

duties any entries for which the assessment rate is *de minimis* (i.e., less than 0.50 percent). See 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

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

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: 1) the cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; 2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 7.05 percent, the all-others rate made effective by the LTFV investigation. See *Shrimp Order*. These requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

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

Dated: February 28, 2008.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E8-4392 Filed 3-5-08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-549-822]

Certain Frozen Warmwater Shrimp From Thailand: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp from Thailand with respect to 42¹ companies. The four respondents which the Department selected for individual review are Andaman Seafood Co., Ltd., Chanthaburi Frozen Food Co., Ltd. (CFF), Chanthaburi Seafoods Co., Ltd., Euro-Asian International Seafoods Co., Ltd., Intersia Foods Co., Ltd. (Intersia Foods) (formerly Y2K Frozen Foods Co., Ltd. (Y2K Frozen Foods)), Phattana Seafood Co., Ltd., Phattana Frozen Food Co., Ltd., S.C.C. Frozen Seafood Co., Ltd., Seawalth Frozen Food Co., Ltd., Thailand Fishery Cold Storage Public Co., Ltd., Thai International Seafoods Co., Ltd., and Wales & Co. Universe Limited (collectively "the Rubicon Group"); Pakfood Public Company Limited and its affiliated subsidiaries,

¹ This figure does not include those companies for which the Department is preliminarily rescinding the administrative review.

Asia Pacific (Thailand) Company Limited, Chaophraya Cold Storage Company Limited, Okeanos Company Limited, and Takzin Samut Company Limited (collectively "Pakfood"); Thai I-Mei Frozen Foods Co., Ltd. (Thai I-Mei); and Thai Union Frozen Products Public Co., Ltd. (Thai Union Frozen), Thai Union Seafood Co., Ltd. (Thai Union Seafood) (collectively "Thai Union"). The respondents which were not selected for individual review are listed in the "Preliminary Results of Review" section of this notice. This is the second administrative review of this order. The review covers the period February 1, 2006, through January 31, 2007.

We preliminarily determine that sales were made by Pakfood, the Rubicon Group, Thai I-Mei, and Thai Union below normal value (NV). In addition, based on the preliminary results for the respondents selected for individual review, we have preliminarily determined a weighted-average margin for those companies that were not selected for individual review but were responsive to the Department's requests for information. For those companies which were not responsive to the Department's requests for information, we have preliminarily assigned to them a margin based on adverse facts available (AFA).

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

EFFECTIVE DATE: March 6, 2008.

FOR FURTHER INFORMATION CONTACT: Irina Itkin, AD/CVD Operations, Office 2, Import Administration—Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0656.

SUPPLEMENTARY INFORMATION:

Background

In February 2005, the Department published in the **Federal Register** an antidumping duty order on certain frozen warmwater shrimp from Thailand. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Thailand*, 70 FR 5145 (Feb. 1, 2005) (*Shrimp Order*). On February 2, 2007, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order of certain frozen warmwater shrimp from

Thailand for the period February 1, 2006, through January 31, 2007. See *Antidumping and Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 5007 (Feb. 2, 2007). In response to timely requests from interested parties, pursuant to 19 CFR 351.213(b)(1) and (2), to conduct an administrative review of the sales of certain frozen warmwater shrimp made by numerous companies during the period of review (POR), the Department initiated an administrative review for 142 companies and requested that each provide data on the quantity and value (Q&V) of its exports of subject merchandise to the United States during the POR. These companies are listed in the Department's notice of initiation. See *Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India and Thailand*, 72 FR 17100, 17107-09 (Apr. 6, 2007).

On April 5, 2007, the petitioner² requested that the Department determine whether antidumping duties had been absorbed during the POR. See the "Duty Absorption" section, below, for further discussion.

During the period April through July 2007, we received responses to the Department's Q&V questionnaire from 99 companies. We were unable to locate three companies and we did not receive responses to this questionnaire from 12 companies. For further discussion, see the "Application of Facts Available" section of this notice, below.

In its April 23, 2007, Q&V questionnaire response, the Rubicon Group stated that one of its affiliates, Y2K Frozen Foods, changed its corporate structure prior to the initiation of this review and is now doing business under the name Intersia Foods. As a result, on May 7, 2007, we solicited information on this change from the Rubicon Group. The Rubicon Group supplied this information on May 21, 2007. After analyzing this information, we preliminarily find that Intersia Foods is the successor-in-interest to Y2K Frozen Foods. For further discussion, see the "Successor-in-Interest" section of this notice, below.

On July 5, 2007, in accordance with 19 CFR 351.213(d)(1), the Louisiana Shrimp Association (LSA) withdrew its request for review for six companies (i.e., Anglo-Siam Seafoods Co., Ltd., Gallant Ocean (Thailand) Co., Ltd., Li-Thai Frozen Foods Co., Ltd., Queen

Marine Food Co., Ltd., Smile Heart Foods Co., Ltd., and Thai World Imports and Exports), with respect to which the petitioner also withdrew its request on March 16, 2007.

On July 16, 2007, we requested information from I.T. Foods Industries Co., Ltd. (I.T. Foods) regarding its April 24, 2007, Q&V questionnaire response stating that it had no shipments or entries of subject merchandise into the United States during the POR because, based on information obtained from CBP, it appeared that I.T. Foods did, in fact, have such shipments or entries. For further discussion, see the "Application of Weighted-Average Margin to I.T. Foods" section of this notice, below.

Based upon our consideration of the responses to the Q&V questionnaire received and the resources available to the Department, we determined that it was not practicable to examine all exporters/producers of subject merchandise for which a review was requested. As a result, on July 19, 2007, we selected the four largest producers/exporters of certain frozen warmwater shrimp from Thailand during the POR, Pakfood, the Rubicon Group, Thai I-Mei, and Thai Union, as the mandatory respondents in this proceeding. See the Memorandum to Stephen J. Claeys from James Maeder entitled, "2006-2007 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Thailand: Selection of Respondents for Individual Review," dated July 17, 2007. On this same date, we issued the antidumping duty questionnaire to Pakfood, the Rubicon Group, Thai I-Mei, and Thai Union.

On August 16, 2007, I.T. Foods provided information to the Department indicating that it did, in fact, have reportable transactions during the POR. Therefore, we did not rescind the administrative review with respect to this company and are preliminarily assigning to it a weighted-average margin calculated for the companies selected for individual review because, based on its response: (1) The discrepancy between the Q&V questionnaire response and the CBP data appeared to be an inadvertent oversight; (2) the quantity of the exports in question was so small that it would not have had an impact on our selection of respondents; and (3) the company has been responsive to our requests for information. For further discussion, see the "Application of Weighted-Average Margin to I.T. Foods" section of this notice, below.

We received responses to sections A, B, C, and D of the questionnaire from Pakfood, the Rubicon Group, Thai

Union, and Thai I-Mei in August, September, and October 2007.

On September 5, 2007, we published a notice rescinding the administrative review with respect to 69 companies for the following reasons: (1) The request for an administrative review for the company was withdrawn in a timely manner; (2) the company had no shipments of subject merchandise to the United States during the POR; (3) the Q&V questionnaire sent to the company was returned to the Department because of an "undeliverable" address; or (4) the company name was a duplicate name. See *Certain Frozen Warmwater Shrimp from Thailand; Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 50931 (Sept. 5, 2007) (*Partial Rescission Notice*). See also, the Memorandum to the File from Brianne Riker entitled, "Intent to Rescind in Part the Antidumping Duty Administrative Review on Frozen Warmwater Shrimp from Thailand," dated August 8, 2007.

On September 28, 2007, the petitioner requested that the Department initiate a sales-below-cost investigation for Pakfood and Thai Union. We initiated sales-below-cost investigations for Pakfood and Thai Union on October 5, 2007. See the October 5, 2007, Memoranda to James Maeder from The Team entitled, "The Petitioner's Allegation of Sales Below the Cost of Production for Pakfood Company Limited" (Pakfood Cost Allegation) and "The Petitioner's Allegation of Sales Below the Cost of Production for Thai Union Frozen Products PCL and Thai Union Seafood Company, Ltd." (Thai Union Cost Allegation).

On October 26, 2007, the Department postponed the preliminary results in this review until no later than February 28, 2008. See *Certain Frozen Warmwater Shrimp From Brazil, Ecuador, India, Thailand, and the Socialist Republic of Vietnam: Notice of Extension of Time Limits for the Preliminary Results of the Second Administrative Reviews*, 72 FR 60800 (Oct. 26, 2007).

During the period October 2007 through February 2008, we issued to Pakfood, the Rubicon Group, Thai I-Mei, and Thai Union supplemental questionnaires regarding sections A, B, C, and D of the original questionnaire. We received responses to these questionnaires during the period November 2007 through February 2008.

We conducted sales and cost verifications at Thai Union and its U.S. affiliate in January and February 2008.

On February 20, 2008, Thai Union submitted a revised sales database which incorporated certain minor

² The petitioner is the Ad Hoc Shrimp Trade Action Committee.

corrections to its data discovered at verification.

Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,³ deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size. The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp

and prawns (HTSUS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Successor-in-Interest

In making a successor-in-interest determination, the Department normally examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. See *Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan*, 67 FR 58 (Jan. 2, 2002), and *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992). While no one of these factors is dispositive, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor. See *Industrial Phosphoric Acid from Israel; Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944 (Feb. 14, 1994); and *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical*

Circumstances: Certain Orange Juice from Brazil, 71 FR 2183 (Jan. 13, 2006).

As noted above, on April 23, 2007, the Rubicon Group informed the Department that its affiliated producer Y2K Frozen Foods is now doing business under the name Intersia Foods. As a result, on May 7, 2007, we requested that the Rubicon Group address the four factors noted above (*i.e.*, management, production facilities for the subject merchandise, supplier relationships, and customer base) with respect to this change in corporate structure in order to determine whether Intersia Foods Co., Ltd. is the successor-in-interest to Y2K Frozen Foods.

On May 21, 2007, the Rubicon Group responded to the Department's request. In this submission, the Rubicon Group provided evidence to demonstrate that Intersia Foods is the successor-in-interest to Y2K Frozen Foods. Specifically, the Rubicon Group stated that there were no changes to Y2K Frozen Foods' management, production facilities for the subject merchandise, supplier relationships, or customer base as a result of the change in corporate structure. According to the Rubicon Group, Y2K Frozen Foods officially changed its name to Intersia Foods on June 24, 2004, in order to more clearly identify the company as a foods business. Based on our analysis of the Rubicon Group's May 21, 2007, submission, we find that Intersia Foods' organizational structure, management, production facilities, supplier relationships, and customers have remained essentially unchanged. Further, we find that Intersia Foods operates as the same business entity as Y2K Frozen Foods with respect to the production and sale of certain frozen warmwater shrimp. Thus, we find that Intersia Foods is the successor-in-interest to Y2K Frozen Foods, and, as a consequence, its exports of certain frozen warmwater shrimp are subject to this proceeding.

Partial Rescission of Review

In February 2007, the Department received timely requests, in accordance with 19 CFR 351.213(b)(1), from the petitioner and the LSA to conduct a review of Lucky Union Foods Co., Ltd. (Lucky Union), Songkla Canning PCL (Songkla), and Thai Union Manufacturing Co., Ltd. (Thai Union Manufacturing), which are affiliated with Thai Union, a respondent in this review. The Department initiated a review of these three companies and requested that they supply data on the quantity and value of their exports of shrimp during the POR. On April 23, 2007, Thai Union submitted a response

³ "Tails" in this context means the tail fan, which includes the telson and the uropods.

to the Department's Q&V questionnaire, in which it indicated that only two of its companies, Thai Union Frozen and Thai Union Seafood, exported subject merchandise to the United States during the POR, while Lucky Union, Songkla, and Thai Union Manufacturing did not produce or export frozen shrimp the United States during the POR. We confirmed this information at Thai Union's sales verification. See the February 13, 2008, memorandum to the file from Irina Itkin and Brianne Riker entitled, "Verification of the Sales Response of Thai Union Frozen Products Public Co., Ltd./Thai Union Seafood Co., Ltd. in the Antidumping Administrative Review of Certain Frozen Warmwater Shrimp from Thailand" ("Thai Union Verification Report") at pages 3 and 10. Therefore, because Lucky Union, Songkla, and Thai Union Manufacturing had no shipments of subject merchandise to the United States during the POR, in accordance with 19 CFR 351.213(d)(3), and consistent with the Department's practice, we are preliminarily rescinding our review with respect to them. See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065, 52067 (Sept. 12, 2007) (04-06 Thai Shrimp Final Results); *Certain Steel Concrete Reinforcing Bars From Turkey: Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 70 FR 67665, 67666 (Nov. 8, 2005).

Application of Weighted-Average Margin to I.T. Foods

In its April 24, 2007, response to the Q&V questionnaire, I.T. Foods claimed that it had no shipments or entries of subject merchandise into the United States during the POR. However, when we attempted to confirm this claim with data obtained from CBP, we found that there were entries of merchandise into the United States produced and/or exported by I.T. Foods that appeared to be within the scope of the antidumping duty order. See the Memorandum to the File from Brianne Riker entitled, "2006-2007 Administrative Review of Certain Frozen Warmwater Shrimp from Thailand: Entry Documents from U.S. Customs and Border Protection," dated June 12, 2007. Therefore, on July 16, 2007, we requested information from I.T. Foods to explain this discrepancy.

On August 16, 2007, I.T. Foods provided information to the Department indicating that it did, in fact, have reportable transactions of subject

merchandise during the POR of "tiny shrimp." See the August 16, 2007, letter to the Department from I.T. Foods. Therefore, we did not rescind the administrative review with respect to this company and are preliminarily assigning to it the weighted-average margin calculated for the companies selected for individual review because, based on its response: (1) The discrepancy between the Q&V questionnaire response and the CBP data appeared to be an inadvertent oversight; (2) the quantity of the exports in question was so small that it would not have had an impact our selection of respondents; and (3) the company has been responsive to our requests for information. Upon issuance of the final results of this administrative review, we will instruct CBP to assess antidumping duties on I.T. Foods' entries of subject merchandise at the weighted-average rate.

In addition, based on the information provided by I.T. Foods, we also have preliminarily determined certain other merchandise produced/exported by I.T. Foods (i.e., "shrimp balls") that entered the United States during the POR is not subject to the scope of the order because the shrimp content of this product is limited to shrimp flavoring. See the August 16, 2007, letter to the Department from I.T. Foods. Therefore, upon issuance of the final results of this administrative review, we will instruct CBP to liquidate I.T. Foods' entries of non-subject merchandise (i.e., "shrimp balls") without regard to antidumping duty liability.

Period of Review

The POR is February 1, 2006, through January 31, 2007.

Application of Facts Available

Section 776(a) of the Tariff Act of 1930, as amended (the Act), provides that the Department will apply "facts otherwise available" if, *inter alia*, necessary information is not available on the record or an interested party: 1) Withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified.

In this administrative review, 13 companies failed to respond completely to the Department's requests for information. Therefore, we preliminarily determine that it is appropriate to assign these companies

dumping margins, either in whole or in part, based on facts available. These companies are discussed below.

A. Companies That Failed To Respond to the Q&V Questionnaire

As discussed in the "Background" section, above, in April 2007, the Department requested that all companies subject to the review respond to the Department's Q&V questionnaire for purposes of mandatory respondent selection. The original deadline to file a response was April 23, 2007. Of the 142 companies subject to this review, 60 companies did not respond to the Department's initial request for information. Subsequently in May and June 2007, the Department issued two letters to these companies affording them additional opportunities to submit a response to the Department's Q&V questionnaire. However, 12 of these companies also failed to respond to the Department's additional Q&V questionnaires.⁴ On July 19, 2007, the Department placed documentation on the record confirming delivery of the questionnaires to each company. See the Memorandum to the File from Brianne Riker entitled, "Placing Delivery Information on the Record of the 2006-2007 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Thailand," dated July 19, 2007. By failing to respond to the Department's Q&V questionnaire, these companies withheld requested information and significantly impeded the proceeding. Thus, pursuant to sections 776(a)(2)(A) and (C) of the Act, because these companies did not respond to the Department's questionnaire, the Department preliminarily finds that the use of total facts available is appropriate.

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. See *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (Sep. 13, 2005);

⁴ These companies are: Applied DB; Chonburi LC; Haitai Seafood Co., Ltd. (Haitai); High Way International Co., Ltd. (High Way International); Merkur Co., Ltd. (Merkur); Ming Chao Ind Thailand (Ming Chao); Nongmon SMJ Products (Nongmon); SCT Co., Ltd. (SCT); Search and Serve; Shianlin Bangkok Co., Ltd. (located at 159 Surawong Road, Suriyawong, Bangrak, Bangkok 10500 Thailand) (Shianlin Bangkok); Star Frozen Foods Co., Ltd. (Star Frozen Foods); and Wann Fisheries Co., Ltd. (Wann Fisheries).

Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil, 67 FR 55792, 55794–96 (Aug. 30, 2002). 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 accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994) (SAA), reprinted in 1994 U.S.C.C.A.N. 4040, 4198–99. Furthermore, “affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.” See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); see also *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) (*Nippon*). We preliminarily find that Applied DB, Chonburi LC, Haitai, High Way International, Merkur, Ming Chao, Nongmon, SCT, Search and Serve, Shianlin Bangkok, Star Frozen Foods, and Wann Fisheries did not act to the best of their abilities in this proceeding, within the meaning of section 776(b) of the Act, because they failed to respond to the Department’s requests for information and provide timely information. Therefore, an adverse inference is warranted in selecting from the facts otherwise available with respect to these companies. See *Nippon*, 337 F.3d at 1382–83.

Section 776(b) of the Act provides that the Department may use as AFA information derived from: (1) The petition; (2) the final determination in the investigation; (3) any previous review; or (4) any other information placed on the record.

The Department’s practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.” See, e.g., *04–06 Thai Shrimp Final Results* and *Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (Nov. 7, 2006).

In order to ensure that the margin is sufficiently adverse so as to induce cooperation, we have preliminarily assigned a rate of 57.64 percent, which is the highest rate alleged in the petition, as adjusted at the initiation of the less-than-fair-value (LTFV)

investigation, to the non-responsive companies (*i.e.*, Applied DB, Chonburi LC, Haitai, High Way International, Merkur, Ming Chao, Nongmon, SCT, Search and Serve, Shianlin Bangkok, Star Frozen Foods, and Wann Fisheries). See *Notice of Initiation of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp From Brazil, Ecuador, India, Thailand, the People’s Republic of China and the Socialist Republic of Vietnam*, 69 FR 3876, 3881 (Jan. 27, 2004). The Department believes that this rate is sufficiently high as to effectuate the purpose of the facts available rule (*i.e.*, we find that this rate is high enough to encourage participation in future segments of this proceeding in accordance with section 776(b) of the Act).

Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Department’s regulations provide that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value. See 19 CFR 351.308(d); see also SAA at 870. To the extent practicable, the Department will examine the reliability and relevance of the information to be used.

To corroborate the petition margin, we compared it to the transaction-specific rates calculated for each respondent in this review. We find that it is reliable and relevant because the petition rate fell within the range of individual transaction margins calculated for the mandatory respondents. See e.g., *04–06 Thai Shrimp Final Results*, 72 FR at 52068 and *Notice of Preliminary Results of Antidumping Duty Administrative Review; Partial Rescission and Postponement of Final Results: Certain Softwood Lumber Products from Canada*, 71 FR 33964, 33968 (June 12, 2006). Therefore, we have determined that the 57.64 percent margin is appropriate as AFA and are assigning it to the uncooperative companies listed above.

Further, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department may disregard the margin and determine an appropriate margin. See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative*

Review, 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest calculated margin as AFA because the margin was based on a company’s uncharacteristic business expense resulting in an unusually high margin). Therefore, we examined whether any information on the record would discredit the selected rate as reasonable facts available. We were unable to find any information that would discredit the selected AFA rate.

Because we did not find evidence indicating that the selected margin is not appropriate and because this margin falls within the range of transaction-specific margins for the mandatory respondents, we have preliminarily determined that the 57.64 percent margin, as alleged in the petition and adjusted at the initiation of the LTFV investigation, is corroborated. We are, therefore, assigning this rate to the non-responsive companies (*i.e.*, Applied DB, Chonburi LC, Haitai, High Way International, Merkur, Ming Chao, Nongmon, SCT, Search and Serve, Shianlin Bangkok, Star Frozen Foods, and Wann Fisheries). For company-specific information used to corroborate this rate, see the Memorandum to the File from Brianne Riker entitled, “Corroboration of Adverse Facts Available Rate for the Preliminary Results in the 2006–2007 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Thailand,” dated February 28, 2008.

B. Thai Union

During verification, we found that Thai Union had failed to report certain U.S. sales transactions during the POR, which should have been included in the company’s U.S. sales database in accordance with the Department’s definition of the universe of reportable transactions. We note that certain of these transactions had not been reported because Thai Union did not follow the Department’s reporting instructions. Specifically, these transactions included: (1) Certain export price (EP) transactions which had been shipped prior to the POR, but which entered the United States during the POR; (2) certain direct constructed export price (CEP) transactions which were shipped during the POR, but invoiced after the POR; and (3) a small quantity of overlooked U.S. transactions which had not been included in error. We have preliminarily determined that the margin for these sales should be based on facts available in accordance with section 776(a)(1) of the Act because they were not reported to the Department in response to the Department’s request for information.

In this case, because Thai Union did not provide the Department with the complete information regarding its universe of POR subject sales in a timely manner, we find that it is appropriate to resort to facts otherwise available to account for the unreported information. See *Notice of Final Results of Antidumping Duty Administrative Review, Rescission of Administrative Review in Part, and Final Determination to Not Revoke Order in Part: Canned Pineapple Fruit from Thailand*, 68 FR 65247 (Nov. 19, 2003), and accompanying Issues and Decision Memorandum at Comment 20b. Thai Union's failure to provide this necessary information meets the requirements set forth in *Nippon*. As stated by the Court of Appeals for the Federal Circuit during its discussion of section 776(a) of the Act in *Nippon*, "{t}he focus of subsection (a) is respondent's failure to provide information. The reason for the failure is of no moment. The mere failure of a respondent to furnish requested information—for any reason—requires Commerce to resort to other sources of information to complete the factual record on which it makes its determination."

In regard to the use of an adverse inference, section 776(b) of the Act states that the Department may use an adverse inference if "an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information * * *." Because: (1) Thai Union had the necessary information within its control and it did not report this information; and (2) it failed to put forth its maximum effort as required by the Department's questionnaire, we find that Thai Union's failure to respond in this case clearly meets these standards.

As AFA, we have preliminarily used the highest non-aberrant margin calculated for any U.S. transaction for Thai Union, in accordance with our practice. See, e.g., *Static Random Access Memory Semiconductors From Taiwan; Final Results of Antidumping Duty New Shipper Review*, 65 FR 12214 (Mar. 8, 2000), and accompanying Issues and Decision Memorandum at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8912 (Feb. 23, 1998); *Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils from Germany*, 64 FR 30710, 30732 (June 8, 1999); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61747 (Nov. 19, 1997). In

selecting a facts available margin, we sought a margin that is sufficiently adverse so as to effectuate the statutory purposes of the AFA rule, which is to induce respondents to provide the Department with complete and accurate information in a timely manner. We also sought a margin that is rationally related to the transactions to which the AFA is being applied and indicative of Thai Union's customary selling practices. To that end, we selected the highest margin on an individual sale in a commercial quantity that fell within the mainstream of Thai Union's transactions (i.e., transactions that reflect sales of products that are representative of the broader range of models used to determine normal value).

Duty Absorption

On April 5, 2007, the petitioner requested that the Department determine whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. This review was initiated two years after the publication of the order.

In determining whether the antidumping duties have been absorbed by the respondents during the POR, we presume the duties will be absorbed for those sales that have been made at less than normal value. This presumption can be rebutted with evidence (e.g., an agreement between the affiliated importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. See, e.g., *Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind*, 70 FR 39735, 39737 (July 11, 2005). On September 18, 2007, we issued letters to Pakfood, the Rubicon Group, Thai I-Mei, and Thai Union requesting proof that the companies' unaffiliated purchasers would ultimately pay the antidumping duties to be assessed on entries during the POR. Thai Union did not provide any such evidence. Because Thai Union did not rebut the duty-absorption presumption with evidence that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise, we preliminarily find that antidumping duties have been absorbed by Thai Union on all U.S. sales made through its affiliated importers of

record. For the percentage of such sales, see the February, 28, 2008, Memorandum to the File from Brianne Riker, entitled "Calculations Performed for Thai Union Frozen Products Co., Ltd./Thai Union Seafood Co., Ltd. for the Preliminary Results of the 2006–2007 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Thailand" at Attachment 2.

The Rubicon Group and Thai I-Mei responded to the Department's request for information on October 2, 2007. The Rubicon Group stated in its submission that sample documentation submitted as part of its section A questionnaire response shows that it included the cost of antidumping duty deposits in its prices to unaffiliated customers. However, because the Rubicon Group was unable to show that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise, we find that the Rubicon Group did not rebut the duty-absorption presumption. Thai I-Mei also was unable to rebut the duty-absorption presumption. Therefore, because neither the Rubicon Group nor Thai I-Mei was able to rebut the duty-absorption presumption with evidence that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise, we preliminarily find that antidumping duties have also been absorbed by the Rubicon Group and Thai I-Mei on all U.S. sales made through their respective importers of record. For the percentage of such sales by the Rubicon Group and Thai I-Mei, see the February, 28, 2008, Memoranda to the File from Kate Johnson and Rebecca Trainor entitled "Second Administrative Review of Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results Margin Calculation for the Rubicon Group" at Attachment 2 and "2006–2007 Administrative Review of Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results Margin Calculation for Thai I-Mei Frozen Foods Co., Ltd" at Attachment 1.

With respect to Pakfood, it did not sell subject merchandise in the United States through an affiliated importer. Therefore, it is not appropriate to make a duty-absorption determination in this segment of the proceeding within the meaning of section 751(a)(4) of the Act. See *Agro Dutch Industries Ltd. v. United States*, 508 F.3d 1024, 1033 (Fed. Cir. 2007).

Comparisons to Normal Value

To determine whether sales of certain frozen warmwater shrimp from Thailand to the United States were

made at less than NV, we compared the EP or CEP to the NV, as described in the “Constructed Export Price/Export Price” and “Normal Value” sections of this notice, below.

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

Regarding Thai I-Mei, we have determined that this company did not have a viable home or third country market during the POR. Therefore, as the basis for NV, we used constructed value (CV) when making comparisons to CEP for Thai I-Mei in accordance with section 773(a)(4) of the Act.

Product Comparisons

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

With respect to sales comparisons involving broken shrimp, we compared Pakfood’s and the Rubicon Group’s sales of broken shrimp in the United States to its sales of comparable quality shrimp in the home market. Where there were no sales of identical broken shrimp in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales of broken shrimp to sales of the most similar broken shrimp made in the ordinary course of trade. Where there were no sales of identical or similar broken shrimp, we made product comparisons using CV.

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

Constructed Export Price/Export Price

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

For all U.S. sales made by Thai I-Mei, as well as certain U.S. sales made by the Rubicon Group and Thai Union, we calculated CEP in accordance with section 772(b) of the Act because the subject merchandise was sold for the account of these companies by their subsidiaries in the United States to unaffiliated purchasers.

A. Pakfood

We based EP on packed prices to the first unaffiliated purchaser in the United States. Where appropriate, we made adjustments for billing adjustments and discounts. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight expenses, foreign warehousing expenses, survey fees, foreign brokerage and handling expenses, ocean freight expenses (offset by freight adjustments, where appropriate), marine insurance expenses, U.S. brokerage and handling expenses, and U.S. customs duties (including harbor maintenance fees and merchandise processing fees).

B. The Rubicon Group

In accordance with section 772(a) of the Act, we calculated EP for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States. We based EP on the packed price to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for discounts. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight

expenses, foreign warehousing expenses, foreign inland insurance expenses, foreign brokerage and handling expenses, ocean freight expenses, marine insurance expenses, U.S. brokerage and handling expenses, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), and U.S. inland freight expenses (*i.e.*, freight from port to warehouse).

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. We used the earlier of shipment date from Thailand to the customer or the U.S. affiliate’s invoice date as the date of sale for CEP sales, in accordance with our practice. *See e.g.*, *Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (Sep. 12, 2007), and accompanying Issues and Decision Memorandum at Comment 11 (*04–06 Thai Shrimp Final*); *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (Dec. 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10 (*Thai Shrimp LTFV Investigation Final*); and *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2 (*SS Beams from Germany*).

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for discounts and rebates. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight expenses, foreign warehousing expenses, foreign inland insurance expenses, foreign brokerage and handling expenses, ocean freight expenses, marine insurance expenses, U.S. brokerage and handling expenses, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland insurance expenses, U.S. inland freight expenses (*i.e.*, freight from port to warehouse and

freight from warehouse to the customer), and U.S. warehousing expenses.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, bank charges, advertising, and imputed credit expenses), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by the Rubicon Group and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales.

C. Thai I-Mei

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. We used the earlier of shipment date from Thailand to the customer or the U.S. affiliate's invoice date as the date of sale for CEP sales, in accordance with our practice. *See e.g.*, 04–06 Thai Shrimp Final at Comment 11; Thai Shrimp LTFV Investigation Final at Comment 10; and SS Beams from Germany at Comment 2.

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for billing adjustments. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling expenses, ocean freight expenses, marine insurance expenses, U.S. brokerage and handling, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland freight expenses (*i.e.*, freight from port to warehouse and freight from warehouse to the customer), and U.S. warehousing expenses.

In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, imputed credit expenses), and indirect

selling expenses (including inventory carrying costs and other indirect selling expenses).

Pursuant to section 772(d)(3) of the Act, we calculated an amount for profit to arrive at CEP. In accordance with section 772(f)(2)(C)(iii) of the Act, we based the CEP profit rate on Thai I-Mei's financial statements because Thai I-Mei made sales during the POR solely to the United States. For further discussion, see the Memorandum to the File from Rebecca Trainor, entitled, "Calculations Performed for Thai I-Mei Frozen Foods Co., Ltd. for the Preliminary Results in the 2006–2007 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Thailand," dated February 28, 2008.

D. Thai Union

In accordance with section 772(a) of the Act, we calculated EP for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States. We based EP on the packed price to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling expenses, ocean freight expenses, marine insurance expenses, U.S. brokerage and handling expenses, and U.S. customs duties (including harbor maintenance fees and merchandise processing fees).

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. We used the earlier of shipment date from Thailand to the customer or the U.S. affiliate's invoice date as the date of sale for CEP sales, in accordance with our practice. *See e.g.*, 04–06 Thai Shrimp Final at Comment 11; Thai Shrimp LTFV Investigation Final at Comment 10; and SS Beams from Germany at Comment 2.

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for billing adjustments, discounts, and rebates. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight expenses, foreign brokerage and handling expenses,

demurrage expenses, ocean freight expenses, marine insurance expenses, U.S. brokerage and handling, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), U.S. inland freight expenses (*i.e.*, freight from port to warehouse, freight from warehouse to warehouse, and freight from warehouse to the customer), and U.S. warehousing expenses (offset by warehouse release revenue). In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*i.e.*, imputed credit expenses, bank charges, and advertising expenses), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Thai Union and its U.S. affiliates on their sales of the subject merchandise in the United States and the profit associated with those sales.

Normal Value

A. Home Market Viability and Selection of Comparison Markets

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that Pakfood and Thai Union had viable home markets during the POR. Consequently, we based NV on home market sales for these respondents.

However, the petitioner has argued throughout this review that certain of Thai Union's home market sales should not be considered for purposes of determining NV, and that excluding such sales from the viability test renders Thai Union's home market not viable. Specifically, the petitioner argued that the following sales should not be included in home market sales: (1) Sales to an affiliated producer which are consumed in the production of non-subject merchandise (*i.e.*, no downstream sale exists); and (2) sales of "hanging" shrimp. In response, Thai Union has argued that its reported home market sales are legitimate because: (1) it is the Department's practice to

include in the viability test sales of the foreign like product sold to an affiliated producer in the home market consumed in the production of non-subject merchandise; and (2) "hanging shrimp" is second-quality shrimp, not a by-product. At verification, we thoroughly examined whether the shrimp at issue are properly considered foreign like product and were sold and/or consumed as claimed by the respondent. For further discussion, see the "Thai Union Verification Report" and the February 26, 2008, memorandum to the file from Heidi K. Schriefer entitled, "Verification of the Cost Response of Thai Union Frozen Product PCL and Thai Union Seafood Company Ltd. in the 2nd Administrative Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from Thailand."

Regarding the Rubicon Group, we determined that this respondent's aggregate volume of home market sales of the foreign like product was insufficient to permit a proper comparison with U.S. sales of the subject merchandise. Therefore, we used sales to the Rubicon Group's largest third-country market (*i.e.*, Canada) as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404. Finally, we determined that Thai I-Mei's aggregate volumes of home and third country market sales of the foreign like product were insufficient to permit a proper comparison with U.S. sales of the subject merchandise. Therefore, we used CV as the basis for calculating NV for Thai I-Mei, in accordance with section 773(a)(4) of the Act.

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

During the POR, Pakfood and Thai Union sold the foreign like product to affiliated customers. To test whether these sales were made at arm's-length prices, we compared, on a product-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all discounts and rebates, movement charges, direct selling expenses, and packing expenses. Pursuant to 19 CFR 351.403(c) and in accordance with the Department's practice, where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (Nov. 15, 2002)

(establishing that the overall ratio calculated for an affiliate must be between 98 percent and 102 percent in order for sales to be considered in the ordinary course of trade and used in the NV calculation). Sales to affiliated customers in the comparison market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade. See 19 CFR 351.102(b).

C. Level of Trade

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

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),⁵ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron Technology, Inc. v. United States*, 243 F. 3d 1301, 1314 (Fed. Cir. 2001). When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of

⁵ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.

the Act. Finally, for CEP sales only, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See *Plate from South Africa*, 62 FR at 61732–61733.

In this administrative review, we obtained information from each respondent regarding the marketing stages involved in making the reported foreign market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

1. Pakfood

Pakfood reported that it made EP sales in the U.S. market through a single channel of distribution (*i.e.*, direct sales to distributors). We examined the selling activities performed for this channel and found that Pakfood performed the following selling functions: Providing sales promotion/advertising, attending trade shows, maintaining customer contact, price negotiation, invoice issuance, payment receipt, delivery services, and packing. Accordingly, based on the core selling functions, we find that Pakfood performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for U.S. sales. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Pakfood made sales to processors, distributors, retailers, and end-users. Pakfood stated that its home market sales were made through a single channel of distribution, regardless of customer category. We examined the selling activities performed for this channel, and found that Pakfood performed the following selling functions: Sales forecasting/market research, providing sales promotion/advertising, attending trade shows, maintaining customer contact, price negotiation, order processing, invoice issuance, delivery services, providing direct sales personnel, payment receipt, and packing. Accordingly, based on the core selling functions, we find that Pakfood performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing at the same relative level of intensity for all customers in the

home market. Because all sales in the home market are made through a single distribution channel, we preliminarily determine that there is one LOT in the home market.

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

2. The Rubicon Group

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

We examined the selling activities performed for each channel. For direct EP sales, the Rubicon Group reported the following selling functions: sales forecasting/market research, sales promotion/trade shows/advertising, inventory maintenance, order input/processing, freight and delivery arrangements, visits/calls and correspondence to customers, development of new packaging (with customer), packing and after-sales services. Accordingly, based on the core selling functions, we find that the Rubicon Group performed sales and marketing, freight and delivery, and inventory maintenance and warehousing activities. For CEP sales of both warehoused and drop shipment sales, the Rubicon Group reported the following selling functions: inventory maintenance, order input/processing, freight and delivery arrangements, and packing. As the selling functions performed for both warehoused and drop shipment sales were identical, we find that there was one LOT for CEP sales. Furthermore, although the Rubicon Group reported that it performed fewer selling functions for CEP sales than for EP sales (primarily sales and marketing functions), we do not find that the differences are significant enough to warrant finding different LOTs in the U.S. market. This determination is consistent with that made in the LTFV investigation for the Rubicon Group. *See Notice of Preliminary Determination of Sales at*

Less Than Fair Value; Postponement of Final Determination, and Negative Critical Circumstances Determination: Certain Frozen and Canned Warmwater Shrimp From Thailand, 69 FR 47100 (August 4, 2004) and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004) (unchanged in final). Moreover, although the Rubicon Group has claimed that its selling practices in the United States have changed since the LTFV investigation, it has not provided compelling evidence that the selling functions by any of the Thai respondents has changed significantly since then. *See* the November 28, 2007, ABC Supplemental Questionnaire Response at pages 19–20.

With respect to the Canadian market, the Rubicon Group reported sales to distributors/wholesalers, retailers, and end users. The Rubicon Group stated that its Canadian sales were made through two channels of distribution: (1) Direct to Canadian customers; and (2) through its U.S. affiliate from a Canadian warehouse. We examined the reported selling activities and found that the Rubicon Group performed the following selling functions for direct sales: Sales forecasting; market research; sales promotion; trade shows; inventory maintenance; order input/processing; freight and delivery arrangements; visits, calls and correspondence to customers; development of new packaging (with customer); and after-sales services. Accordingly, based on the core selling functions, we find that the Rubicon Group performed sales and marketing, freight and delivery, and inventory maintenance and warehousing at the same relative level of intensity for all customers in the comparison market. We note that, the company performed some sales and marketing activities for warehoused sales but not for direct sales to Canadian customers. However, we do not find that this difference, combined with some claimed differences in the levels of the common selling functions, amounts to a significant difference in

the selling functions performed for the two channels of distribution. Therefore, based on our overall analysis, we found that all of the Rubicon Group’s sales in the Canadian market constituted one LOT.

After analyzing the selling functions performed for each sales channel, we find that the distinctions in selling functions are not material. We acknowledge that the Rubicon Group provides sales forecasting/market research for sales to Canada and direct U.S. sales but not for sales to its U.S. affiliate. However, we do not find that this difference, combined with the claimed difference in the levels of the common selling functions, amounts to a significant difference in the selling functions performed for the two channels of distribution. Therefore, we do not find that the U.S. LOT for CEP sales is less advanced than the LOT for Canadian sales.

Based on the above analysis, we find that the Rubicon Group performed essentially the same selling functions when selling to both Canada and the United States (for both the EP and CEP sales). Therefore, we determine that these sales are at the same LOT and no LOT adjustment is warranted. Because we find that no difference in the LOTs exists between markets, we have not granted a CEP offset to the Rubicon Group.

3. Thai I-Mei

With respect to Thai I-Mei, this exporter had no viable home or third country market during the POR. Therefore, we based NV on CV. When NV is based on CV, the NV LOT is that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Atlantic Salmon From Chile*, 63 FR 2664 (Jan. 16, 1998), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile*, 63 FR 31411 (June 9, 1998). In accordance with 19 CFR 351.412(d), the Department will make its LOT determination under paragraph (d)(2) of this section on the basis of sales of the foreign like product by the producer or exporter. Because we based the selling expenses and profit for Thai I-Mei on the weighted-average home market selling expenses incurred and profits earned by the other respondents (*i.e.*, Pakfood and Thai Union) in the administrative review, we are able to determine the LOT of the sales from which we derived selling expenses and profit for CV.

Thai I-Mei reported that it made sales through six channels of distribution in the United States; however, it stated that the selling activities it performed did not vary by channel of distribution. Thai I-Mei reported performing the following selling functions for sales to its U.S. affiliate: order input/processing, warranty service, freight and delivery services, calls and correspondence with customers, price negotiation, invoice issuance, payment receipt/processing, providing samples, and packing. Accordingly, based on the core selling functions, we find that Thai I-Mei performed sales and marketing, freight and delivery services, and warranty services for sales to its U.S. affiliate. Because Thai I-Mei's selling activities did not vary by distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

As noted above, we find that Thai Union and Pakfood performed the following core selling functions: sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty services. Further, although Thai Union and Pakfood performed certain sales and marketing functions (e.g., sales forecasting/market research, strategic/economic planning, sales promotion/advertising/trade shows) and inventory maintenance and warehousing functions that Thai I-Mei did not perform, we did not find these differences to be material selling function distinctions significant enough to warrant a separate LOT. Thus, we determine that the NV LOT for Thai I-Mei is the same as the LOT of Thai I-Mei's CEP sales and, as a result, no LOT adjustment is warranted.

Regarding the CEP offset provision, as described above, it is appropriate only if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability. Because we find that no difference in LOTs exists, we do not find that a CEP offset is warranted for Thai I-Mei.

4. Thai Union

In the U.S. market, Thai Union reported both EP and CEP sales to wholesalers/distributors, end-users, processors, and retailers/restaurants. Thai Union reported sales through two channels of distribution: 1) Direct EP sales from Thai Union to unaffiliated U.S. customers; and 2) CEP sales made to its U.S. affiliates. We examined the selling activities performed for direct EP sales from Thai Union to unaffiliated U.S. customers and found that Thai Union performed the following selling functions: sales forecasting/market

research, sales/marketing support, strategic/economic planning, order input/processing, providing direct sales personnel, providing warranty services/guarantees, inventory maintenance, freight services, and packing. Accordingly, based on the core selling functions, we find that Thai Union performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical services for its EP sales.

Further, we examined the selling activities performed for CEP sales made to Thai Union's U.S. affiliates and found that Thai Union performed the following selling functions: order input/processing, freight services, inventory maintenance, and packing. Accordingly, based on the core selling functions, we find that Thai Union performed sales and marketing, freight and delivery services, and inventory maintenance and warehousing for its CEP sales.

We preliminarily find that Thai Union performed freight and delivery services and inventory maintenance and warehousing at the same level of intensity for all customers in the United States regardless of distribution channel. In addition, although technical and warranty services were provided for EP sales, and not for CEP sales, these services were performed at a low level of intensity and, thus, we do not find this to be a material selling distinction significant enough to warrant a separate LOT. Further, although Thai Union performed additional sales and marketing functions (i.e., sales forecasting/market research, strategic/economic planning, providing direct sales personnel, and sales/marketing support) for its EP sales that it did not perform for its CEP sales, we also did not find these differences to be material selling function distinctions significant enough to warrant a separate LOT in the U.S. market. Therefore, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Thai Union made sales to wholesalers/distributors, end-users, processors, and retailers/restaurants. Thai Union stated that its home market sales were made through two channels of distribution: (1) Ex-factory sales; and (2) delivered sales. We examined the selling activities performed and found that Thai Union performed the following selling functions at the same level of intensity for both of these channels: sales forecasting/market research/sales promotion, sales/marketing support, strategic/economic planning, order input/processing, providing direct sales personnel, providing warranty services/

guarantees, inventory maintenance, and packing. Additionally, for delivered sales, we find that Thai Union provided freight and delivery services. Accordingly, based on the core selling functions, we find that Thai Union performed sales and marketing, inventory maintenance and warehousing, and warranty and technical services at the same level of intensity for all customers in the home market regardless of distribution channel. Although freight and delivery services were performed for delivered sales, and not for ex-factory sales, we do not find this to be a material selling distinction significant enough to warrant a separate LOT. Therefore, we preliminarily determine that there is one LOT in the home market.

We evaluated the core selling function categories in the U.S. and home market LOTs and found that each of the core selling functions (i.e., sales and marketing, inventory maintenance, freight and delivery services, and warranty and technical support) were performed in both the U.S. and home markets. Although there are differences in the type of sales and marketing services provided for each market, we did not find this to be a material selling function distinction significant enough to warrant a separate LOT. Therefore, after analyzing the selling functions performed in each market, we find that the distinctions in selling functions are not material and thus, that the home market and U.S. LOTs are the same. Accordingly, we determine that no LOT adjustment is warranted or possible for Thai Union. Regarding the CEP offset provision, as described above, it is appropriate only if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability. Because we find that no difference in LOTs exists, we do not find that a CEP offset is warranted for Thai Union.

D. Cost of Production Analysis

We found that the Rubicon Group had made sales below the cost of production (COP) in the LTFV investigation, the most recently completed segment of this proceeding as of the date the questionnaire was issued in this review, and such sales were disregarded. See *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Preliminary Critical Circumstances Determination: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 47100, 47107 (Aug. 4, 2004); unchanged in the *Thai*

Shrimp LTFV Investigation Final. Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that the Rubicon Group made sales in the third-country market at prices below the cost of producing the merchandise in the current review period.

Further, based on our analysis of the petitioner's allegations, we found that there were reasonable grounds to believe or suspect that Pakfood's and Thai Union's sales of frozen warmwater shrimp in the home market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated sales-below-cost investigations to determine whether Pakfood's and Thai Union's sales were made at prices below their respective COPs. *See* the Pakfood Cost Allegation and the Thai Union Cost Allegation.

1. Calculation of Cost of Production

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

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

a. Pakfood

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

b. The Rubicon Group

i. We removed purchases of finished shrimp between collapsed affiliates from the company-specific cost of sales denominator in the calculation of the G&A and financial expense ratios to avoid double counting such costs.

ii. For CFF, we used cost of goods sold as the denominator in the calculation of the G&A expense ratio.

Our revisions to the Rubicon Group's COP data are discussed in the Memorandum to Neal Halper, Director, Office of Accounting from Frederick W. Mines, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results," dated February 28, 2008.

c. Thai Union

i. We excluded certain book-to-physical inventory adjustments from

Thai Union Seafood's fixed overhead costs that were double-counted in the reported costs.

ii. We adjusted Thai Union Seafood's reported cost data to account for additional finished production quantities that were reported as a minor correction at the cost verification. This adjustment resulted in the addition of two new control numbers to Thai Union Seafood's cost database.

iii. We revised Thai Union Seafood's G&A expense ratio to exclude export tax coupon income from the numerator and to include scrap offsets in the denominator.

iv. We revised Thai Union Frozen's G&A expense ratio to exclude certain income items (*i.e.*, raw material claims, export tax coupons, and other revenues related to interest earned on accounts receivables and raw material claims) from the numerator and to include scrap offsets in the denominator.

v. We revised Thai Union's consolidated financial expense ratio to include scrap offsets in the denominator.

Our revisions to Thai Union's COP data are discussed in the Memorandum to Neal Halper, Director, Office of Accounting, from Heidi K. Schriefer entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Thai Union Frozen Products PCL and Thai Union Seafood Company, Ltd.," dated February 28, 2008.

2. Test of Comparison Market Sales Prices

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

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined

that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than COP, we determined that such sales have been made in "substantial quantities." *See* section 773(b)(2)(C) of the Act. Further, the sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because we examined below-cost sales occurring during the entire POR. In such cases, because we compared prices to POR-average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain specific products, more than 20 percent of Pakfood's, the Rubicon Group's, and Thai Union's sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

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

E. Calculation of Normal Value Based on Comparison Market Prices

1. Pakfood

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

We made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances-of-sale for imputed credit expenses and bank/wire fee charges. We also made adjustments in accordance with 19 CFR 351.410(e) for indirect

selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not the other. Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of: (1) The amount of commission paid in the U.S. market; or (2) the amount of indirect selling expenses incurred in the comparison market.

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

2. The Rubicon Group

For the Rubicon Group, we calculated NV based on delivered prices to unaffiliated customers. Where appropriate, we made adjustments for billing adjustments and rebates. We also made deductions for movement expenses, including inland freight (plant to warehouse and warehouse to port), warehousing, inland insurance, brokerage and handling, ocean freight (offset by freight adjustments, where appropriate), third-country inland insurance, third-country inspection fees, third-country brokerage and handling, and third-country warehousing, under section 773(a)(6)(B)(ii) of the Act.

For third country price-to-EP comparisons, we made circumstance-of-sale adjustments for differences in credit expenses and commissions, pursuant to section 773(a)(6)(C) of the Act.

For third country price-to-CEP comparisons, we made deductions for third-country credit expenses and commissions pursuant to 773(a)(6)(C) of the Act.

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

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

We also deducted third-country packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

3. Thai Union

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

For home market price-to-EP comparisons, we made circumstance-of-sale adjustments for differences in credit expenses, pursuant to section 773(a)(6)(C) of the Act.

For home market price-to-CEP comparisons, we made deductions for home market credit expenses, pursuant to 773(a)(6)(C) of the Act.

Regarding credit expenses, Thai Union reported that it had not received payment for certain home market and U.S. sales. Consequently, for these sales, we used a payment date of February 28, 2008 (*i.e.*, the date of the preliminary results), and recalculated imputed credit expenses accordingly.

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

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

We also deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

F. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for those frozen warmwater shrimp products for Pakfood, the Rubicon Group, and Thai Union for which we could not

determine the NV based on comparison-market sales, either because there were no useable sales of a comparable product or all sales of comparable products failed the COP test, we based NV on CV. For Thai I-Mei, in accordance with section 773(a)(4) of the Act, we based NV on CV because there was no viable home or third country market.

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

For Thai I-Mei, in accordance with section 773(e) of the Act, we calculated CV based on the sum of Thai I-Mei's cost of materials and fabrication for the foreign like product, plus amounts for SG&A, profit, and U.S. packing costs. The Department relied on COP data submitted by Thai I-Mei in its most recent supplemental section D questionnaire response for the COP calculation. Because Thai I-Mei does not have a viable comparison market, the Department cannot determine profit under section 773(e)(2)(A) of the Act, which requires sales by the respondent in question in the ordinary course of trade in a comparison market. Likewise, because Thai I-Mei does not have sales of any product in the same general category of products as the subject merchandise, we are unable to apply alternative (i) of section 773(e)(2)(B) of the Act. Therefore, we calculated Thai I-Mei's CV profit and selling expenses based on alternative (ii) of this section, in accordance with section 773(e)(2)(B)(ii) of the Act. As a result, we calculated Thai I-Mei's CV profit and selling expenses as a weighted average of the profit and selling expenses incurred by the other respondents which had viable home markets in this

administrative review. Specifically, we calculated the weighted-average profit and selling expenses incurred on comparison market sales made by Pakfood and Thai Union.

For comparisons to Thai I-Mei's CEP, we deducted from CV direct selling expenses incurred on Pakfood's and Thai Union's comparison market sales,

in accordance with section 773(a)(7)(ii)(B) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415 based on the exchange rates in effect on

the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of the Review

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

Manufacturer/exporter	Percent margin
Pakfood Public Company Limited/Asia Pacific (Thailand) Company Limited/Chaophraya Cold Storage/Okeanos Company Limited/Takzin Samut Company Limited	2.40
Andaman Seafood Co., Ltd./Chanthaburi Frozen Food Co., Ltd./Chanthaburi Seafoods Co., Ltd./Euro-Asian International Seafoods Co., Ltd./Intersia Foods Co., Ltd./Phattana Seafood Co., Ltd./Phattana Frozen Food Co., Ltd./S.C.C. Frozen Seafood Co., Ltd./Seawalth Frozen Food Co. Ltd./Thailand Fishery Cold Storage Public Co., Ltd./Thai International Seafoods Co., Ltd./Wales & Co. Universe Limited	5.24
Thai I-Mei Frozen Foods Co., Ltd	3.02
Thai Union Frozen Products Public Co., Ltd./Thai Union Seafood Co., Ltd	15.30
Review-Specific Average Rate Applicable to the Following Companies: ⁶	
Asian Seafoods Coldstorage Public Company Limited/Asian Seafoods Coldstorage (Suratthani) Co., Ltd./STC Foodpak Limited ...	6.09
Charoen Pokphand Foods Public Company Limited/CP Merchandising Co., Ltd./Klang Co., Ltd./Seafoods Enterprise Co., Ltd./Thai Prawn Culture Center Co., Ltd	6.09
Crystal Frozen Foods Co., Ltd	6.09
CY Frozen Co., Ltd	6.09
Fortune Frozen Foods (Thailand) Co., Ltd	6.09
Good Fortune Cold Storage Ltd	6.09
Good Luck Product Co., Ltd	
Inter-Pacific Marine Products Co, Ltd	6.09
I.T. Foods Industries Co., Ltd	6.09
Kiang Huat Sea Gull Trading Frozen Food Public Company Limited	6.09
Kingfisher Holdings Limited/KF Foods Limited	6.09
Kitchens of the Ocean (Thailand) Co., Ltd	
Kongphop Frozen Foods Co., Ltd	6.09
Marine Gold Products Ltd	6.09
May Ao Co., Ltd./May Ao Foods Co., Ltd	6.09
Narong Seafood Co., Ltd	6.09
Ongkorn Cold Storage Co., Ltd/Thai-ger Marine Co., Ltd	6.09
S&D Marine Products Co., Ltd	6.09
Seafresh Industry Public Company Limited/Seafresh Fisheries	6.09
Siam Intersea Co., Ltd	6.09
SMP Food Product Co., Ltd	6.09
Surapon Foods Public Co., Ltd./Surat Seafoods Co., Ltd	6.09
Tey Seng Cold Storage Co., Ltd./Chaiwarut Co., Ltd	6.09
Thai Royal Frozen Food Co., Ltd	6.09
The Siam Union Frozen Foods Co., Ltd./Kosamut Frozen Foods Co., Ltd	6.09
The Union Frozen Products Co., Ltd./Bright Sea Co., Ltd	6.09
Transamut Food Co., Ltd	6.09
Xian-Ning Seafood Co., Ltd	6.09
Yeenin Frozen Foods Co., Ltd	6.09
AFA Rate Applicable to the Following Companies:	
Applied DB	57.64
Chonburi LC	57.64
Haitai Seafood Co., Ltd	57.64
High Way International Co., Ltd	57.64
Merkur Co., Ltd.	57.64
Ming Chao Ind Thailand	57.64
Nongmon SMJ Products	57.64
SCT Co., Ltd	57.64
Search and Serve	57.64
Shianlin Bangkok Co., Ltd. (located at 159 Surawong Road, Suriyawong, Bangrak, Bangkok 10500 Thailand)	57.64
Star Frozen Foods Co., Ltd	57.64
Wann Fisheries Co., Ltd	57.64

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in

connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Pursuant to 19 CFR 351.309,

interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of

⁶ This rate is based on the weighted average of the margins calculated for those companies selected for

individual review, excluding *de minimis* margins or margins based entirely on AFA.

publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Interested parties who wish to request a hearing or to participate if one is requested must submit a written request to the Assistant Secretary for Import Administration, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. See 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

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

For certain of Pakfood's, the Rubicon Group's, and Thai Union's sales and all of Thai I-Mei's sales, we note that these companies reported the entered value for the U.S. sales in question. We will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer.

For certain of Pakfood's, the Rubicon Group's, and Thai Union's sales, we note that these companies did not report the entered value for the U.S. sales in question. We will calculate importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. We note that for certain of Pakfood's and the Rubicon Group's sales of shrimp with sauce, we will include the total quantity of the merchandise with sauce in the denominator of the calculation of the importer-specific rate because CBP will apply the per-unit duty rate to the total quantity of merchandise entered, including the

sauce weight. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific *ad valorem* ratios based on the estimated entered value.

Finally, regarding Thai Union's unreported U.S. sales, we will base the assessment rate assigned to the corresponding entries on AFA, determined as noted above. We will instruct CBP to collect these duties on an importer-specific basis, where possible.

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

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (i.e., at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (i.e., less than 0.50 percent). See 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

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

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise

entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: 1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; 2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 5.95 percent, the all-others rate made effective by the LTFV investigation. See *Shrimp Order*. These requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

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

Dated: February 28, 2008.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

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