners were not in charge when the June 9, 2004, submission was made. According to Red Garden, the company was dormant during the period because it was the off-season and the final sale was completed in April 2004. Red Garden notes that the old management began leaving in April 2004. Red Garden argues that the new owners had the company name changed and a new business license issued on May 25, 2004. Red Garden notes that the Department found at verification that Meizhou had no original documents of any kind. See Memo to the file from Katherine Huang, Joseph Welton, John Conniff, Case Analyst Through Alex Villanueva, Acting Program Manager, Regarding Verification of Responses for Meizhou Aquatic Products Quick Frozen Industry Co., Ltd. Shengping Shantou (September 22, 2003), ("Meizhou Verification Report").

With regard to the second argument, Red Garden argues that the record is replete with evidence (11 instances) showing that Red Garden contacted (a) the "current ownership" of Meizhou and (b) "the ownership that was in place" when the questionnaires were filled out. Red Garden notes that

Meizhou's new owners bought the company in February 2004. See Meizhou Verification Report at 2. Red Garden also notes that both Meizhou and Red Garden independently filed their Section A responses on March 31, 2004, and that for that prior month-long period, when Red Garden was preparing its Section A response, there was a gradual changeover in control of Meizhou.

Based upon these two arguments, Red Garden alleges that the Department committed a ministerial error in assessing the evidence on the record concerning whether Red Garden acted to the best of its ability to obtain factors of production ("FOP") data from its supplier, Meizhou. Red Garden points out the numerous times that it contacted the current ownership and management of Meizhou, and also the numerous instances in Meizhou's verification report where the verification team notes that the current ownership of Meizhou did not possess documents from the POI. Red Garden asserts that given the available evidence, the Department's decision regarding this issue can only have been the result of a ministerial error.

Petitioners argue that Red Garden's allegation does not constitute a ministerial error, and that the Department's decision was informed by careful consideration of all evidence on the record, which does not therefore constitute a ministerial error. Specifically, Petitioners cite the inconsistencies cited by the Department in its Final Determination among the accounts of Red Garden's efforts to contact Meizhou, and the absence of any evidence to demonstrate that Red Garden made any attempt to contact the former ownership of Meizhou, even after the current ownership communicated to Red Garden that the information sought by Red Garden was in the hands of the former ownership. Petitioners conclude that the Department's reasoning and conclusions are clear, and are not the result of a ministerial error.

Department's Position:

The Department finds that certain language in the Final Determination was misstated, which is a ministerial error, but finds it did not make a ministerial error when it applied partial AFA to Red Garden.

With regard to Red Garden's first argument about the language in the first sentence above from the Final Determination, we find that the language was correctly stated. The record indicates that from the period [* * *], Meizhou's current owners appeared to have been granted access to certain pieces of information that was generated before February 2004, when the current owners purchased Meizhou. See Meizhou Verification Report at 2.

Regarding Red Garden's argument about the second sentence at issue from the Final Determination, we agree with Red Garden. In the Final Determination, the Department incorrectly stated that Red Garden did not contact the current ownership. The Department recognizes the several instances where Red Garden contacted the current ownership. See Red Garden's August 5, 2004, submission at Exhibit 1; Final Determination at Comment 6(B). As such, we hereby correct that statement as follows:

> Thus, we find that Red Garden, despite its information to the contrary, by not contacting the previous ownership of Meizhou after the current ownership notified Red Garden that it did not have the FOP information requested by Red Garden, did not act to the best of its ability to obtain the FOP information from Meizhou.

This change is consistent with the Department's explanation concerning the application of partial AFA to Red Garden in the Final Determination, where the Department stated:

> In its August 5, 2004, submission at Exhibit 1, and in its subsequent rebuttal brief, Red Garden chronicled their various attempts to obtain FOP information from Meizhou pertaining to its purchases of subject merchandise from Meizhou during the POI. However, close examination of the letters in Exhibit 1 reveal that Meizhou's current owners notified Red Garden that Meizhou's former owners possessed the information. There is no information on the record demonstrating Red Garden's attempt to contact the former owners, even after Meizhou's current owners repeated their notification to Red Garden that the former owners possessed the information. See Red Garden's August 5, 2004, submission at Exhibit 1 and Meizhou Verification Report at 2.
>
> Section 776(b) of the Act permits the Department to apply AFA when a respondent, among other things, withholds requested information and fails to cooperate by not acting to the best of its ability to comply with the Department's requests for information.
>
> Thus, we find that Red Garden did not act to the best of its ability to obtain the FOP information from Meizhou because Red Garden knew that Meizhou's former owners possessed the relevant information and Red Garden did not provide any evidence of its attempts to obtain that information from the former ownership. The Department has determined that it is appropriate to apply an adverse inference pursuant to section 776(b) of the Act with respect to all of Red Garden's sales produced by Meizhou. Therefore, we are applying the PRC-wide rate to all of these sales by Red Garden during the POI. See Final Determination at Comment 6(B).

Although the Department recognizes the error in language, the Department's basis for finding that Red Garden did not cooperate to the best of its ability remains unchanged. Moreover, as further evidence that Red Garden failed to contact Meizhou's previous owners, the Department compared the list of individuals who responded to Red Garden's request for FOP information against the list of individuals present at Meizhou's verification. The Department found that only the current owners, who subsequently explained to Red Garden that the previous owners had the information, were receiving and responding to Red Garden's FOP information requests.[7] Thus, we continue to find that Red

[7] The individuals compared are those listed in Red Garden's August 5, 2004, submission at Exhibit 1 and those individuals listed as attendees in the Meizhou Verification Report and the verification report for Red Garden.

Garden did not cooperate to the best of its ability in obtaining Meizhou's FOP information as it did not contact Meizhou's previous owners after it was informed as early as March 5, 2004, that the new owners did not have the requested FOP information. See Red Garden's August 5, 2004 submission at Exhibit 1 and Meizhou Verification Report at 2. Therefore, the Department's Final Determination remains unchanged.

Comment 10: Inclusion of Procured Shrimp in Calculation of Surrogate Financial Ratios

Petitioners contend that the Department made a clerical error by including purchased shrimp expenses in the denominator of the surrogate financial ratios. In the Final Determination, the Department calculated the surrogate financial ratios for Zhanjiang Guolian from an average of the financial ratios of Waterbase, Devi, and Sandya in order to fully calculate the aquaculture costs of Zhanjiang Guolian. See Final Determination at Comment 9(f). Petitioners argue that because Zhanjiang Guolian is a fully-integrated producer that made no purchases of shrimp during the POI, and because the Department demonstrated an intention to adjust surrogate financial ratios to exclude expenses not incurred by Red Garden and Zhanjiang Guolian, the Department clearly made a ministerial error when it included an expense associated with purchasing shrimp in the surrogate financial ratios applied to Zhanjiang Guolian in the POI.

Petitioners request that the Department calculate revised surrogate financial ratios for Zhanjiang Guolian after removing those expenses from the Waterbase calculations. Petitioners state that these revisions would result in revised surrogate overhead, selling, general & administrative ("SG&A") and profit ratios of 14.83 percent, 23.99 percent, and 2.9 percent, respectively.

Zhanjiang Guolian argues that the Department's final Waterbase financial ratios calculation worksheet clearly and intentionally includes procured shrimp costs in the denominator of the Waterbase overhead, SG&A, and profit calculations. Zhanjiang Guolian concludes that the Petitioners' claim of a ministerial error is erroneous and that the Department should not adjust the surrogate financial ratios applied to Zhanjiang Guolian in the final determination of this proceeding.

Department's Position:

The Department finds that the Department's inclusion of procured shrimp is not a ministerial error, within the meaning of 19 CFR 351.224(f) of the Department's regulations, but rather an intentional decision. In the Final Determination, the Department considered both Petitioners' and Zhanjiang Guolian's agreed position that the Department needed to make adjustments from Petitioners' submission of Waterbase financial data to incorporate Waterbase into the calculation of SG&A, overhead, and profit. See Final Determination at Comment 9(F); Petitioners' Surrogate Value Data Submission (September 8, 2004), at Attachment 1B; Petitioners' Case Brief (October 19, 2004), at 35; Zhanjiang Guolian's Rebuttal Brief (October 26, 2004), at 9. Specifically, for the Final Determination, the Department independently reviewed Waterbase's financial data on the record and

categorized expenses as the Department deemed appropriate and necessary to reflect the production experience of Zhanjiang Guolian and Red Garden. See Final Determination at Comment 9(F); Memorandum from John D.A. LaRose, Analyst, to Alex Villanueva, Program Manager, regarding Selection of Surrogate Factor Values for Allied Pacific, Yelin, Zhanjiang Guolian, and Red Garden ("Final Factor Valuation Memo") dated November 29, 2004, at Exhibit 2. The Department intentionally decided to use Waterbase's financial data to construct the surrogate financial ratios for Zhanjiang Guolian and Red Garden. The Department's decision to use these surrogate financial ratios, which included "procured shrimp," was based on record evidence. As highlighted in Exhibit 2 of the Final Factor Valuation Memo, Waterbase's financial data includes manufacturing expenses of "procured shrimp." See Final Factor Valuation Memo at Exhibit 2. Thus, as the Department did not make a ministerial error regarding Waterbase's financial data, the Department's Final Determination remains unchanged with respect to surrogate financial ratios for the integrated companies, Zhanjiang Guolian and Red Garden.

Comment 11: Inclusion of Devi and Sandhya in Calculation of Surrogate Financial Ratios

Petitioners argue that the Department erred in stating that Waterbase's financial statements were more contemporaneous than those of Sandhya and Devi. Petitioners contend that Waterbase's financial statements are the only contemporaneous data on the record of this investigation because they covered the period between April 2003 and March 2004, inclusive of the POI, while the financial statements of Devi and Sandhya are not contemporaneous with the POI, covering the fiscal year ending March 31, 2003. Petitioners argue that the Department must correct the Final Determination to exclude Devi's and Sandhya's financial ratios and use only Waterbase's financial ratios to calculate the surrogate financial ratios that are ultimately applied to Zhanjiang Guolian and Red Garden.

Zhanjiang Guolian argues that the Department acknowledged that Devi's and Sandhya's financial data was not as contemporaneous as Waterbase's financial statements, and that the Department's decision to average the financial data of the three surrogate companies for the final determination is consistent with the Department's regulation and practice. Zhanjiang Guolian states that by averaging the financial data from Devi, Sandhya, and Waterbase, the Department ensured that the surrogate financial ratios were representative of the entire surrogate industry and most accurately reflected Zhanjiang Guolian's production experience. See Brake Rotors From the People's Republic of China: Preliminary Results of Third New Shipper Review and Preliminary Results and Partial Rescission of Second Antidumping Duty Administrative Review ("Brake Rotors") 64 FR 73007, 73011 (December 29, 1999). Zhanjiang Guolian concludes that the Petitioners' claim that the Department has committed a ministerial error is incorrect, and argue that the Department should not adjust the surrogate financial ratios used for Zhanjiang Guolian in the Department's Final Determination.

Department's Position:

The Department finds that the Department's methodology in calculating surrogate financial ratios for use

in its antidumping duty calculations for Zhanjiang Guolian is not a ministerial error. The Department's Final Determination explained its decision to employ this methodology. See Issues and Decisions Memorandum at Comment 9(F). The Department intentionally averaged Waterbase, Devi, and Sandhya's financial data to construct the surrogate financial ratios for Zhanjiang Guolian. Id. Thus, as this allegation does not constitute a ministerial error in accordance with section 351.224(f) of the Department's regulations, the Final Determination will remain unchanged with respect to the surrogate financial ratios pertaining to Zhanjiang Guolian and Red Garden.

Comment 12: Application of Incorrect Surrogate Value to Certain Count Size for Allied Pacific

Allied Pacific argues that the Department improperly applied its count-size specific input shrimp surrogate value for 31/40 input shrimp rather than 41/50 input shrimp to certain of Allied Pacific's control numbers ("CONNUMs").

Petitioners agree that the Department committed a ministerial error in its application of input shrimp surrogate values for certain of Allied Pacific's CONNUMs.

Department's Position:

The Department agrees with Allied Pacific that the Department made a ministerial error regarding the valuation of input shrimp for certain of Allied Pacific's CONNUMs. Specifically, the Department improperly valued the input shrimp for CONNUMs where Allied Pacific reported an input shrimp count size of 86-90 count/kg. Because of a clerical error, the Department valued these input shrimp using the surrogate value for 31/40 count/lb input shrimp rather than the appropriate surrogate value for 41/50 count/lb input shrimp. Accordingly, for this amended final determination, the Department has assigned the input shrimp surrogate value for 41/50 count/lb input shrimp, USD5.18, to the CONNUMs for which Allied Pacific reported an input shrimp count size of 86-90 count/kg.

Comment 13: Shantou Sez Xu's[8] Separate Rate

Shantou Sez Xu asserts that it was a ministerial error for the Department to deny the company a separate rate. According to Shantou Sez Xu, it provided the Department with sales packages consisting of translated, legible documents in the supplemental Section A response and the factual information submission. See Shantou Sez Xu's Supplemental Section A Response (June 10, 2004), at Exhibit SA-5; Shantou Sez Xu's Factual Information Submission (August 9, 2004); Shantou Sez Xuhao's Ministerial Error Allegation (December 3, 2004), at 2. Shantou Sez Xu also notes that it submitted a complete sales package to the Department in the original Section A response, and that the Department

[8] Shantou Sez Xuhao Fastness Freeze Aquatic Factory Co., Ltd.

did not challenge the completeness of the submission or ask Shantou Sez Xu to submit additional sales trace documents. See Shantou Sez Xu's Section A Response (March 31, 2004), at A-18 and Exhibit A-6.

Shantou Sez Xu argues that it previously submitted a fully translated sample sales package, which included invoices, a packing slip and Customs Declaration, as well as one voucher. Shantou Sez Xu points out that it provided the Department with a complete translation of all material portions of the documents, which are clearly legible, in the sample sales package. See Shantou Sez Xu's Ministerial Error Allegation, at 3.

Shantou Sez Xu requests that each of the documents within the sales package be evaluated in the context of both the Company Official Certification and the Certification by Counsel of Record. Shantou Sez Xu asserts that it is the Department's well-established practice to accept representations contained in questionnaire responses absent evidence to the contrary. See Shantou Sez Xu's Ministerial Error Allegation, at 4 and 5. Furthermore, Shantou Sez Xu requests that the Department consider certain other evidence along with the documents from the sales package in question. In conclusion, Shantou Sez Xu requests that the Department acknowledge that Shantou Sez Xu submitted a fully translated sample sales package and grant the company a separate rate.

Department's Position:

The Department finds that the Department's decision to deny a separate rate based upon Shantou Sez Xu's inability to provide a fully translated and legible sales package is not a ministerial error. Shantou Sez Xu's allegation ignores that the Department's decision was based on Shantou Sez Xu's failure to remedy the deficiencies the Department found with the sample sales packages submitted by Shantou Sez Xu. The Department determined in the Preliminary Determination, Amended Preliminary Determination and accompanying Ministerial Error Memorandum that Shantou Sez Xu submitted sample sales packages that both consisted of documents that were either not fully translated or only partially legible. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the People's Republic of China, 69 FR 42654 (July 16, 2004) ("Preliminary Determination") and the Separate Rates for Producers/Exporters Memorandum from Julia Hancock and Hallie Zink to Edward Yang dated July 2, 2004 ("Separate Rates Memorandum") at 11; Memorandum to the File from Julia Hancock and Irene Gorelik, Case Analysts, through James C. Doyle, Program Manager, Regarding Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam: Analysis of Allegations of Ministerial Error from Section A Respondents, dated August 24, 2004 ("Ministerial Error Memorandum") at 5-6.

In the Final Determination, the Department found that Shantou Sez Xu did not remedy the evidentiary deficiencies identified by the Department regarding the previously submitted sales packages. See Section A Respondents Issues Memorandum at Issue XVI. As explained in the Final Determination,

the factual information submitted by Shantou Sez Xu included a new sales package that did not correspond to the previously submitted sales packages and, thus, did not follow the Department's standard of only accepting factual information that corroborates or clarifies information already on the record. See Id; Notice of Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Japan, 64 FR 73215, 73234 (March 16, 1999). The Department's decision to deny a separate rate to Shantou Sez Xu in the Final Determination on the basis of providing a partially untranslated and illegible sales package was an intentional decision, which does not constitute a ministerial error within the meaning of section 351.224(f) of the Department's regulations.

Comment 14: Certain[9] Section A Respondents' Separate Rate

The Section A Respondents allege that the Department made a ministerial error in denying each of the Section A Respondents a separate rate due to insufficient evidence of price negotiation.
The Section A Respondents argue that the Department incorrectly relies on prior determinations that do not support the Department's position that a purchase order is sufficient evidence of price negotiation only when the document was signed by either one or no parties to the transaction. See e.g., Notice of Final Results of Antidumping Duty New Shipper Review: Honey From the People's Republic of China, 68 FR 62053 (October 31, 2003) ("Honey from the PRC") and accompanying Issues and Decision Memorandum at Comment 1; Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China, 60 FR 22544 (May 8, 1995) ("Furfuryl Alcohol from the PRC"). In addition, they maintain that the Department erred in distinguishing between evidence of price negotiation submitted by Section A Respondents in this case and the Section A Respondents in Wooden Bedroom Furniture from the PRC. See Notice of Final Determination of Sales at Less than Fair Value: Wooden Bedroom Furniture from the PRC, 69 FR 67313 (Nov. 17, 2004) and accompanying Issues and Decision Memorandum at Comment 79.

The Section A Respondents further argue that the Department's decision to reject affidavits from the United States customer was a ministerial error. See Supplemental Information for Section A Companies (Aug. 9, 2004), at Exhibits 3-12. The Section A Respondents contend that the nine rejected affidavits were submitted in accordance with section 351.301(b) of the Department's regulations. Given the Department's mistaken analysis of its regulations, the Section A Respondents argue that critical evidence was omitted from the record, which, thus, constitutes a ministerial error.

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[9] The Section A Respondents include: ZJ CNF Sea Products Engineering Ltd. and CNF Zhanjiang (Tong Lian) Fisheries Co., Ltd., Zhoushan Xifeng Aquatic Co., Ltd., Zhejiang Daishan Baofa Aquatic Product Co., Ltd., Zhejiang Taizhou Lingyang Aquatic Products Co. and Zhoushan Juntai Foods Co., Ltd., Zhoushan Zhenyang Developing Co., Ltd., Zhejiang Cereals, Oils & Foodstuff Import & Export Co., Ltd., Zhoushan Diciyuan Aquatic Products Co., Ltd., Zhejiang Zhenlong Foodstuffs Co., Ltd., Zhejiang Evernew Seafood Co., Ltd., Jinfu Trading Co., Ltd., Taizhou Zhonghuan Industrial Co., Ltd., Zhoushan Haichang Food Co., Zhoushan Putuo Huafa Sea Products Co., Ltd., Zhoushan Industrial Co., Ltd., and Shanghai Linghai Fisheries Economic and Trading Co., Ltd. ("Section A Respondents").

Petitioners argue that the Department did not commit a ministerial error by denying separate rates to the Section A Respondents. Specifically, Petitioners note that the Department made its decision after an exhaustive examination of all evidence submitted by the Section A Respondents and was correct in denying separate rates to these Section A Respondents. Petitioners also maintain that the Department was justified in rejecting the factual information submitted by the Section A Respondents because the factual information submissions did not clarify or corroborate previous statements regarding either the company's negotiating methods or inability to provide evidence of price negotiation.

Petitioners further argue that the Section A Respondents' argument that the Department did not follow agency precedent, which is that sales documentation signed by two parties is sufficient evidence of price negotiation, is incorrect. Petitioners note that the Department fully articulated its practice of not accepting sales documentation signed by two parties as evidence of price negotiation. See Section A Respondents Issue Memorandum at Issue X; Petitioners' Rebuttal Comments on Ministerial Error Allegations at 18. Therefore, Petitioners argue that Department must not accept the Section A Respondents' ministerial error allegation.

Department's Position:

The Department finds that it did not make a ministerial error in its decision to deny separate rates to the Section A Respondents. The Department's decision to deny the Section A Respondents' separate rates was based on the record evidence. In the Final Determination, the Department found, based on agency precedent, that the sales documentation submitted by the Section A Respondents, which had two signatures, evidenced the final results of the price negotiation process rather than the events leading up to the final terms of sale. See Final Determination and accompanying Section A Respondents Issues Memorandum at Issue X; Original Section A Responses of Zhoushan Xifeng, Zhejiang Daishan, Taizhou Zhonghuan, Zhejiang Zhenglong, Zhoushan Zhenyang, Zhoushan Haichang, Zhoushan Putuo, Zhoushan Diciyuan, Zhejiang Lingyang, and Jinfu Trading (March 31, 2004), Exhibit 6; Supplemental Section A Responses of Zhoushan Xifeng, Zhejiang Daishan, Taizhou Zhonghuan, Zhejiang Zhenlong, Zhoushan Zhenyang, Zhoushan Haichang, Zhoushan Putuo, Zhoushan Diciyuang, Zhejiang Taizhou Lingyang, and Jinfu Trading (June 16, 2004), at Exhibit SA-V; Section A Respondents Issues Memorandum at 40; Honey from the PRC at Comment 1; Notice of Preliminary Determination of Sales at Less than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, and Postphonement of Final Determination of Certain Tissue Paper Products: Certain Tissue Paper Products and Certain Crepe Paper Products from the PRC, 69 FR 56407 (September 21, 2004) ("Tissue Paper from the PRC") and accompanying Preliminary Determination: Certain Tissue Paper Products from the PRC: Separate Rates for Exporters (September 14, 2004), at 12.

Moreover, the Department also finds that the Section A Respondents' reliance on Wooden Bedroom Furniture from the PRC as a basis for its ministerial error allegation is misplaced. The Section A Respondents incorrectly argue that the Department granted a separate rate to several of the Section A Respondents, including PuTian JingGong Furniture Company Ltd. ("PuTian"), in Wooden Bedroom

Furniture from the PRC on the basis of purchase orders that had two signatures is incorrect. The Department granted separate rates to PuTian and other Section A Respondents in Wooden Bedroom Furniture from the PRC on the basis of the affidavits and not on the basis of sales documentation. See Wooden Bedroom Furniture at Comment 79.

The Department further finds that its decision that the affidavits submitted by the Section A Respondents were not sufficient evidence of price negotiation is not a ministerial error. The Department notes that the Section A Respondents' argument that the affidavits were rejected as record evidence is incorrect. In the Final Determination, the Department found, after review of each affidavit, that these affidavits neither corroborated nor clarified prior statements on the record regarding price negotiation methods and the company's inability to provide communication documents. See Section A Respondents Issues Memorandum at Issue X and XII. The Department made a deliberate, methodological decision that these affidavits did not sufficiently evidence the process of price negotiation. Accordingly, the Department decision's to deny separate rates to the Section A Respondents on the basis of insufficient evidence of price negotiation was intentional and, thus, does not constitute a ministerial error.

Comment 15: Shanghai Linghai's, Zhoushan Xifeng's, Zhejiang Cereals', Jinfu Trading's, and Zhoushan Diciyuan's Separate Rate

The Section A Respondents allege that the Department made a ministerial error by overlooking evidence of price negotiation submitted by several Section A Respondents. The Section A Respondents note that several of the Section A Respondents did provide purchase orders with the requisite one or no signature(s), which the Department indicated was sufficient evidence of price negotiation. The three Section A Respondents that the Department allegedly overlooked evidence of price negotiation are: 1) Zhejiang Cereals, which submitted a purchase order signed by one party; 2) Zhoushan Xifeng, which filed a purchase order signed by no parties; and 3) Shanghai Linghai, which submitted an unsigned sales contract. See Supplemental Information for Section A Companies, at Exhibit 6; Section A Response of Zhoushan Xifeng Aquatic Co., Ltd.(March 31, 2004), at Exhibit 6; Section A Response of Shanghai Linghai Fisheries Economic & Trading Co., Ltd. (March 31, 2004), at Exhibit 6. The Section A Respondents allege that the Department must now accept these documents and grant the three Section A Respondents separate rates.

Department's Position:

The Department finds that it made a ministerial error for Zhoushan Xifeng, Zhejiang Cereals, Jinfu Trading, and Zhoushan Diciyuan by inadvertently overlooking certain record evidence of price negotiation. In the Section A Respondents Issues Memorandum, the Department determined that neither Zhoushan Xifeng, Zhejiang Cereals, Jinfu Trading, or Zhoushan Diciyuan submitted sufficient

evidence of price negotiation. See Section A Respondents Issues Memorandum at Issue X and Issue XIII. However, the Department's analysis inadvertently overlooked certain evidence of price negotiation. The Department, after a thorough review of the sales documentation, finds that Zhoushan Xifeng submitted a [* * *], which is indicative of the events leading up to the sale and not the final terms of the sale. See Section A Response of Zhoushan Xifeng at Exhibit 6. Moreover, the Department finds that it overlooked purchase orders [* * *], which is indicative of the price negotiation process, submitted in the factual information submission by Zhejiang Cereals, Jinfu Trading, and Zhoushan Diciyuan. See Supplemental Information for Section A Companies at Exhibit 3, 4, and 6. The Department notes that the ministerial error allegation did not cite Jinfu Trading or Zhoushan Diciyuan as companies with sales documentation overlooked by the Department. The Department finds that these purchase orders can be traced to the sample sales package submitted by Zhejiang Cereals, Jinfu Trading, and Zhoushan Diciyuan, and, thus, corroborates information already on the record. See Zhejiang Cereals' Section A Response at Exhibit 6; Jinfu Trading Section A Response at Exhibit 6; Zhoushan Diciyuan Section A Response at Exhibit 6; Notice of Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Japan, 64 FR 73215, 73234 (March 16, 1999). Therefore, the Department has determined that Zhoushan Xifeng, Zhejiang Cereals, Jinfu Trading, and Zhoushan Diciyuan qualify for separate rates because each company provided sufficient evidence of price negotiation.

The Department finds that Zhoushan Xifeng, Zhejiang Cereals, Jinfu Trading, and Zhoushan Diciyuan demonstrated a *de jure* absence of government control over export activities because: a) there were no restrictive stipulations associated with the company's business license, and (b) the company submitted PRC regulations that demonstrated decentralized control of the company. See Zhoushan Xifeng, Zhejiang Cereals, Jinfu Trading, and Zhoushan Diciyuan's Section A Responses, dated March 31, 2004; Zhoushan Xifeng, Zhejiang Cereals, Jinfu Trading, and Zhoushan Diciyuan's Supplemental Section A Responses, dated June 16, 2004. The Department also determines that Zhoushan Xifeng, Zhejiang Cereals, Jinfu Trading, and Zhoushan Diciyuan: further demonstrated a *de facto* absence of government control over export activities because: the submitted evidence demonstrates the company's ability to set prices, dispose of proceeds, and select management independent of the government of the PRC. See Id. After analyzing the separate rates information supplied by Zhoushan Xifeng, Zhejiang Cereals, Jinfu Trading, and Zhoushan Diciyuan, the Department finds that each company is entitled to a separate rate in the amended final determination because the company provided sufficient evidence of a lack of *de jure* and *de facto* control by the PRC government.

Furthermore, the Department does not agree that this was a ministerial error for Shanghai Linghai. The Department, after further review of the sales documentation, finds that Shanghai Linghai submitted a [* * *], which is indicative of the events leading up to and not the final terms of the sale. See Section A Response of Shanghai Linghai at Exhibit 6. However, the Department notes that Shanghai Linghai was also denied a separate rate at the Final Determination for discrepancies with the company's corporate affiliations. See Section A Respondents Issues Memorandum at Issue XII. Shanghai Linghai did not allege in its submission that the Department made a ministerial error in regards to discrepancies with the

company's corporate affiliation. Therefore, the Department maintains its Final Determination that Shanghai Linghai does not qualify for a separate rate.

Comment 16: Zhejiang Evernew's Separate Rate

Zhejiang Evernew contends that the Department incorrectly denied it separate rate treatment for the additional reason that there were discrepancies with the company's corporate affiliations. The Section A Respondent explains that a review of the full record establishes that there was no discrepancy in the company's three submissions and, thus, the Department committed a factual oversight, which needs to be corrected. See Zhejiang Evernew's Section A Response (March 31, 2004); Zhejiang Evernew's Supplemental Section A Response (June 10, 2004); Supplemental Information Regarding Section A of Zhejiang Evernew (August 9, 2004); Section A Respondents Ministerial Error Allegation, at 10.

Zhejiang Evernew asserts that it unequivocally stated in its three submissions that [* * *]. See Zhejiang Evernew's Section A Response, at A-4; Zhejiang Evernew's Supplemental Section A Response, at 4; Supplemental Information Regarding Section A of Zhejiang Evernew, at 3. The Department's analysis of its corporate affiliations, Zhejiang Evernew maintains, is factually incorrect. In the Final Determination, the Department explained that it was unclear whether the company's [* * *] to the U.S. during the POI. See Section A Respondents Issues Memorandum at Issue XII. Zhejiang Evernew argues that it clearly stated in more than one submission that [* * *]. The Department, in pointing out discrepancies with the company's corporate affiliations, also noted that in its factual information submission, the company indicated that [* * *]. Zhejiang Evernew concedes that it did not provide the Department with evidence regarding the [* * *], however, the company notes that it stated again in its factual information submission that [* * *]. See Supplemental Information Regarding Section A of Zhejiang Evernew at 3. Zhejiang Evernew insists that the Department's failure to consider the information that the company provided in three different submissions concerning its corporate affiliations is an omission of fact and a ministerial error that must be corrected.

Department's Position:

The Department finds that its analysis regarding the appropriateness of denying Zhejiang Evernew a separate rate is not a ministerial error. The Department disagrees with Zhejiang Evernew that certain statements were overlooked by the Department. The Department found that after review of all information placed on the record by Zhejiang Evernew, there were still discrepancies in Zhejiang Evernew's responses regarding its corporate relationships with no supporting evidence. See Zhejiang Everenew's Original Section A Response at A-4; Zhejiang Evernew's Supplemental Section A Response at 4; Zhejiang Evernew's Factual Information Submission at 3. In the Final Determination, the Department was unable to grant a separate rate to Zhejiang Evernew because there were previous contradictory statements and a lack of evidence on the record that could corroborate information provided in the factual information submission. See Section A Respondents Issues Memorandum at

Issue XII. The Department's Final Determination reflects its intended methodology. Accordingly, no ministerial error correction is warranted.

Comment 17: Shantou Ocean's Separate Rate

Petitioners argue that the Department's decision to grant a separate rate to Shantou Ocean on the basis that the [* * *] obtained by Shantou Ocean were fully disclosed to the Department prior to verification constitutes a ministerial error. The record of this case, contends Petitioners, clearly demonstrates that it was at verification that the Department was informed that Shantou Ocean received [* * *]. See Petitioners' Comments Concerning Ministerial Error Allegations (December 7, 2004), at 12; Shantou Ocean's Verification Report (Sept. 22, 2004), at 2, 7. The Department was incorrect in concluding that Shantou Ocean's original and supplemental Section A responses disclosed these loans because neither the auditor's report from FY 2002 or 2003 made any mention of these loans. See Id.; Shantou Ocean's Section A Response (March 31, 2004), at Exhibit 7; Shantou Ocean's Supplemental Section A Response (June 16, 2004), at Exhibit SA-9.

Petitioners further note that the Department was mistaken in concluding that Shantou Ocean disclosed prior to verification the identity of the [* * *]. Shantou Ocean's FY 2003 financial statement, which was cited as support by the Department, only indicates that the [* * *] was an investor. Petitioners argue that Shantou Ocean's FY 2003 financial statement makes no mention of the fact that this company [* * *] that provided loans to Shantou Ocean or that this company was engaged in a [* * *] with Shantou Ocean. See Petitioners' Comments Concerning Ministerial Error Allegations at 13.

Petitioners further contend that the Department was mistaken to conclude that [* * *] were not related to Shantou Ocean's export activities. As support, Petitioners point out that the Department found at verification that the loans made by [* * *] were primarily used to cover Shantou Ocean's operating expenses. See Shantou Ocean's Verification Report at 7. Therefore, Petitioners maintain that the Department must rectify this ministerial error by assigning the PRC-wide rate to Shantou Ocean instead of a separate rate.

Department's Position:

The Department finds that the Department's decision to grant Shantou Ocean a separate rate is not a ministerial error. The Department's decision to grant Shantou Ocean a separate rate was intentional. Specifically, Petitioners argue that the Department was mistaken in concluding that Shantou Ocean disclosed information prior to verification. The Department notes that Shantou Ocean disclosed all information requested by the Department in the original and supplemental Section A responses, which was verified by the Department. See Shantou Ocean's Section A Response (March 31, 2004); Shantou Ocean's Supplemental Section A Response (June 18, 2004); Shantou Ocean's Verification Report. In the Final Determination, the Department, therefore, assigned Shantou Ocean a separate because it neither withheld information nor provided information that could not be verified. See Section

A Respondents Issues Memorandum at Issue II. This is not a ministerial error within the meaning of 19 CFR 351.224(f), and no change to the Final Determination is warranted.

Comment 18: Dusted Shrimp

Petitioners contend that the Department made a ministerial error in the exclusion of dusted shrimp from the scope of this investigation.

Petitioners note that the Department excluded dusted shrimp from the scope of this investigation in spite of Petitioners' opposition. Petitioners point to the fact that the Department cited significantly to the declarations of Dr. Otwell and Mr. Thompson submitted by Eastern Fish and Long John Silvers ("EF/LJS") in support of excluding dusted shrimp. Petitioners contend that the Department based much of its decision to exclude dusted shrimp from the scope of this investigation on these affidavits. Petitioners specifically note that the Department referenced both declarations eight times regarding an adequate definition to separate dusted shrimp from subject merchandise and at least four times regarding the fact that the benefits of removing the dusting layer from the shrimp did not outweigh the costs.

Petitioners contend that they provided a declaration that directly rebutted many of the claims of EF/LJS. According to Petitioners, their declaration stated that frozen dusted shrimp can have its dusting layer removed. Additionally, the practice of thawing and rinsing undusted frozen shrimp is common industry practice, thus the same can be done for dusted shrimp. Furthermore, the barriers to removing the dusting layer are economic, not physical. The declaration provided by Petitioners further noted that the cost of removing the dusting layer could be more economially sensible than paying the dumping duty. The declaration also notes that the technology to remove the dusting layer is available. See Petitioners' Ministerial Error Allegation, at 11.

According to Petitioners, the Department did not address these statements, which directly contested EF/LJS's claims, in its Dusted/Battered Final Scope Memo. See Memorandum from Edward C. Yang, China/NME Unit Coordinator, Import Administration, to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the Socialist Republic of Vietnam and the Socialist Republic of Vietnam: Scope Clarification on Dusted Shrimp and Battered Shrimp ("Dusted/Battered Scope Final Memo"), dated November 29, 2004. Furthermore, Petitioners assert that the Department did not acknowledge that Petitioners' declaration even existed. Petitioners therefore conclude that the Department completely overlooked Petitioners' declaration, and thus made an unintentional error that must be corrected by including dusted shrimp in the scope of this investigation.

Department's Position:

The Department finds that the Department's decision to exclude dusted shrimp from the scope of this investigation is not a ministerial error, within the meaning of 19 CFR 351.224(f) of the Department's regulations. The Department considered Petitioners' affidavit and referenced the provided affidavit and statements made in the affidavit. See Dusted/Battered Final Scope Memo at 15 and 16. The Department considered all evidence submitted by all parties in its Final Determination to exclude dusted shrimp from the scope of this investigation. See Final Determination and Dusted/Battered Final Scope Memo at 28. Therefore, the Department's decision to exclude dusted shrimp from the scope of this investigation was intentional and not a ministerial error.

V. RECOMMENDATION

Based upon the correction of ministerial errors, four more Section A Respondents now qualify for separate rates, and the final antidumping duty margin for Allied Pacific has changed. Accordingly, we recommend that the Department correct these ministerial errors, as identified, and grant separate rates to those entities identified in Attachment I of this memorandum.[10] If accepted, we will publish these results in the Federal Register.

_____ Agree _____ Disagree _____ Let's Discuss

_____
James C. Doyle
Director, Office 9
Import Administration

_____
Date

[10] Attachment II identifies those parties that have been denied a separate rate.

Attachment I

Section A Respondents Receiving Separate Rate

Jinfu Trading Co., Ltd.
Zhoushan Diciyuan Aquatic Products Co., Ltd.
Zhoushan Xifeng Aquatic Co., Ltd.
Zhejiang Cereals, Oils & Foodstuff Import & Export Co., Ltd.

Attachment II

Section A Respondents Receiving PRC-wide Rate

Daishan Baofa Aquatic Product Co., Ltd.
Zhejiang Taizhou Lingyang Aquatic Products Co. and Zhoushan Juntai Foods Co., Ltd. Zhoushan Zhenyang Developing Co., Ltd.
Zhejiang Zhenlong Foodstuffs Co., Ltd.
Zhejiang Evernew Seafood Co., Ltd.
Taizhou Zhonghuan Industrial Co., Ltd.
Zhoushan Haichang Food Co.
Zhoushan Putuo Huafa Sea Products Co., Ltd.
Zhoushan Industrial Co., Ltd.
Shantou Sez Xuhao Fastness Freeze Aquatic Factory Co., Ltd.
Shanghai Linghai Fisheries Economic and Trading Co., Ltd.