

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 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. See 19 CFR 351.309(c)(2).

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B-099, within 30 days of the date of publication of this notice. Requests should contain: 1) the party's name, address and telephone number; 2) the number of participants; and, 3) a list of issues to be discussed. *Id.* Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

#### Assessment Rates

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

For Falcon, HLL, and the Liberty Group, because these companies reported the entered value for some of their U.S. sales, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales which entered value was reported. For Falcon, HLL, and the Liberty Group's U.S. sales reported without entered values, 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. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific *ad valorem* ratios based on the estimated entered value.

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

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis*. 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 10.17 percent, the "All Others" rate made effective by the LTFV investigation. See *Shrimp Order*, 70 FR at 5148. These deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

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

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

Dated: February 28, 2007.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-549-822]

#### Certain Frozen Warmwater Shrimp From Thailand: Preliminary Results and 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 27 companies.<sup>1</sup> The respondents which the Department selected for individual review are Good

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

Luck Product Co., Ltd. (Good Luck Product), Pakfood Public Company Limited and its affiliated subsidiaries, Asia Pacific (Thailand) Company Limited, Chaophyraya Cold Storage Company Limited, Okeanos Company Limited, and Takzin Samut Company Limited (collectively "Pakfood"), and Thai I-Mei Frozen Foods Co., Ltd. (Thai I-Mei). The respondents which were not selected for individual review are listed in the "Preliminary Results of Review" section of this notice. This is the first administrative review of this order. The review covers the period August 4, 2004, through January 31, 2006.

We preliminarily determine that sales were made by Good Luck Product, Pakfood, and Thai I-Mei 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.

**DATES:** *Effective Date:* March 9, 2007.

**FOR FURTHER INFORMATION CONTACT:** Irina Itkin or Alice Gibbons, AD/CVD Operations, Office 2, Import Administration-Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0656 or (202) 482-0498, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

In February 2005, the Department published in the **Federal Register** an antidumping duty order on certain frozen warmwater shrimp from Thailand. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Thailand*, 70 FR 5145 (Feb. 1, 2005) (*Shrimp Order*). On February 1, 2006, 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 August 4, 2004, through January 31, 2006. See *Antidumping and Countervailing Duty Order, Finding, or Suspending Investigation; Opportunity to Request Administrative Review*, 71 FR 5239 (Feb. 1, 2006). On February 28, 2006, the petitioner<sup>2</sup> submitted a letter timely requesting that the Department conduct an administrative review of the sales of certain frozen warmwater shrimp made by numerous companies during the period of review (POR), pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and in accordance with 19 CFR 351.213(b)(1). Also, on February 28, 2006, the Department received requests to conduct an administrative review of the antidumping duty order on certain frozen warmwater shrimp from the following producers/exporters of subject merchandise during the POR in accordance with 19 CFR 351.213(b)(2): Kitchens of the Ocean (Thailand), Ltd., Pakfood, Thai I-Mei, Thai Union Frozen Products and Thai Union Seafood (collectively, "Thai Union"), and Union Frozen Products (UFP).

On April 7, 2006, the Department published a notice of initiation of administrative review for 145 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 for mandatory respondent selection purposes. 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*, 71 FR 17819 (Apr. 7, 2006) (*Notice of Initiation*).

During the period April 24, 2006, through July 10, 2006, we received responses to the Department's Q&V questionnaire from 106 companies.<sup>3</sup> We were unable to locate six companies, and we did not receive responses to this questionnaire from the remaining companies.<sup>4</sup> For further discussion, see

<sup>2</sup> The petitioner is the Ad Hoc Shrimp Trade Action Committee.

<sup>3</sup> We note that we initiated a review on six of these companies (i.e., Haitai Seafood Co., Ltd., Kingfisher Holdings Limited, Klang Co., Ltd., Inter-Oceanic Resources Co., Ltd., Narong Seafood Co., Ltd., Sea Bonanza Foods Co., Ltd.) as if they were two different entities based on the two different addresses on the record for each company. However, we have determined, based on the responses submitted by these companies, that each comprises a single entity with two different addresses.

<sup>4</sup> As discussed below, for some of these companies, the petitioner subsequently withdrew its request for review.

the "Application of Facts Available" section of this notice.

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 11, 2006, we selected the three largest producers/exporters of certain frozen warmwater shrimp from Thailand during the POR, Good Luck Product, Pakfood, and Thai I-Mei, as the mandatory respondents in this proceeding. See the Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from Irene Darzenta Tzafolias, Acting Director, Office 2, AD/CVD Operations, entitled, "Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Thailand: Selection of Respondents," dated July 11, 2006. On this same date, we issued the antidumping duty questionnaire to Good Luck Product, Pakfood, and Thai I-Mei.

On July 20, 2006, we published a notice rescinding the administrative review with respect to 112 companies for which the requests for an administrative review were withdrawn in a timely manner, in accordance with 19 CFR 351.213(d)(1). See *Certain Frozen Warmwater Shrimp from Thailand; Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 41200 (July 20, 2006) (*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 June 22, 2006.

On August 3, 2006, we published a notice amending the partial rescission of the administrative review to correct a typographical error. See *Certain Frozen Warmwater Shrimp from Thailand; Corrected Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 44017 (Aug. 3, 2006).

We received responses to section A of the questionnaire from Pakfood on August 8, 2006, and from Good Luck Product and Thai I-Mei on August 16, 2006.

On August 25, 2006, the Department postponed the preliminary results in this review until no later than February 28, 2007. See *Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, the Socialist Republic of Vietnam, the People's Republic of China, and Thailand: Notice of Extension of Time Limits for the Preliminary Results of the First Administrative Reviews and New*

*Shipper Reviews*, 71 FR 50387 (Aug. 25, 2006).

On August 29, 2006, the petitioner submitted comments regarding home market viability with respect to Good Luck Product and Pakfood.

We received responses to sections B and C of the questionnaire from Pakfood and Good Luck Product on September 1 and 5, 2006, respectively. In addition, we received a response to sections C and D of the questionnaire from Thai I-Mei on September 5, 2006.

On September 8 and 13, 2006, Pakfood and Good Luck Product, respectively, responded to the petitioner's comments regarding home market viability. For further discussion, see "Home Market Viability and Selection of Comparison Markets" section of this notice.

On September 14, 2006, we published an additional notice amending the partial rescission of the administrative review to correct a typographical error. See *Certain Frozen Warmwater Shrimp from Thailand; Corrected Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 54268 (Sept. 14, 2006).

We received comments from the petitioner on September 15, 2006, regarding the application of the multinational corporation (MNC) provision in section 773(d) of the Act with respect to Thai I-Mei.

On September 19, 2006, we issued a supplemental sales questionnaire to Pakfood.

On September 20, 2006, the petitioner requested that the Department initiate a sales-below-cost investigation of Pakfood.

On September 21, 2006, we issued a supplemental sales questionnaire to Thai I-Mei.

On September 26, 2006, Thai I-Mei submitted a response to the petitioner's comments regarding the application of the MNC provision in section 773(d) of the Act with respect to Thai I-Mei.

On September 27, 2006, we issued a supplemental sales questionnaire to Good Luck Product.

We initiated a sales-below-cost investigation for Pakfood on October 3, 2006. See the Memorandum to James Maeder, Director, Office 2, AD/CVD Operations, from The Team entitled, "Petitioner's Allegation of Sales Below the Cost of Production for Pakfood Company Limited" (Pakfood Cost Allegation).

We received Pakfood's supplemental response on October 17, 2006. Also on October 17, 2006, we issued a supplemental cost questionnaire to Thai I-Mei.

We received supplemental sales responses from Thai I-Mei and Good Luck Product on October 23 and 26, 2006, respectively.

On October 27, 2006, the petitioner requested that the Department initiate a sales-below-cost investigation of Good Luck Product. This investigation for Good Luck Product was initiated on October 30, 2006. See the Memorandum to James Maeder, Director, Office 2, AD/CVD Operations from The Team entitled, "Petitioner's Allegation of Sales Below the Cost of Production for Good Luck Product Co., Ltd." (Good Luck Product Cost Allegation).

Pakfood submitted a response to section D of the questionnaire on November 2, 2006.

On November 14, 2006, we issued a second sales supplemental questionnaire to Good Luck Product.

We received a response to the supplemental cost questionnaire from Thai I-Mei on November 15, 2006.

On November 16, 2006, we issued a supplemental cost questionnaire to Pakfood.

We received a second supplemental sales response, as well as a response to section D of the questionnaire from Good Luck Product on November 22 and 30, 2006, respectively.

On December 7, 2006, we issued a second sales supplemental questionnaire to Thai I-Mei. Also, on December 8, 2006, we issued a supplemental cost questionnaire to Good Luck Product.

We received a supplemental cost response from Pakfood on December 14, 2006.

On December 21, 2006, we issued a supplemental cost questionnaire to Thai I-Mei.

Sales verifications were conducted at Good Luck Product and Pakfood in December 2006. Sales verification reports were issued in January and February 2007 for Pakfood and Good Luck Product, respectively.

On January 4, 2007, we received Good Luck Product's supplemental cost response, as well as Thai I-Mei's second supplemental sales response. In addition, we received a supplemental cost response from Thai I-Mei on January 10, 2006.

On January 11, 2007, we issued a third supplemental sales questionnaire to Thai I-Mei.

On January 19, 2007, based on the information on the record, we found that the MNC provision does not apply to Thai I-Mei. For further discussion, see the Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration from The Team entitled, "Application of the

Multinational Corporation Provision," dated January 19, 2007.

We received Thai I-Mei's third supplemental sales response on January 23, 2007. Also on this date, we published a correction to the scope of the order in which we clarified that the scope does not cover warmwater shrimp in non-frozen form. See *Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam; Amended Orders*, 72 FR 2857 (Jan. 23, 2007).

On January 24 and February 14, 2007, respectively, Pakfood and Good Luck Product submitted revised sales databases which incorporated certain minor corrections to these companies' data discovered at verification.

We conducted cost verifications at Good Luck Product and Pakfood in January and February 2007.

### Scope of the Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,<sup>5</sup> deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*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*).

<sup>5</sup> "Tails" in this context means the tail fan, which includes the telson and the uropods.

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 (HTS 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 (HTS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTS 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.

#### Partial Rescission of Review

Eight of the companies that responded to the Department's Q&V questionnaire stated that they had no shipments/entries of subject merchandise into the United States during the POR. However, based on information obtained from CBP, it appeared that these companies did, in fact, have shipments or entries

of subject merchandise that entered into the United States during the POR. See the Memorandum to the File from Brianne Riker, Analyst, Office 2, AD/CVD Operations, entitled, "2004–2006 Administrative Review of Certain Frozen Warmwater Shrimp from Thailand: Entry Documents from U.S. Customs and Border Protection," dated July 31, 2006. From September 2006 to February 2007, we contacted seven of the eight companies in question and/or the exporters listed on the CBP entry documentation and requested that they provide information regarding the entries in question. We did not request information from one of the eight companies, Bangkok Dehydrated Marine Product Co., Ltd. (Bangkok Dehydrated Marine Product), because, based on CBP information, we found that the merchandise (*i.e.*, dried shrimp) was not subject to the scope of the order.

Based on either responses to the Department's solicitation or the CBP information, we have preliminarily determined that entries at issue by four of the eight exporters/producers, Bangkok Dehydrated Marine Product, Siam Ocean,<sup>6</sup> Tep Kinsho,<sup>7</sup> and Thai Agri,<sup>8</sup> were not reportable transactions because they were either: (1) Non-subject merchandise (*i.e.*, dried shrimp); (2) a non-paid sample; or, (3) reported by another company in its Q&V questionnaire. Therefore, 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 these companies. See, *e.g.*, *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).

One of the remaining exporters/producers, Siam Intersea Co., Ltd., provided additional information to the Department indicating that it did, in fact, have a reportable transaction during the POR. Therefore, we are not rescinding 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 impacted our selection of respondents; and, (3) the company has been responsive to our requests for information.

In addition, of the remaining two exporters/producers, NR Instant Produce<sup>9</sup> and Surapon Nichirei Foods Co., Ltd. (Surapon) stated that they did not report the entries in question because they claimed that the entries were of non-subject merchandise. Because these goods were entered into the United States as subject merchandise and there is insufficient evidence on the record to conclude otherwise, we preliminarily determine that the merchandise in question is included within the scope of the order. As a result, we are preliminarily assigning NR Instant Produce and Surapon the weighted-average margin calculated for the companies selected for individual review because these companies have been responsive to our requests for information. We may request additional information on the products in question. If we ultimately determine the merchandise is not subject to the order, we will rescind the administrative review with respect to NR Instant Produce and Surapon.

Finally, the remaining exporter/producer, Thai World,<sup>10</sup> failed to respond to the Department's request for additional information and, thus, we find that it failed to act to the best of its ability. Therefore, we are not rescinding the administrative review with respect to Thai World. For further information, see the "Application of Facts Available" section of this notice.

#### Application of Facts Available

Section 776(a) of 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.

As discussed in the "Background" section, above, in April 2006, the

<sup>6</sup> We note that the response from this company indicated that its name is Siam Ocean Frozen Foods Co., Ltd.

<sup>7</sup> We note that the response from this company indicated that its name is Tep Kinsho Foods Co., Ltd.

<sup>8</sup> We note that the response from this company indicated that its name is Thai Agri Foods Co., Ltd.

<sup>9</sup> We note that the response from this company indicated that its name is NR Instant Produce Co., Ltd. (NR Instant Produce).

<sup>10</sup> We note that the response from this company indicated that its name is Thai World Imports and Exports Co., Ltd. (Thai World).

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 28, 2006. Of the 145 companies subject to review, 32 companies did not respond to the Department's initial requests for information. Subsequently in May 2006, the Department issued letters to these companies affording them a second opportunity to submit a response to the Department's Q&V questionnaire. However, six of these companies also failed to respond to the Department's second questionnaire.<sup>11</sup> On January 31, 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, Analyst, Office 2, AD/CVD Operations, entitled, "Placing Delivery Information on the Record of the 2004–2006 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Thailand," dated January 31, 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.

Furthermore, one company, Thai World, claimed that it made no shipments of subject merchandise to the United States during the POR. Because we were unable to confirm the accuracy of Thai World's claim with CBP, we requested further information/clarification from it. However, Thai World failed to provide the requested information/clarification. By doing so, Thai World withheld requested information and significantly impeded the proceeding. Therefore, pursuant to sections 776(a)(2)(A) and (C) of the Act, the Department also preliminarily finds that the use of total facts available with respect to Thai World 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 also *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (Sept. 13, 2005); and *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.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 Anglo-Siam Seafoods, Fortune Frozen Foods, Gallant Ocean, Li-Thai, Queen Marine Food, Smile Heart Foods, and Thai World 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. 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., *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. 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 finds 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 *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

<sup>11</sup> These companies are: Anglo-Siam Seafoods Co., Ltd. (Anglo-Siam Seafoods), Fortune Frozen Foods (Thailand) Co., Ltd. (Fortune Frozen Foods), Gallant Ocean (Thailand) Co., Ltd. (Gallant Ocean), Li-Thai Frozen Foods Co., Ltd. (Li-Thai), Queen Marine Food Co., Ltd. (Queen Marine Foods), and Smile Heart Foods.

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 appropriate as AFA. We are assigning this rate to Anglo-Siam Seafoods, Fortune Frozen Foods, Gallant Ocean, Li-Thai, Queen Marine Food, Smile Heart Foods, and Thai World. For company-specific information used to corroborate this rate, see the Memorandum to the File from Brianne Riker, Analyst, Office 2, AD/CVD Operations, entitled "Corroboration of Adverse Facts Available Rate for the Preliminary Results in the 2004–2006 Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from Thailand," dated February 28, 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 export price (EP) or constructed export price (CEP) to the NV, as described in the "Constructed Export Price/Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2) of the Act, for Good Luck Product and Pakfood, we compared the EPs 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 Good Luck Product and Pakfood 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 home market for Good Luck Product and Pakfood 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 Good Luck Product and Pakfood, where there were no sales of identical or similar merchandise, and for all Thai I-Mei sales, we made product comparisons using CV.

With respect to sales comparisons involving broken shrimp, we compared Pakfood's sales of broken shrimp in the home market to its sales of comparable quality shrimp to the United States.

In making the product comparisons, we matched foreign like products based on the physical characteristics reported by Good Luck Product and Pakfood 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 Good Luck Product and Pakfood 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 U.S. sales made by Thai I-Mei, we calculated CEP in accordance with section 772(b) of the Act because the subject merchandise was sold for the account of Thai I-Mei by its subsidiary, Ocean Duke Corporation, in the United States to unaffiliated purchasers.

##### A. Good Luck Product

We based EP on packed prices to the first unaffiliated purchaser in the United States. Where appropriate, we made adjustments for billing adjustments. We made deductions from the starting price for foreign inland freight expenses (*i.e.*, freight from port to warehouse and freight from warehouse to the customer), foreign warehousing expenses, foreign brokerage and handling expenses, survey fees, and ocean freight expenses,

where appropriate, in accordance with section 772(c)(2)(A) of the Act.

##### B. 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 from the starting price for foreign inland freight expenses, foreign warehousing expenses, gate charges, survey fees, foreign brokerage and handling expenses, ocean freight expenses, U.S. brokerage expenses, and U.S. customs duties, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

Regarding warehousing expenses, Pakfood reported that certain of these services were provided by an affiliated party. At verification, we tested the warehousing expenses charged by the affiliated party to determine whether the prices charged were at "arm's length." Where we found that the prices were not at arm's length, we adjusted them to be equivalent to the market price. For further discussion, see the Memorandum to the File from Irina Itkin and Brianne Riker entitled, "Verification of the Sales Response of Pakfood Public Company Limited in the Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Thailand" ("Pakfood Verification Report"), dated January 19, 2007.

##### 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 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. For Thai I-Mei's direct shipments, 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, in accordance with our practice. *See e.g., 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; *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.

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 from the starting price for foreign inland freight, foreign inland insurance, foreign brokerage and handling expenses, ocean freight expenses, marine insurance expenses, U.S. brokerage and handling, U.S. customs duties, U.S. inland insurance, U.S. inland freight expenses, and U.S. warehousing expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act. 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 Alice Gibbons, Senior Analyst, Office 2, AD/CVD Operations, entitled, "Calculations Performed for Thai I-Mei Frozen Foods Co., Ltd. for the Preliminary Results in the 2004–2006 Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Thailand," dated February 28, 2007.

## 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 Good Luck Product and Pakfood 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 a large portion of Pakfood's home market is not legitimate (therefore, making its home market not viable) because there is no significant market for frozen shrimp in Thailand. In response, Pakfood has

argued that its reported home market sales are legitimate because they: (1) Were exclusively of foreign like product; (2) were for consumption in Thailand; and, (3) do not constitute a particular market situation. At verification we thoroughly examined this issue and confirmed Pakfood's assertions regarding its home market sales. For further discussion, see the "Pakfood Verification Report."

Further, 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, Good Luck Product and Pakfood sold the foreign like product to affiliated customers. To test whether these sales were made at arm's-length prices, we compared, on a product-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all discounts and rebates, movement charges, direct selling expenses, and packing expenses. Pursuant to 19 CFR 351.403(c) and in accordance with the Department's practice, where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (Nov. 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 percent and 102 percent in order for sales to be considered in the ordinary course of trade and used in the normal value 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),<sup>12</sup> we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

When the Department is unable to match U.S. 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. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is 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 61732–33.

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

<sup>12</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.

### 1. Good Luck Product

Good Luck Product reported that it made EP sales in the U.S. market through a single channel of distribution (*i.e.*, spot sales). We examined the selling activities performed for this channel and found that Good Luck Product performed the following selling functions: sales forecasting, order input/processing, providing direct sales personnel, providing commission payments, claim services (*i.e.*, billing adjustments), freight and delivery services, and packing. These selling activities can be generally grouped into four core selling function categories for analysis: (1) Sales and marketing; (2) freight and delivery; (3) inventory maintenance and warehousing; and, (4) warranty and technical support. Accordingly, based on the core selling functions, we find that Good Luck Product performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical services 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, Good Luck Product made sales through the following channels of distribution: (1) Spot sales; (2) sales to a Thai retailer; and, (3) sales through retail arrangements. Good Luck Product stated that its home market sales were made at the same LOT, regardless of distribution channel. We examined the selling activities performed for spot sales and found that Good Luck Product performed the following selling functions: order input/processing, providing direct sales personnel, providing commission payment, claim services (*i.e.*, return service), and freight and delivery services. Regarding sales both to the Thai retailer and through retail arrangements, we find that Good Luck Product performed the following sales activities: sales forecasting, sales promotion/advertising/trade fairs, packing, providing retail displays/inventory maintenance, order input/processing, providing direct sales personnel, providing rebates, claim services (*i.e.*, return service), and freight and delivery services. Accordingly, based on the core selling functions, we find that Good Luck Product performed sales and marketing, freight and delivery services, inventory maintenance and warehousing, and warranty and technical services in the home market. Although Good Luck Product performed additional sales and marketing functions for its sales both to

the Thai retailer and through retail arrangements that it did not perform for its spot sales, we did not find these differences to be material selling function distinctions significant enough to warrant a separate LOT in the home market. Therefore, we preliminarily determine that there is one LOT in the home market because Good Luck Product performed essentially the same selling functions for all home market sales.

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 do not differ significantly. 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. Pakfood

Pakfood reported that it made EP sales in the U.S. market through a single channel of distribution (*i.e.*, direct sales to distributors). We examined the selling activities performed for this channel, and found that Pakfood performed the following selling functions: sales forecasting/market research, order processing, providing direct sales personnel, providing commission payments, sales promotion/trade shows/advertising, 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 distributors, retailers, and end-users. Pakfood stated that its home market sales were made through a single channel of distribution, regardless of customer category. We examined the selling activities performed for this channel, and found that Pakfood performed the following selling functions: sales forecasting/market research, sales promotion/trade shows/advertising, 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.

### 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 selling expenses incurred and profits earned by the other respondents 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, providing direct sales personnel, warranty service, freight and delivery services, 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 Good Luck Product and Pakfood performed the following core selling functions: sales and marketing, freight and



delivery services, inventory maintenance and warehousing, and warranty services. Further, although Good Luck Product and Pakfood performed certain sales and marketing functions (e.g., sales forecasting/market research, sales promotion/advertising/trade fairs, and retail displays) 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. Because Good Luck Product and Pakfood only made sales at one LOT in their home markets, and there is no additional information on the record that would allow for an LOT adjustment, we determine that no LOT adjustment is warranted for Thai I-Mei.

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.

#### D. Cost of Production Analysis

Based on our analysis of the petitioner's allegations, we found that there were reasonable grounds to believe or suspect that Good Luck Product's and Pakfood's sales of frozen warmwater shrimp in the home market were made at prices below their cost of production (COP). Accordingly, pursuant to section 773(b) of the Act, we initiated sales-below-cost investigations to determine whether Good Luck Product's and Pakfood's sales were made at prices below their respective COPs. See the Good Luck Product Cost Allegation and the Pakfood 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 each respondent in its most recent supplemental section D questionnaire response for the COP calculation, except for the following

instances where the information was not appropriately quantified or valued:

##### a. Good Luck Product

1. We adjusted Good Luck Product's reported G&A expenses to exclude an offset claimed for trade fair income because the cost of the products sold was already deducted from the reported costs.

2. We adjusted the cost of sales denominator used to calculate the G&A and financial expense ratios to deduct certain shrimp purchases that were erroneously double-booked by Good Luck Product and removed from the reported costs.

3. Good Luck Product did not remove packing costs from the denominator used to calculate the G&A and financial expense ratios. Therefore, we applied these rates to the reported cost of manufacturing, including packing expenses.

Our revisions to Good Luck Product's COP data are discussed in the Memorandum from Christopher Zimpo, Accountant, to Neal Halper, Director, Office of Accounting, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Good Luck Product Co., Ltd.," dated February 28, 2007.

##### b. Pakfood

1. We adjusted the G&A expense ratios for Pakfood and its affiliates Asia Pacific (Thailand) Company Limited and Takzin Samut Company Limited to include a portion of the affiliate Okeanos Company Limited's administrative expenses.

2. We adjusted Pakfood's G&A expense ratio to: (1) Exclude the offset for the gain on the sale of marketable securities; and, (2) include the G&A expenses and cost of sales of an affiliated producer in the numerator and denominator. In addition, we excluded an offset to Pakfood's G&A expenses for rental income received from an affiliated producer.

3. Because Pakfood had net financial income, we did not include an amount for financial expense for COP. This is in accordance with the Department's practice of determining that, when a company earns enough financial income that it recovers all of its financial expense, that company did not have a resulting cost for financing during that period. See *Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 26455, 26460 (May 5, 2006); *Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products From*

*Canada*, 70 FR 73437 (Dec. 12, 2005), and accompanying Issues and Decision Memorandum at Comments 9 and 25.

Our revisions to Pakfood's COP data are discussed in the Memorandum from Ernest Gziryan, Accountant, to Neal Halper, Director, Office of Accounting, entitled "Cost and Constructed Value Calculation Memorandum for the Preliminary Results—Pakfood Public Company Limited," dated February 28, 2007.

##### 2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales 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 (inclusive of billing adjustments, where appropriate) 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 Good Luck Product's and Pakfood'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. Good Luck Product

We based NV for Good Luck Product on 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. We made adjustments, where appropriate, to the starting price for discounts and rebates. We made deductions, where appropriate, from the starting price for inland freight expenses 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 charges.

Regarding credit expenses, Good Luck Product reported that it had not received full payment for certain home market and U.S. sales. Consequently, for the unpaid portion of these sales, we used a payment date of February 28, 2007 (*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. If 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.

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

##### 2. 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. 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.

Regarding warehousing expenses, Pakfood reported that certain of these services were provided by an affiliated party. At verification, we tested the warehousing expenses charged by the affiliated party to determine whether the prices charged were at "arm's length." Where we found that the prices were not at arm's length, we adjusted them to be equivalent to the market price. For further discussion, see the "Pakfood Verification Report."

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 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.

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

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for those frozen warmwater shrimp products for Pakfood and Good Luck Product 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 the 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 Good Luck Product and Pakfood, 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 home market, in accordance with section 773(e)(2)(A) of the Act. For comparisons to Good Luck Product's and Pakfood's EP, we made circumstances-of-sale adjustments by deducting direct selling expenses incurred on home 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, except for the calculation of the company's G&A and financial expense ratios. For these ratios, we adjusted the reported data to include inventory changes in the denominator. Our revisions to Thai I-Mei's COP data are discussed in the Memorandum from Oh Ji Young, Accountant, to Neal Halper, Director, Office of Accounting, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Thai I-Mei Frozen Foods Co., Ltd.," dated February 28, 2007.

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 two other respondents in this administrative review.

Specifically, we calculated the weighted-average profit and selling expenses incurred on home market sales by Good Luck Product and Pakfood.

For comparisons to Thai I-Mei's CEP, we deducted from CV direct selling expenses incurred on Good Luck Product's and Pakfood's home 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 August 4, 2004, through January 31, 2006, as follows:

Manufacturer/exporter	Percent margin
Good Luck Product Co., Ltd .....	10.75
Pakfood Public Company Limited/ Okeanos Company Limited/ Takzin Samut Company Limited	4.29
Thai I-Mei Frozen Foods Co., Ltd	2.34

Review-Specific Average Rate  
Applicable to the Following  
Companies:<sup>13</sup>

Manufacturer/exporter	Percent margin
Crystal Frozen Foods Co., Ltd .....	4.24
Far East Cold Storage Co., Ltd .....	4.24
Inter-Oceanic Resources Co., Ltd	4.24
Kitchens of the Oceans (Thailand), Ltd .....	4.24
Lee Heng Seafood Co., Ltd .....	4.24
Narong Seafood Co., Ltd .....	4.24
NR Instant Produce Co., Ltd .....	4.24
Pacific Queen Co., Ltd .....	4.24
Piti Seafood Co., Ltd .....	4.24
S&D Marine Products Co., Ltd .....	4.24
Siam Intersea Co., Ltd .....	4.24
Siamchai International Food Co., Ltd .....	4.24
SMP Food Product Co., Ltd .....	4.24
Surapon Nichirei Foods Co., Ltd ..	4.24
Suratthani Marine Products Co., Ltd .....	4.24

AFA Rate Applicable to the Following  
Companies:

<sup>13</sup>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.

Manufacturer/exporter	Percent margin
Anglo-Siam Seafoods Co., Ltd .....	57.64
Fortune Frozen Foods (Thailand) Co., Ltd .....	57.64
Gallant Ocean (Thailand) Co., Ltd .....	57.64
Li-Thai Frozen Foods Co., Ltd .....	57.64
Queen Marine Food Co., Ltd .....	57.64
Smile Heart Foods .....	57.64
Thai World Imports and Exports 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 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 B-099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and, (3) a list of issues to be discussed. See 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

#### Assessment Rates

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

For certain sales made by Pakfood 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 all of Good Luck Product's and certain of Pakfood'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. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific *ad valorem* ratios based on the estimated entered value.

For the responsive companies which were not selected for individual 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, 2007.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E7-4278 Filed 3-8-07; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-351-838]

#### Certain Frozen Warmwater Shrimp from Brazil: Preliminary Results and 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 Brazil with respect to 11 companies.<sup>1</sup> The respondents which the Department selected for individual review are Aquatica Maricultura do Brasil Ltda ("Aquatica") and Comercio de Pescado Aracatiense Ltda. ("Compescal"). The respondents which were not selected for individual review are listed in the "Preliminary Results of Review" section of this notice. This is the first administrative review of this order. The period of review ("POR") covers August 4, 2004, through January 31, 2006.

We preliminarily determine that sales made by Aquatica and Compescal have been made below normal value ("NV"). In addition, 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 based on the preliminary results for the respondents selected for individual review. 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 9, 2007.

**FOR FURTHER INFORMATION CONTACT:** Kate Johnson or Rebecca Trainor, AD/CVD Operations, Office 2, Import Administration—Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202)

<sup>1</sup> This figure does not include those companies for which the Department is preliminarily rescinding the administrative review. *See* "Partial Rescission of Review" section for further discussion.

482-4929 or (202) 482-4007, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

In February 2005, the Department published in the **Federal Register** an antidumping duty order on certain warmwater shrimp from Brazil. *See Notice of Amended Final Determination and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Brazil*, 70 FR 5143 (February 1, 2005) ("*Shrimp Order*"). On February 1, 2006, 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 Brazil for the period August 4, 2004, through January 31, 2006. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 5239 (February 1, 2006). On February 28, 2006, the petitioner<sup>2</sup> submitted a letter timely requesting that the Department conduct an administrative review of the sales of certain frozen warmwater shrimp made by numerous companies during the POR, pursuant to section 751(a) of the Tariff Act of 1930, as amended ("the Act"), and in accordance with 19 CFR 351.213(b)(1). Also, on February 28, 2006, the Department received a timely request under 19 CFR 351.213(b)(2) to conduct an administrative review of the sales of certain frozen warmwater shrimp from the following affiliated producers/exporters of subject merchandise: CIDA Central De Industrializacao E Distribuicao De Alimentos Ltda. and Produmar Cia Exportadora de Produtos Do Mar (collectively "CIDA").

On April 7, 2006, the Department published a notice of initiation of administrative review for 50 companies and requested that each provide data on the quantity and value of its exports of subject merchandise to the United States during the POR for mandatory respondent selection purposes. 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*, 71 FR 17819 (April 7, 2006) ("*Notice of Initiation*").

During the period April 28 through June 19, 2006, we received responses to the Department's quantity and value questionnaire from 19 companies. We

<sup>2</sup> The petitioner is the Ad Hoc Shrimp Trade Action Committee.