

common that the symbol "DOT" must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

**Prefix letter designations:**

- P - Identifies a tire intended primarily for service on passenger cars;
- LT - Identifies a tire intended primarily for service on light trucks; and,
- ST - Identifies a special tire for trailers in highway service.

**Suffix letter designations:**

- TR - Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156" or plus 0.250"
- MH - Identifies tires for Mobile Homes;
- HC - Identifies a heavy duty tire designated for use on "HC" 15" tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.
- Example: 8R17.5 LT, 8R17.5 HC;
- LT - Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service; and
- MC - Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; tires of a kind designed for use on aircraft, all-terrain vehicles, and vehicles for turf, lawn and garden, golf and trailer applications. Also excluded from the scope are radial and bias tires of a kind designed for use in mining and construction vehicles and equipment that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

**Initiation of Changed Circumstances Review**

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended ("Act"), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from, an interested party for a review of an antidumping duty order which

shows changed circumstances sufficient to warrant a review of the order.

In accordance with 19 CFR 351.216(d), the Department has determined that the information submitted by Atlas Tire constitutes sufficient evidence to conduct a changed circumstances review. In an antidumping duty changed circumstances review involving a successor-in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Certain Activated Carbon From the People's Republic of China: Notice of Initiation of Changed Circumstances Review*, 74 FR 19934, 19935 (April 30, 2009). While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor if the resulting operations are essentially the same as those of the predecessor company. *See, e.g., Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Forged Stainless Steel Flanges from India*, 71 FR 327 (January 4, 2006). Thus, if the record demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon From Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999).

Based on the information provided in its submission, Atlas Tire has provided sufficient evidence to warrant a review to determine if Shandong Linglong is the successor-in-interest to Leo Rubber. Therefore, pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(d), we are initiating a changed circumstances review.

The Department will issue questionnaires requesting additional information for the review and will publish in the **Federal Register** a notice of the preliminary results of the antidumping duty changed circumstances review, in accordance with 19 CFR 351.221(b)(2) and (4), and 19 CFR 351.221(c)(3)(i). That notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an

opportunity to comment on the preliminary results of review. In accordance with 19 CFR 351.216(e), the Department will issue the final results of its antidumping duty changed circumstances review not later than 270 days after the date on which the review is initiated.

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216.

Dated: June 7, 2010.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-570-848]

**Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative and New-Shipper Reviews**

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

**SUMMARY:** In response to timely requests, the Department of Commerce (the Department) is conducting an administrative review and a new-shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). The period of review (POR) is September 1, 2008, through August 31, 2009.

With respect to the administrative review, we have preliminarily determined that sales have been made below normal value by Xiping Opeck Food Co., Ltd., Shanghai Ocean Flavor International Trading Co., Ltd., China Kingdom (Beijing) Import & Export Co., Ltd., and Xuzhou Jinjiang Foodstuffs Co., Ltd.

With respect to the new-shipper review, we have preliminarily determined that Nanjing Genshen International Co., Ltd., has made sales in the United States at prices below normal value.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

**DATES:** *Effective Date:* June 16, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Dmitry Vladimirov or Mino Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0665 and (202) 482-1690, respectively.

**Background**

On September 15, 1997, the Department published in the **Federal Register** an amended final determination and antidumping duty order on freshwater crawfish tail meat from the PRC. See *Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat from the People's Republic of China*, 62 FR 48218 (September 15, 1997). On September 1, 2009, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 45179 (September 1, 2009).

On October 26, 2009, based on timely requests for an administrative review, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 54956 (October 26, 2009). The review was initiated with respect to Shanghai Ocean Flavor International Trading Co., Ltd. (Shanghai Ocean Flavor), China Kingdom (Beijing) Import & Export Co., Ltd. (China Kingdom), Xiping Opeck Food Co., Ltd. (Xiping Opeck), Xuzhou Jinjiang Foodstuffs Co., Ltd. (Jinjiang), and Yancheng Hi-King Agriculture Developing Co., Ltd. (Hi-King).

On December 9, 2009, we determined to examine all companies for which we received requests for an administrative review. See Memorandum entitled "Freshwater Crawfish Tail Meat From the People's Republic of China: Issuance of Questionnaires," dated December 9, 2009.

On January 25, 2010, in accordance with 19 CFR 351.213(d)(1), the petitioner withdrew its request for an administrative review of Hi-King. Because the petitioner was the only party that requested a review of Hi-King, the Department rescinded the review with respect to this company. See *Freshwater Crawfish Tail Meat from the*

*People's Republic of China: Rescission of Antidumping Duty Administrative Review in Part*, 75 FR 13497 (March 22, 2010).

On September 17, 2009, Nanjing Gemen International Co., Ltd. (Nanjing Gemen), an exporter of crawfish tail meat from the PRC, requested a new-shipper review in accordance with 19 CFR 351.214(c).

On October 30, 2009, the Department initiated a new-shipper review of Nanjing Gemen covering the period September 1, 2008, through August 31, 2009. See *Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Initiation of Antidumping Duty New-Shipper Review*, 74 FR 56180 (October 30, 2009).

On March 29, 2010, in accordance with 19 CFR 351.214(j)(3), Nanjing Gemen agreed to waive the applicable time limits for conducting the new-shipper review and consented to the alignment of the new-shipper review with the concurrent administrative review. See letter from Nanjing Gemen dated March 29, 2010.

On March 25, 2010, the petitioner submitted certain surrogate-value information. On April 23, 2010, we received comments from Jinjiang on the selection of surrogate values. On April 30, 2010, we received rebuttal comments from the petitioner concerning the surrogate-value information submitted by Jinjiang. On May 5, 2010, we received comments from Xiping Opeck and Nanjing Gemen on the selection of surrogate values. On May 21, 2010, we received additional comments from Jinjiang.

We are conducting these reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

**Scope of the Order**

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

and HTSUS numbers 0306.19.00.10 and 0306.29.00.00, which are reserved for fish and crustaceans in general. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

**Bona-Fides Analysis**

Consistent with our practice, we analyzed whether the U.S. transactions reported by Nanjing Gemen during the POR were *bona-fide* sales. We examined the prices and quantities of the U.S. sales and other relevant factors. Based on our analysis, we preliminarily determine that Nanjing Gemen's sales constitute *bona-fide* transactions. For our complete analysis, see the Memorandum from Bryan Hansen to the File entitled "New-Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China—*Bona-Fides* Sales Analysis of Nanjing Gemen International Co., Ltd.," dated June 9, 2010, on file in room 1117 of the main Department of Commerce building.

We preliminarily determine that Nanjing Gemen has met the requirements to qualify as a new shipper during the POR based on the following findings: (1) Nanjing Gemen's sales are *bona fide*; (2) Nanjing Gemen is eligible for a separate rate (see the "Separate Rates" section below); (3) Nanjing Gemen is not affiliated with any exporter or producer that had shipped subject merchandise previously to the United States; (4) Henan Baoshu Aquatic Products Co. Ltd. (Henan Baoshu), the producer of the subject merchandise, did not export the subject merchandise to the United States during the period of investigation. Therefore, for these preliminary results of review, we are treating the sales of subject merchandise produced by Henan Baoshu and exported to the United States by Nanjing Gemen during the POR to be appropriate transactions for this review.

**Verification**

On October 30, 2009, the petitioner requested a verification of the data submitted by all of the firms for which the Department initiated an administrative review. Due to our resource constraints in conducting these reviews, we selected Xiping Opeck and Nanjing Gemen for verification, pursuant to section 782(i)(2) of the Act and 19 CFR 351.307. We used standard verification procedures, including on-site inspection of the manufacturers' and exporters' facilities, and examination of relevant sales and financial records. Our verification

results are outlined in the verification report for each company.

### Non-Market-Economy Country Status

The Department considers the PRC to be a non-market-economy (NME) country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2005 Administrative Review and Preliminary Notice of Intent To Rescind the 2004/2005 New Shipper Review*, 71 FR 26736 (May 8, 2006) (unchanged in *Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006)). None of the parties to this proceeding has contested NME treatment for the PRC. Therefore, for these preliminary results of administrative and new-shipper reviews we have treated the PRC as an NME country and applied our current NME methodology in accordance with section 773(c) of the Act.

In antidumping proceedings involving NME countries, pursuant to section 773(c)(1) of the Act, the Department generally bases normal value on the value of the NME producer's factors of production (FOP). In accordance with section 773(c)(4) of the Act, in valuing the FOP the Department uses, to the extent possible, the prices or costs of the FOP in one or more market-economy countries that are at a level of economic development comparable to that of the NME country which are significant producers of merchandise comparable to the subject merchandise.

The Department has determined that India, Indonesia, the Philippines, Peru, Ukraine, and Thailand are countries that are at a level of economic development comparable to that of the PRC.<sup>1</sup> While none of these countries is a significant producer of freshwater crawfish tail meat,<sup>2</sup> India has a seafood-processing industry that is comparable to the crawfish industry with respect to factory overhead, selling, general, and administrative (SG&A) expenses, and

profit.<sup>3</sup> Therefore, we have selected India as the primary surrogate country in which to value all inputs with the exception of live crawfish, the primary input, and the by-product, crawfish-shell scrap.

Because India does not have a fresh-crawfish industry (although it has a sea-crawfish industry) and we have determined that other forms of seafood are not sufficiently comparable to crawfish to serve as surrogates for live crawfish, we have valued live crawfish using the data submitted by the petitioner which was obtained from the same source that was used to value live crawfish in several previous segments of this proceeding.<sup>4</sup> The petitioner submitted data on imports of live crawfish from Portugal into Spain as reported by *Agencia Tributaria*, the Spanish government agency responsible for trade statistics. Spain is a significant producer of comparable merchandise, *i.e.*, whole processed crawfish,<sup>5</sup> and there are publicly available import statistics for Spain that are contemporaneous with the POR.

We have selected Indonesia as a secondary surrogate country for purposes of valuing the crawfish shell by-product because there are no appropriate Indian surrogate values for crawfish shell by-product on the records of these reviews. We find that Indonesia is appropriate to use for the following reasons: (a) It is at a level of economic development comparable to the PRC; (b) it produces wet crab and shrimp shells, which are merchandise comparable to the shell by-product; (c) it has publicly available data, *i.e.*, a public price quote from an Indonesian company that has been used in prior segments of this proceeding.<sup>6</sup>

### Separate Rates

In proceedings involving NME countries, the Department has a

<sup>3</sup> See *id.*

<sup>4</sup> See the March 25, 2010, submission by the petitioner entitled "Freshwater Crawfish Tail Meat from the People's Republic of China: Whole Crawfish Surrogate Values." For an example of a previous segment of the proceeding where this source was used, see *Freshwater Crawfish Tail Meat from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Review in Part*, 74 FR 27109 (June 8, 2009) (unchanged in *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review in Part*, 74 FR 52180 (October 9, 2009)).

<sup>5</sup> See Surrogate-Country Memorandum.

<sup>6</sup> See Memorandum entitled "Surrogate Valuation of Shell Scrap: Freshwater Crawfish Tail Meat from the People's Republic of China, Administrative Review 9/1/00–8/31/01 and New Shipper Reviews 9/1/00–8/31/01 and 9/1/00–10/15/01" dated August 5, 2002, which has been placed on the records of these reviews.

rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to a proceeding involving an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. The Department assigns separate rates in NME proceedings only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities under a test developed by the Department and described in *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), and *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

### Absence of De Jure Control

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

In their questionnaire responses, Xiping Opeck, Shanghai Ocean Flavor, China Kingdom, Jinjiang, and Nanjing Gemen stated that they are independent legal entities and placed evidence on the records of the reviews indicating that the government of the PRC does not have *de jure* control over their export activities. Xiping Opeck, Shanghai Ocean Flavor, China Kingdom, Jinjiang, and Nanjing Gemen submitted evidence of their legal right to set prices independent of all governmental oversight. Furthermore, the business licenses of these five companies indicate that they are permitted to engage in the exportation of freshwater crawfish tail meat. We also found no evidence of *de jure* government control restricting Xiping Opeck, Shanghai Ocean Flavor, China Kingdom, Jinjiang, and Nanjing Gemen's exportation of freshwater crawfish tail meat. In their responses, Xiping Opeck, Shanghai Ocean Flavor, China Kingdom, Jinjiang, and Nanjing Gemen stated that no export quotas apply to crawfish. Prior verifications have confirmed that there are no

<sup>1</sup> See Memorandum entitled "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Freshwater Crawfish Tail Meat ('FCTM') from the People's Republic of China ('PRC')" dated February 16, 2010.

<sup>2</sup> See Memorandum entitled "Freshwater Crawfish Tail Meat from the People's Republic of China: Selection of a Surrogate Country," dated June 9, 2010 (Surrogate-Country Memorandum).

commodity-specific export licenses required and no quotas for the seafood category "Other," which includes crawfish, in *China's Tariff and Non-Tariff Handbook* for 1996 and 1997. See *Freshwater Crawfish Tail Meat from The People's Republic of China; Preliminary Results of New Shipper Review*, 64 FR 8543 (February 22, 1999) (1999 *Crawfish NSR Preliminary Results*) (unchanged in *Freshwater Crawfish Tail Meat from the People's Republic of China; Final Results of New Shipper Review*, 64 FR 27961 (May 24, 1999)).

In addition, we have confirmed previously that freshwater crawfish tail meat is not on the list of commodities with planned quotas in the 1992 PRC Ministry of Foreign Trade and Economic Cooperation document entitled *Temporary Provisions for Administration of Export Commodities*. See 1999 *Crawfish NSR Preliminary Results*, 64 FR at 8544.

Xiping Opeck, Shanghai Ocean Flavor, China Kingdom, Jinjiang, and Nanjing Gemen placed on the records of these reviews the *Company Law of the People's Republic of China*. The Department has found previously that the *Company Law of the People's Republic of China*, made effective on July 1, 1994, with the amended version promulgated on August 28, 2004, states that a company is an enterprise legal person, that shareholders shall assume liability towards the company to the extent of their shareholdings, and that the company shall be liable for its debts to the extent of all its assets. See *Freshwater Crawfish Tail Meat from the People's Republic of China: Preliminary Results and Partial Rescission of the 2005-2006 Antidumping Duty Administrative Review and Preliminary Intent to Rescind 2005-2006 New Shipper Reviews*, 72 FR 57288 (October 9, 2007) (unchanged in *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results and Partial Rescission of the 2005-2006 Antidumping Duty Administrative Review and Rescission of 2005-2006 New Shipper Reviews*, 73 FR 20249 (April 15, 2008)).

Additionally, the *Foreign Trade Law of the People's Republic of China* also indicates a lack of *de jure* government control. Specifically, this document identifies the rights and responsibilities of organizations engaging in foreign trade, grants autonomy to foreign-trade operators in management decisions, and establishes the foreign-trade operator's accountability for profits and losses. Xiping Opeck, Shanghai Ocean Flavor, China Kingdom, Jinjiang, and Nanjing Gemen also provided copies of their business licenses stating their right to

conduct business within the scope of their licenses. Based on the foregoing, the Department has preliminarily determined that there is an absence of *de jure* governmental control over the export activities of Xiping Opeck, Shanghai Ocean Flavor, China Kingdom, Jinjiang, and Nanjing Gemen.

#### *Absence of De Facto Control*

Typically the Department considers the following four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or are subject to the approval of, a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995); see also *Silicon Carbide*, 59 FR at 22586-87. The Department considers an analysis of *de facto* control to be critical in determining whether a respondent is, in fact, subject to a degree of governmental control that would preclude the Department from assigning the respondent a separate rate.

Xiping Opeck, Shanghai Ocean Flavor, China Kingdom, Jinjiang, and Nanjing Gemen have each asserted the following: (1) Each establishes its own export prices through direct negotiations with its customers; (2) each negotiates contracts not subject to review or guidance from any governmental entities or organizations; (3) the shareholders of each elect managers and make personnel decisions independent of the PRC government's approval or review; (4) each is not required to sell any portion of the foreign currency it earns to the government, each retains the proceeds of its export sales, and each uses profits according to its business needs. Moreover, the Department verified that Xiping Opeck and Nanjing Gemen are free of *de facto* government control.

Based upon the information on the record of these reviews, the Department has preliminarily determined that there is an absence of *de facto* governmental control over the export activities of Xiping Opeck, Shanghai Ocean Flavor, China Kingdom, Jinjiang, and Nanjing Gemen. Given that the Department has found that Xiping Opeck, Shanghai

Ocean Flavor, China Kingdom, Jinjiang, and Nanjing Gemen operate free of *de jure* and *de facto* governmental control, it has preliminarily determined that Xiping Opeck, Shanghai Ocean Flavor, China Kingdom, Jinjiang, and Nanjing Gemen have satisfied the criteria for a separate rate.

#### **U.S. Price**

In accordance with section 772(a) of the Act, we based each respondent's U.S. price on export price because the first sales to unaffiliated purchasers were made prior to importation and constructed export price was not otherwise warranted by the facts on the record. We calculated export price based on packed Free on Board or Cost and Freight price to the first unaffiliated purchaser in the United States, as appropriate. In accordance with section 772(c) of the Act, we calculated net export price by deducting foreign inland-freight expenses, foreign brokerage and handling expenses, ocean-freight expenses (where applicable), and cold-storage expenses (where applicable) from the starting price (gross unit price) charged to the first unaffiliated customer in the United States. We based all movement expenses on surrogate values because a PRC company provided the movement services for all respondents (see the "Normal Value" section of this notice for further details).

#### **Normal Value**

Section 773(c)(1) of the Act provides that the Department shall determine normal value using an FOP methodology if the merchandise is exported from an NME country and the available information does not permit the calculation of normal value using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department uses an FOP methodology because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under its normal methodologies. See *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part*, 70 FR 39744, 39754 (July 11, 2005) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003-2004 Administrative Review and Partial Rescission of Review*, 71 FR 2517 (January 17, 2006)).

In accordance with section 773(c) of the Act, we relied on the FOP data reported by the respondents for the POR.<sup>7</sup> We calculated normal value by adding together the value of the FOP, general expenses, profit, and packing costs. Specifically, we valued material, labor, energy, and packing by multiplying the reported per-unit rates for the factors consumed in producing the subject merchandise by the average per-unit surrogate value of the factor. In addition, we added freight costs to the surrogate costs that we calculated for material inputs. We calculated freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. This adjustment is in accordance with the decision by the United States Court of Appeals for the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). We increased the calculated costs of the FOP for surrogate general expenses and profit. See Memorandum to the File entitled “Fresh Crawfish Tail Meat from the People’s Republic of China: Surrogate-Value Memorandum,” dated June 9, 2010 (Surrogate-Value Memo).

### Surrogate Values

In selecting surrogate values, we considered the quality, specificity, and contemporaneity of the data. For these preliminary results, in selecting the best available data for valuing FOPs in accordance with section 773(c)(1) of the Act, we followed our practice of choosing publicly available values which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004) (unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004)). We also considered the quality of the source of surrogate information in selecting surrogate values. See *Notice of Final Determination of Sales at Less Than*

*Fair Value: Certain Cased Pencils From the People’s Republic of China*, 59 FR 55625, 55633 (November 8, 1994).

Where we could only obtain surrogate values that were not contemporaneous with the POR, we inflated the surrogate values using, where appropriate, the Indian Wholesale Price Index (Indian WPI) and the Indonesian Wholesale Price Index (Indonesian WPI) as published in the *International Financial Statistics* of the International Monetary Fund. See Surrogate-Value Memo.

In calculating surrogate values from import statistics and in accordance with our practice, we disregarded statistics for imports from NME countries and countries deemed to maintain broadly available, non-industry-specific subsidies which may benefit all exporters to all export markets (i.e., Indonesia, the Republic of Korea, and Thailand). See, e.g., *Frontseating Service Valves from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, and Postponement of Final Determination*, 73 FR 62952 (October 22, 2008) (unchanged in *Frontseating Service Valves from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 74 FR 10886 (March 13, 2009)). See, also, *China National Machinery Import & Export Corporation v. United States*, 293 F. Supp. 2d 1334 (CIT 2003). Additionally, we excluded from our calculations imports that were labeled as originating from an unspecified country because we could not determine whether they were from an NME country.

We used the following surrogate values in our margin calculations for these preliminary results of review. We valued coal and packing materials using September 2008–August 2009 weighted-average Indian import values derived from the *World Trade Atlas* online (WTA). The Indian import statistics that we obtained from the WTA were published by the Directorate General of Commercial Intelligence & Statistics, Ministry of Commerce of India, and are contemporaneous with the POR.

We valued whole live crawfish using the publicly available data for Spanish imports of whole live crawfish from Portugal during the POR submitted by the petitioner. We valued the crawfish shell by-product using a 2001 price quote from Indonesia for wet crab and shrimp shells and inflated this value using the Indonesian WPI to make it contemporaneous with the POR.

We valued water using data from the Maharashtra Industrial Development Corporation (<http://www.midcindia.org>) because this source includes a wide range of industrial water tariffs. Specifically, this source provides numerous industrial water rates within the Maharashtra province for April 2009 (for the “inside industrial areas” usage category and for the “outside industrial areas” usage category). We excluded industrial areas where either no data were reported or a “0” was reported. We inflated the surrogate value for water using the Indian WPI to make it contemporaneous with the POR.

To value electricity, we used March 2008 electricity price rates from *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, published by the Central Electricity Authority of the Government of India. As the rates listed in this source became effective on a variety of different dates, we are not adjusting the average value for inflation.

We valued non-refrigerated truck-freight expenses using an average of the per-unit average rates for September 2008, December 2008, March 2009, and June 2009 which we calculated from data at <http://www.infobanc.com/logistics/logtruck.htm>. The logistics section of this Web site contains rates for inland-freight trucking between many large Indian cities. We inflated (or deflated, depending on the month) the per-unit average truck-freight rates for the selected months of the POR using the Indian WPI to make it contemporaneous with the POR. We valued refrigerated-truck freight expenses based on price quotations for April 2004 from CTC Freight Carriers of Delhi, India, placed originally on the record of the antidumping investigation of certain frozen warmwater shrimp from the PRC. We inflated this surrogate value using the Indian WPI.

We valued brokerage and handling expenses using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in *Doing Business 2009: India*, published by the World Bank. Because these data were current throughout the POR, we did not inflate the value for brokerage and handling. See Surrogate-Value Memo for further details.

We valued international freight using the data obtained from the Descartes Carrier Rate Retrieval Database (Descartes), which is available at <http://descartes.com/>. The Descartes database

<sup>7</sup> We based the values of the FOPs on surrogate values (see “Surrogate Values” section below).

is a Web-based service which publishes the ocean-freight rates of numerous carriers. In prior administrative reviews the Department did not use the Descartes database as an ocean-freight surrogate-value source because the data did not appear to be publicly available. See, e.g., *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews*, 71 FR 26329 (May 4, 2006), and accompanying Issues and Decision Memorandum at Comment 7. Upon reexamination, however, we have found that this database is accessible to government agencies without charge in compliance with Federal Maritime Commission regulations and, thus, we now find that this is a publicly available source.

In addition to being publicly available, the Descartes data reflect rates for multiple carriers, the Web site reports rates on a daily basis, the price data are based on routes that correspond closely to those used by the respondents, and they reflect merchandise similar to subject merchandise. Therefore, the Descartes data are product-specific, publicly available, a broad-market average, and contemporaneous with the POR. Accordingly, we find that the Descartes database is the best available source for valuing international freight on the record of these reviews because it provides rates that are representative of the entire POR and a broader representation of product-specificity.

While we find that the Descartes database is the superior source on the record of the reviews for valuing international freight, to make the source less impractical, we had to define certain parameters in our selection of data. For example, we calculated the period-average international-freight rate by obtaining rates from multiple carriers for a single day in each quarter of the POR. Further, we did not include rates in the period-average international-freight calculation that we determined were from NME carriers. Additionally, we excluded from any individual rate calculation any charges that are covered by the brokerage and handling expenses that the respondents incurred and which are valued by the appropriate surrogate value. See Surrogate-Value Memo for further details.

For Xiping Opeck, we valued cold storage using a rate published in an article from Dawn Wire Service. Because data reported in this source were not contemporaneous with the POR, we inflated the surrogate value for cold storage using the Indian WPI. See Surrogate-Value Memo. This source was

used in *Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Reviews*, 69 FR 24123, 24126 (May 3, 2004) (unchanged in *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews*, 69 FR 46498 (August 3, 2004)). When the product is fully processed and packed and then placed into a cold-storage facility not located at the production/processing facility prior to the date of shipment from the exporting country, our practice is to treat cold storage as a movement expense and deduct it from the U.S. price. See, e.g., *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews*, 69 FR 46498, 46500 (August 3, 2004).

The Department's regulations require the use of a regression-based wage rate. See 19 CFR 351.408(c)(3). Therefore, to value labor, we used the regression-based wage rate for the PRC published on the Import Administration (IA) Web site. See the IA Web site at <http://ia.ita.doc.gov/wages/07wages/final/final-2009-2007-wages.html>. See also *2009 Calculation of Expected Non-Market Economy Wages*, 74 FR 65092 (December 9, 2009). We applied the same wage rate to all skill levels and types of labor (i.e., direct production, indirect, packing) reported by the respondents because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor. See Surrogate-Value Memo for further details.

We valued SG&A, factory-overhead costs, and profit using the 2007–2008 financial statements of Nekkanti Sea Foods Ltd., an Indian seafood processor. See Surrogate-Value Memo.

#### Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. These exchange rates are available on the IA Web site at <http://ia.ita.doc.gov/exchange/index.html>.

#### Preliminary Results of the Reviews

As a result of the administrative review, we preliminarily determine that the following weighted-average percentage dumping margins exist for the period September 1, 2008, through August 31, 2009:

Company	Margin (percent)
Xiping Opeck Food Co., Ltd .....	11.46

Company	Margin (percent)
Shanghai Ocean Flavor International Trading Co., Ltd .....	41.95
China Kingdom (Beijing) Import & Export Co., Ltd .....	18.90
Xuzhou Jinjiang Foodstuffs Co., Ltd .....	5.44

As a result of the new-shipper review, we preliminarily determine that a weighted-average dumping margin of 12.42 percent exists for merchandise produced by Henan Baoshu Aquatic Products Co., Ltd., and exported by Nanjing Gemsen International Co., Ltd., for the period September 1, 2008, through August 31, 2009.

#### Comments

We will disclose the calculations used in our analysis to interested parties in these reviews within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit publicly available information to value factors no later than 20 days after the date of publication of these preliminary results of reviews. See 19 CFR 351.301(c)(3)(ii). Any interested party may request a hearing within 30 days of the date of publication of this notice. See 19 CFR 351.310. Interested parties who wish to request a hearing or to participate in a hearing if one is requested must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain the following: (1) The party's name, address, and telephone number; (2) the number of participants; (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 case briefs. See 19 CFR 351.310(c). Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice of preliminary results of reviews. See 19 CFR 351.309(c)(1)(ii). Rebuttal briefs from interested parties, limited to the issues raised in the case briefs, may be submitted not later than five days after the time limit for filing the case briefs or comments. See 19 CFR 351.309(d)(1). If requested, any hearing will be held two days after the scheduled date for submission of rebuttal briefs. See 19 CFR 351.310(d). Parties who submit case briefs or rebuttal briefs in these segments of the proceeding are requested to submit with each argument a statement of the issue, a summary of the arguments not exceeding five pages,



and a table of statutes, regulations, and cases cited. See 19 CFR 351.309(c)(2).

The Department will issue the final results of these reviews, including the results of its analysis of issues raised by parties in their comments, within 120 days after the date of publication of this notice. See section 751(a)(3)(A) of the Act.

#### Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific (or customer-specific) assessment rates for merchandise subject to these reviews.

For these preliminary results, we divided the total dumping margins (calculated as the difference between normal value and export price) for each of the respondents' importers or customers by the total number of kilograms the exporter sold to that importer or customer. We will direct CBP to assess the resulting per-kilogram dollar amount against each kilogram of merchandise in each of that importer's/customer's entries during the review period.

We intend to issue assessment instructions to CBP 15 days after the date of publication of the final results of reviews.

#### Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of these reviews for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by Xiping Opeck, Shanghai Ocean Flavor, China Kingdom, and Jinjiang, and for subject merchandise produced by Henan Baoshu and exported by Nanjing Gemen, the cash-deposit rate will be that established in the final results of reviews;<sup>8</sup> (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash-deposit rate will be PRC-wide rate of 223.01 percent; (4) for all non-PRC exporters of subject merchandise the cash-deposit rate will be the rate applicable to the PRC entity

<sup>8</sup>For subject merchandise exported by Nanjing Gemen but not produced by Henan Baoshu, the cash-deposit rate will be the PRC-wide rate.

that supplied that exporter. 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)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These reviews and this notice are in accordance with sections 751(a)(1), 751(a)(2)(B)(iv), 751(a)(3), and 777(i) of the Act and 19 CFR 351.214.

Dated: June 9, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

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**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XW71

#### Taking and Importing of Marine Mammals

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; affirmative finding.

**SUMMARY:** The Assistant Administrator for Fisheries (Assistant Administrator), NMFS, has granted a request for an affirmative finding to the Government of Mexico under the Marine Mammal Protection Act (MMPA). This affirmative finding will allow yellowfin tuna harvested in the eastern tropical Pacific Ocean (ETP) in compliance with the International Dolphin Conservation Program (IDCP) by Mexican-flag purse seine vessels or purse seine vessels operating under Mexican jurisdiction to be imported into the United States. The affirmative finding was based on review of documentary evidence submitted by the Government of Mexico and obtained from the Inter-American Tropical Tuna Commission (IATTC) and the U.S. Department of State.

**DATES:** The affirmative finding is effective from April 1, 2010, through

March 31, 2015, subject to annual review by NMFS.

**FOR FURTHER INFORMATION CONTACT:** Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213; phone 562-980-4000; fax 562-980-4018.

**SUPPLEMENTARY INFORMATION:** The MMPA, 16 U.S.C. 1361 *et seq.*, allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, the IATTC, or the Department of State.

The affirmative finding process requires that the harvesting nation is meeting its obligations under the IDCP and obligations of membership in the IATTC. Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. On an annual basis, NMFS will review the affirmative finding and determine whether the harvesting nation continues to meet the requirements. A nation may provide information related to compliance with IDCP and IATTC measures directly to NMFS on an annual basis or may authorize the IATTC to release the information to NMFS to annually renew an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations, thereby diminishing the effectiveness of the IDCP.

As a part of the affirmative finding process set forth in 50 CFR 216.24(f), the Assistant Administrator considered documentary evidence submitted by the Government of Mexico and obtained from the IATTC and the Department of State, and has determined that Mexico has met the MMPA's requirements to receive an affirmative finding.

After consultation with the Department of State, the Assistant Administrator issued an affirmative finding to Mexico, allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested