

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The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the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 less-than-fair-value (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) of the Act and 19 CFR 352.671(b)(4).

Dated: March 8, 2010.

Ronald K. Lorentzen,

Deputy 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 of Antidumping Duty Administrative Review and Final Results of 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 165 companies.¹ The three respondents which the Department selected for individual examination are Marine Gold Products Limited (MRG); Pakfood Public Company Limited and its affiliates²; and the Rubicon Group.³ The respondents which were not selected for individual examination are listed in the "Preliminary Results of Review" section of this notice. This is the fourth administrative review of this order. The review covers the period February 1, 2008, through January 31, 2009.⁴

¹ This figure excludes twenty companies for which we are rescinding the review due to the fact that they made no shipments of the subject merchandise during the period of review (POR). *See* "Partial Rescission of Review" section, below.

² Asia Pacific (Thailand) Company Limited, Chaophraya Cold Storage Company Limited, Okeanos Company Limited, Okeanos Food Company Limited, and Takzin Samut Company Limited (collectively, Pakfood).

³ Andaman Seafood Co., Ltd. (Andaman), Wales & Co. Universe Limited (Wales), Chanthaburi Frozen Food Co., Ltd. (CFF), Chanthaburi Seafoods Co., Ltd. (CSF), Intersia Foods Co., Ltd. (formerly Y2K Frozen Foods Co., Ltd.), Phatthana Seafood Co., Ltd. (PTN), Phatthana Frozen Food Co., Ltd. (PFF), Thailand Fishery Cold Storage Public (collectively, the Rubicon Group Co., Ltd. (TFC), Thai International Seafood Co., Ltd. (TIS), S.C.C. Frozen Seafood Co., Ltd. (SCC), and Sea Wealth Frozen Food Co., Ltd. (Sea Wealth) (collectively, the Rubicon Group).

⁴ Because of the partial revocation of the antidumping duty order, effective January 16, 2009, the POR is February 1, 2008, through January 15, 2009, for Thai I-Mei Frozen Foods Co., Ltd. (Thai I-Mei) and the Rubicon Group. *See Implementation of the Findings of the WTO Panel in United States-Antidumping Measure on Shrimp from Thailand: Notice of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on*

We preliminarily determine that sales were made by MRG, Pakfood and the Rubicon Group below normal value (NV). In addition, based on the preliminary results for the respondents selected for individual examination, we have preliminarily determined a weighted-average margin for those companies that were not individually examined.

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.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or David Goldberger, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482-4929 and (202) 482-4136, 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 (February 1, 2005). On February 4, 2009, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order of certain frozen warmwater shrimp from Thailand for the period February 1, 2008, through January 31, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 6013 (February 4, 2009). In response to timely requests from interested parties, pursuant to 19 CFR 351.213(b)(1) and (2), to conduct an administrative review of the sales of shrimp made by numerous companies during the POR, the Department initiated an administrative review for 185 companies. These companies are listed in the Department's notice of initiation. *See Certain Frozen Warmwater Shrimp from Brazil, India, and Thailand: Notice*

Frozen Warmwater Shrimp from Thailand, 74 FR 5638, 5639 (January 30, 2009) (Section 129 Determination); *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Changed Circumstances Review and Notice of Revocation in Part*, 74 FR 52452 (October 13, 2009).

of *Initiation of Administrative Reviews*, 74 FR 15699 (April 7, 2009).

Between March and May 2009, the Department received submissions from certain companies that indicated they had no shipments of subject merchandise to the United States during the POR.

On April 21, 2009, the Ad Hoc Shrimp Trade Action Committee (hereafter, Domestic Producers) requested that the Department determine whether antidumping duties had been absorbed during the POR. See the “Duty Absorption” section, below, for further discussion.

Based upon 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 May 13, 2009, we preliminarily selected the three largest producers/exporters of shrimp from Thailand during the POR, MRG, Pakfood and the Rubicon Group, for individual examination in this segment of the proceeding. See the May 13, 2009, memorandum entitled “Selection of Respondents for Individual Review.” On May 18, 2009, we issued the antidumping duty questionnaire to the three mandatory respondents.

On July 7, 2009, in accordance with 19 CFR 351.213(d)(1), the Domestic Producers withdrew their request for review for the following eighteen companies: Anglo-Siam Seafoods Co., Ltd.; Applied DB Ind; Chonburi LC; Gallant Ocean (Thailand) Co., Ltd. (Gallant Ocean); Haitai Seafood Co., Ltd.; High Way International Co., Ltd.; Li-Thai Frozen Foods Co., Ltd.; Merkur Co., Ltd.; Ming Chao Ind Thailand; Nongmon SMJ Products; Queen Marine Food Co., Ltd.; SCT Co., Ltd.; Search & Serve; Smile Heart Foods Co., Ltd.; Shianlin Bangkok Co., Ltd.; Star Frozen Foods Co., Ltd.; Thai World Imports & Exports; and Wann Fisheries Co., Ltd.

In July and August 2009, we received responses to sections A (*i.e.*, the section covering general information about the company), B (*i.e.*, the section covering comparison-market sales), and C (*i.e.*, the section covering U.S. sales) of the antidumping duty questionnaire from each of the respondents. We also received responses to section D (the section covering cost of production (COP) and constructed value (CV)) of the questionnaire from Pakfood and the Rubicon Group.

On August 6, 2009, the Domestic Producers requested that the Department initiate a sales-below-cost investigation of MRG. On September 10, 2009, we initiated this investigation. See September 10, 2009, memorandum

entitled “The Domestic Producers’ Allegation of Sales Below the Cost of Production for Marine Gold Products Ltd.” As a result, we instructed MRG to respond to section D of the Department’s questionnaire, which it submitted on October 22, 2009.

During the period September 2009 through January 2009, we issued to the three mandatory respondents supplemental questionnaires regarding sections A, B, C, and D of the original questionnaire. We received responses to these questionnaires during the period October 2009 through February 2010.

On September 25, 2009, the Department issued a memorandum indicating that it intended to rescind the administrative review with respect to 37 respondent companies, and invited comments on this action from interested parties. See the September 25, 2009, memorandum entitled “Intent to Rescind in Part the Antidumping Duty Administrative Review on Certain Frozen Warmwater Shrimp from Thailand” (Intent to Rescind Memorandum). No party commented on the Intent to Rescind Memorandum.

On October 20, 2009, the Department postponed the preliminary results in this review until no later than March 1, 2009. See *Certain Frozen Warmwater Shrimp From India and Thailand: Notice of Extension of Time Limits for the Preliminary Results of the Fourth Administrative Reviews*, 74 FR 53700 (October 20, 2009).

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the preliminary results of this review is now March 8, 2010. See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding “Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm,” dated February 12, 2010.

On November 17, 2009, we issued a letter to all interested parties in this review inviting comments on a proposal made by MRG requesting that the Department modify the reporting of one of the product matching characteristics, cooked form. We received comments on December 1, 2009, from the Rubicon Group, the Domestic Producers, the American Shrimp Processors Association (ASPA) (hereafter, Domestic Processors), and the Louisiana Shrimp Association (LSA). MRG submitted

rebuttal comments on December 11, 2009. Our determination with respect to MRG’s proposal is discussed in the “Product Comparisons” section below.

We conducted verifications of MRG’s sales and cost responses in December 2009 and February 2010, respectively.

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,⁵ deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

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

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

Excluded from the scope are: 1) breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); 2) shrimp and prawns generally classified in the Pandalidae family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and prawns whether shell-on or peeled

⁵ “Tails” in this context means the tail fan, which includes the telson and the uropods.

(HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); 7) certain dusted shrimp; and 8) certain battered shrimp. Dusted shrimp is a shrimp-based product: 1) that is produced from fresh (or thawed—from-frozen) and peeled shrimp; 2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; 3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; 4) with the non-shrimp content of the end product constituting between four and 10 percent of the product’s total weight after being dusted, but prior to being frozen; and 5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

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

Partial Rescission of Review

As stated above, on September 25, 2009, the Department issued a memorandum indicating that it intended to rescind the administrative review with respect to 37 respondent companies, including the 18 companies listed in the Domestic Producers’ July 7, 2009, submission wherein the Domestic Producers withdrew their request for review of these companies. However, because the Domestic Processors did not withdraw their review request for any of the companies listed in the Domestic Producers’ July 7, 2009, submission and, therefore, there remains an outstanding review request for each of these companies, we are not rescinding the review with respect to these companies, except Wann Fisheries Co., Ltd.⁶

⁶ Wann Fisheries Co., Ltd. submitted a no-shipment statement on May 6, 2009. Accordingly, we are rescinding the review with respect to this company based on our confirmation of its statement, as discussed below.

In accordance with 19 CFR 351.213(d)(3), we are rescinding the review with respect to the following 19 companies that submitted letters indicating that they had no shipments of subject merchandise during the POR: 1) American Commercial Transport, Inc.; 2) Ampai Frozen Food Co., Ltd.; 3) F.A.I.T. Corporation Limited; 4) Far East Cold Storage, Ltd.; 5) Grobest Frozen Foods Co., Ltd.; 6) Inter-Oceanic Resources Co., Ltd.; 7) Leo Transport Corporation, Ltd.; 8) Lucky Unions Foods Co., Ltd.; 9) MKF Interfood (2004) Co., Ltd.; 10) Siam Canadian Foods Co., Ltd.; 11) Siam Ocean Frozen Foods Co., Ltd.; 12) Sky Fresh Co., Ltd.; 13) Songkla Canning (PCL); 14) Suree Interfoods Co., Ltd.; 15) Thai Excel Foods Co., Ltd.; 16) Thai Union Manufacturing Co., Ltd.; 17) Thai Yoo Ltd., Part.; 18) V. Thai Food Product Co., Ltd.; and 19) Wann Fisheries Co., Ltd. We reviewed CBP data and confirmed that there were no entries of subject merchandise during the POR from any of these companies. Consequently, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are rescinding our review of the companies listed above. *See, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65083 (November 7, 2006).

In addition, we are rescinding the review with respect to Euro-Asian International Seafoods Co., Ltd. because it is not a producer and/or exporter of the subject merchandise and the CBP data confirm that there were no entries of subject merchandise during the POR from this company. *See Intent to Rescind Memorandum*.

Period of Review

The POR is February 1, 2008, through January 31, 2009. *See* Footnote 2.

Duty Absorption

On April 21, 2009, the Domestic Producers requested that the Department determine whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Tariff Act of 1930, as amended (the Act), provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. This review was initiated four years after the publication of the order.

In determining whether the antidumping duties have been absorbed by the respondents during the POR, we presume the duties will be absorbed for those sales that have been made at less than NV. This presumption can be rebutted with evidence (*e.g.*, an agreement between the affiliated importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. *See, e.g., Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind*, 70 FR 39735, 39737 (July 11, 2005); unchanged in *Notice of Final Results and Final Rescission in Part of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan*, 70 FR 73727 (December 13, 2005). On May 18, 2009, we requested proof that the Rubicon Group’s unaffiliated purchasers would ultimately pay the antidumping duties to be assessed on entries during the POR. The Rubicon Group did not provide any such evidence. Because the Rubicon Group did not rebut the duty-absorption presumption with evidence that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise, we preliminarily find that antidumping duties have been absorbed by the Rubicon Group on all U.S. sales made through its affiliated importer of record. For the percentage of such sales, see the March 8, 2010, memorandum entitled “Rubicon Preliminary Results Margin Calculation” at Attachment 2.

With respect to MRG and Pakfood, neither respondent sold subject merchandise in the United States through an affiliated importer. Therefore, it is not appropriate to make a duty-absorption determination in this segment of the proceeding within the meaning of section 751(a)(4) of the Act. *See Agro Dutch Industries Ltd. v. United States*, 508 F.3d 1024, 1033 (Fed. Cir. 2007).

Comparisons to Normal Value

To determine whether sales of 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, below.

Pursuant to section 777A(d)(2) of the Act, for MRG, Pakfood and the Rubicon Group we compared the EPs or CEPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in

the ordinary course of trade, as discussed in the “Cost of Production Analysis” section, below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by MRG, Pakfood and the Rubicon Group covered by the description in the “Scope of the Order” section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared U.S. sales of shrimp to sales of shrimp made in the comparison market for MRG and Pakfood (home market) and the Rubicon Group (Canada) 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 the most similar foreign like product made in the ordinary course of trade. For MRG, Pakfood and the Rubicon Group, where there were no sales of identical or similar merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we made product comparisons using CV.

With respect to sales comparisons involving broken shrimp, we compared Pakfood’s and the Rubicon Group’s sales of broken shrimp in the United States to sales of comparable quality shrimp in the comparison market. Where there were no sales of identical broken shrimp in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales of broken shrimp to sales of the most similar broken shrimp made in the ordinary course of trade. Where there were no sales of identical or similar broken shrimp, we made product comparisons using CV. MRG did not make sales of broken shrimp to the United States during the POR.

In making the product comparisons, we matched foreign like products based on the physical characteristics reported by MRG, Pakfood and the Rubicon Group 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.

As noted above, on November 17, 2009, we issued a letter to all interested parties in this review inviting comments on MRG’s request that the Department modify the reporting requirements for

one of the product matching characteristics, “cooked form.” The proposed revision would allow a distinction to be made between shrimp cooked before peeling and shrimp cooked after peeling.

In comments submitted on December 1, 2009, the Domestic Producers maintained that the Department’s consideration of MRG’s request should be consistent with the “compelling reasons” standard, and that any change in reporting requirements should apply across all shrimp reviews.⁷ The Domestic Producers argued that, based on the record of these reviews, there is no compelling reason for the proposed modification, as no other party to these proceedings has supported it, and there is very little independent market-based support for distinguishing between shrimp cooked before and after peeling.

Also on December 1, 2009, we received comments from the Domestic Processors, the LSA, and the Rubicon Group opposing MRG’s proposed alteration to the reporting requirements for “cooked form.” The Domestic Processors and LSA argued that the differences in cooking process identified by MRG appear to overlap almost completely with the preservative characteristic already accounted for in the model-match methodology. They claimed that the physical differences that MRG attributes to the different cooking processes are in fact largely the result of differences in preservative use; therefore, the cooking process is not commercially significant, while preservative use is. Furthermore, the Rubicon Group stated that it could not comply with MRG’s proposed change, because it does not distinguish products that are cooked before peeling from those that are cooked after peeling in its records. Moreover, the Rubicon Group argued, MRG has not demonstrated that the differences in price noted by MRG in its proposal resulted from cooking at different stages of production, as opposed to other factors, such as selling at different times during the POR. The Rubicon Group added that cooking before or after peeling has no bearing on its own pricing.

In its December 11, 2009, rebuttal comments, MRG explained that cooking before peeling results in a brighter-colored cooked shrimp that customers prefer. MRG stated that it charges a price premium for such products to account for the higher processing costs incurred by partially-peeling the

shrimp to an “EZ peel” form and deveining it prior to cooking, and then fully peeling the shrimp after cooking. MRG argued that the Domestic Producers’ comments failed to address these additional costs. Without accounting for these factors, MRG stated, the Department would fail to make an accurate determination of dumping, as required by law. In response to APSA’s and LSA’s arguments, MRG stated that the difference in preservative does not account for the difference in processing costs and sale price premiums that cooking before peeling generates. MRG added that its own pricing data refutes the Rubicon Group’s contention that cooking before, versus after, peeling bears no relationship to price.

While MRG’s questionnaire response appears to support its contention that it charges somewhat higher prices for shrimp cooked before peeling and incurs some additional costs for such shrimp, we note that cooking process is not a physical characteristic of the merchandise under consideration. Whether the shrimp is cooked before or after peeling does not change the fact that the shrimp is cooked. What MRG seeks to distinguish in its argument is that shrimp cooked before peeling is of a different appearance – brighter color – than shrimp cooked after peeling. Thus, it is the difference in appearance that MRG attempts to distinguish through the cooked form physical characteristic.

Normally, when considering whether to revise the model-match methodology established in a less-than-fair-value (LTFV) investigation, the Department “will not modify that methodology in subsequent proceedings unless there are compelling reasons” to do so. A party seeking to modify an existing model-match methodology has alternative means to demonstrate that “compelling reasons” exist to do so. {The Department} will find that “compelling reasons” exist if a party proves by “compelling and convincing evidence” that the existing model-match criteria “are not reflective of the merchandise in question,” that there have been changes in the relevant industry, or that “there is some other compelling reason present, which requires a change.” See *Fagersta Stainless AB v. United States*, 577 F. Supp. 2d 1270 (CIT 2008).

Under this standard, MRG has failed to demonstrate that compelling and convincing evidence exists to alter the model-match methodology to account for the perceived difference in the color of the shrimp. MRG has not provided evidence that there have been changes in the shrimp industry to warrant a new product characteristic based on shrimp

⁷ The Department is currently conducting administrative reviews of the antidumping duty orders on Certain Frozen Warmwater Shrimp from India, the People’s Republic of China, Thailand, and the Socialist Republic of Vietnam.

color intensity. Moreover, MRG has not provided evidence that other factors such as preservative differences do not account for the perceived differences in shrimp color. With respect to the differences in price and cost cited by MRG, we note that it is not unusual for products falling within the same product code to have some price and cost differences. Finally, we find no other compelling reason to modify the model-match criteria to account for the intensity of the shrimp color.

Accordingly, we are not accepting MRG's proposal to revise the cooked form physical characteristic reporting in order to reflect perceived differences in shrimp color.

Constructed Export Price/Export Price

For all U.S. sales made by MRG, and certain U.S. sales made by Pakfood and the Rubicon Group, 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 before the date of importation by the producer or exporter of the subject merchandise outside the United States, and CEP methodology was not otherwise warranted based on the facts of record.

For certain U.S. sales made by Pakfood and the Rubicon Group, we calculated CEP in accordance with section 772(b) of the Act because the subject merchandise was first sold (or agreed to be sold) in the United States after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

A. MRG

We based EP on C&F or DDP (delivered, duty paid) prices to the first unaffiliated purchaser in the United States. Where appropriate, we made adjustments to the starting price for billing adjustments and rebates. We made deductions, where appropriate, for foreign inland freight expenses, warehousing expenses, foreign brokerage and handling expenses (including survey fees, gate charges, and other fees), ocean freight expenses, marine insurance expenses, U.S. brokerage and handling expenses, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), and U.S. pre-sale warehousing expenses in accordance with section 772(c)(2)(A) of the Act.

MRG reported payments to one U.S. customer as reimbursements for marine insurance expenses. At verification, we were unable to confirm that these

payments to the customer were associated with marine insurance premium reimbursements. See Memorandum to the File entitled "Verification of the Sales Response of Marine Gold Products Co., Ltd." dated January 21, 2010, at pages 14–15. Accordingly, we have reclassified these payments as rebates to the customer.

B. Pakfood

We based EP on C&F or DDP prices to the first unaffiliated purchaser in the United States. Where appropriate, we made adjustments to the starting price for discounts. We made deductions, where appropriate, for foreign inland freight expenses, pre-sale warehousing expenses, survey fees, foreign brokerage and handling expenses, ocean freight expenses, marine insurance expenses, U.S. brokerage and handling expenses, and U.S. customs duties (including harbor maintenance fees and merchandise processing fees) in accordance with section 772(c)(2)(A) of the Act.

We based CEP on DDP prices to unaffiliated purchasers in the United States. We made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign warehousing expenses, foreign inland insurance expenses, foreign brokerage and handling expenses, ocean freight expenses, marine insurance expenses, U.S. brokerage and handling expenses, and U.S. customs duties (including harbor maintenance fees and merchandise processing fees). In accordance with section 772(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 (e.g., bank charges, express mail fees, and imputed credit expenses), and indirect selling expenses (including inventory carrying costs and other indirect selling expenses).

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

C. The Rubicon Group

We based EP on the price to the first unaffiliated purchaser in the United States. Where appropriate, we made adjustments to the starting price for billing adjustments and discounts. We made deductions for movement

expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight expenses, gate charges, foreign warehousing expenses, foreign inland insurance expenses, foreign brokerage and handling expenses, ocean freight expenses (offset by freight refunds, where appropriate), marine insurance expenses, U.S. brokerage and handling expenses, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), and U.S. inland freight expenses (i.e., freight from port to warehouse).

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

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

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

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 MRG and Pakfood had viable home markets during the POR. Consequently, we based NV on home market sales for MRG and Pakfood.

Regarding the Rubicon Group, we determined that this respondent's aggregate volume of home market sales of the foreign like product was insufficient to permit a proper comparison with U.S. sales of the subject merchandise. Therefore, we used the Rubicon Group's sales to Canada as the basis for comparison-market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

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

During the POR, Pakfood sold the foreign like product to affiliated customers in the comparison market. To test whether these sales were made at arm's-length prices, we compared, on a product-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all discounts and rebates, movement charges, direct selling expenses, and packing expenses. Pursuant to 19 CFR 351.403(c) and in accordance with the Department's practice, where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (Nov. 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 percent and 102 percent in order for sales to be considered in the ordinary course of trade and used in the NV calculation). Sales to affiliated customers in the comparison market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade. See 19 CFR 351.102(b).

C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling

activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. See *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 (November 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison-market 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.*, where NV is based on either home market or third country prices),⁸ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron Technology, Inc. v. United States*, 243 F. 3d 1301, 1314 (Fed. Cir. 2001). When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP 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.

⁸ 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. MRG

MRG reported that it made EP sales in the U.S. market through a single channel of distribution (*i.e.*, direct sales to unaffiliated distributors). We examined the selling activities performed for this channel and found that MRG performed the following selling functions: sales forecasting/market research, sales promotion/trade shows/advertising, visits/calls and correspondence with customers, order processing/sales documentation, inventory maintenance, delivery services, warranty services, and packing. These selling activities can be generally grouped into three selling function categories for analysis: 1) sales and marketing; 2) freight and delivery services; and, 3) warranty and technical support. Accordingly, we find that MRG performed sales and marketing, freight and delivery services, and warranty and technical support at the same relative level of intensity for all 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, MRG made sales to processors, trading companies, distributors, and restaurants. MRG stated that its home market sales were made through two channels of distribution: 1) sales to one customer which purchases shrimp for processing into non-subject merchandise; and 2) sales to all other customers. We examined the selling activities performed for these channels, and found that MRG performed the following selling functions for both channels: sales forecasting/market research, visits/calls and correspondence with customers, order processing/sales documentation, inventory maintenance, limited delivery services, warranty services, and packing. These selling activities can be generally grouped into three selling function categories for analysis: 1) sales and marketing; 2) freight and delivery services; and, 3) warranty and technical support. Accordingly, we find that MRG performed sales and marketing, freight and delivery services, and warranty and technical support at the same relative level of intensity for all customers in the home market, except for sales forecasting/market research and inventory maintenance, which were performed at a low-to-medium level of intensity for one home market channel, and not performed for the other home market channel. After analyzing the selling functions performed for each sales channel in the home market, we find that the distinctions in selling

functions are not material. Therefore, based on our overall analysis, 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 selling functions performed for U.S. and home market customers are essentially the same. Therefore, we preliminarily determine 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 is warranted.

2. Pakfood

Pakfood reported that it made EP and CEP sales through a single channel of distribution (*i.e.*, direct sales to distributors), and performed the following selling functions for sales to U.S. customers: sales forecasting/market research, sales promotion/advertising, procurement/sourcing services, order processing, direct sales personnel, provision of cash discounts, payment of commissions, freight and delivery services, and packing. These selling activities can be generally grouped into two selling function categories for analysis: 1) sales and marketing; and 2) freight and delivery services. Accordingly, we find that Pakfood performed sales and marketing, and freight and delivery services at the same relative level of intensity for all U.S. customers. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Pakfood made sales to processors, distributors, retailers, and end-users. Pakfood stated that its home market sales were made through a single channel of distribution, direct from factory to customer, and that it performed the following selling functions for sales to home market customers: sales forecasting/market research, sales promotion/advertising, procurement/sourcing services, order processing, direct sales personnel, provision of cash discounts, freight and delivery services, and packing. These selling activities can be generally grouped into two selling function categories for analysis: 1) sales and marketing; and 2) freight and delivery services. Accordingly, we find that Pakfood performed sales and marketing, and freight and delivery services 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 U.S. LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers are virtually identical, with the exception of commission payments made for U.S. sales which is not a sufficient basis to determine that the U.S. LOT is different from the home market LOT. Moreover, although there are some differences in the level of intensity at which some of the selling functions were performed in the two markets, we find that these differences are not material. Therefore, based on our overall analysis, we preliminarily determine 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. The Rubicon Group

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

We examined the selling activities performed for each channel. For direct EP sales, the Rubicon Group reported the following selling functions: sales forecasting/market research, sales promotion/trade shows, inventory maintenance, order input/processing, freight and delivery arrangements, visits, calls and correspondence to customers, development of new packaging (with customer), packing and after-sales services. These selling activities can be generally grouped into four categories for analysis: 1) sales and marketing; 2) freight and delivery services; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Accordingly, we found that the Rubicon Group performed selling functions related to sales and marketing, freight and delivery, inventory maintenance and warehousing, and warranty and technical support at the same relative level of intensity for EP sales. As there was only one channel of distribution for EP sales, we found that there was one LOT for EP sales.

For both warehoused and drop-shipment CEP sales, the Rubicon Group reported the following selling functions: inventory maintenance, order input/processing, freight and delivery

arrangements, and packing. As the selling functions performed for both warehoused and drop-shipment sales were identical, we found that there was one LOT for CEP sales.

With respect to the Canadian market, the Rubicon Group reported sales to distributors/wholesalers, retailers, and end users. The Rubicon Group stated that its Canadian sales were made through two channels of distribution: 1) direct to Canadian customers; and 2) through its U.S. affiliate from a Canadian warehouse. We examined the reported selling activities and found that the Rubicon Group performed the following selling functions for direct sales to Canada: sales forecasting; market research; sales promotion; trade shows; inventory maintenance; order input/processing; freight and delivery arrangements; visits, calls and correspondence to customers; development of new packaging (with customer); packing; and after-sales services. For warehoused sales to Canada, we found that the Rubicon Group (including the Thai packers⁹, Rubicon Resources and Wales, an affiliate of the Thai packers) performed the following selling functions: sales forecasting; market research; sales promotion; trade shows; inventory maintenance; order input/processing; freight and delivery arrangements; visits, calls and correspondence to customers; development of new packaging and new markets (with customer); packing; and after-sales services. These selling activities can be generally grouped into four selling function categories: 1) sales and marketing; 2) freight and delivery services; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Accordingly, we found that the Rubicon Group performed selling functions related to sales and marketing, freight and delivery, inventory maintenance and warehousing, and warranty and technical support at the same relative level of intensity for all customers in the comparison market. Therefore, we found that all of the Rubicon Group's sales in the Canadian market constituted one LOT.

In comparing the EP LOT to the Canadian market LOT we found that the selling functions performed for U.S. and Canadian customers were the same. Therefore, we determined that the LOT for Canadian sales was the same as the LOT for EP sales. Consequently, we

⁹ The following companies in the Rubicon Group produced subject merchandise during the POR and are collectively referred to as the "Thai packers": Andaman, CSF, CFF, PTN, PFF, TFC, TIS, SCC, and Sea Wealth.

matched EP sales to comparison-market sales at the same LOT and no LOT adjustment was warranted.

In comparing the Canadian LOT to the CEP LOT, we found that the selling activities performed by the Thai packers for CEP sales were significantly fewer than the selling activities that were performed for the Canadian sales. The Thai packers performed the following selling functions for Canadian sales: sales forecasting; market research; sales promotion; advertising; trade shows; inventory maintenance; order input/processing; freight and delivery arrangements; visits, calls and correspondence to customers; development of new packaging and new markets (with customer); packing; and after-sales services. The only selling functions that the Thai packers provided for CEP sales were inventory maintenance, order input/processing, freight and delivery arrangements, and packing. Therefore, the Thai packers provided many more selling functions for Canadian sales than they provided for CEP sales, thus making the Canadian market LOT more advanced than the CEP LOT.

Based on the above analysis, we considered the CEP LOT to be different from the Canadian market LOT and to be at a less advanced stage of distribution than the Canadian market LOT. Accordingly, we could not match CEP sales to sales at the same LOT for Canadian sales, nor could we determine a LOT adjustment based on the Rubicon Group's Canadian sales because there was only one LOT in Canada. Therefore, it was not possible to determine if there was a pattern of consistent price differences between the sales on which NV is based and Canadian sales at the LOT of the export transaction. See section 773(a)(7)(A) of the Act. Furthermore, we have no other information that provides an appropriate basis for determining a LOT adjustment. Consequently, because the data available did not form an appropriate basis for making a LOT adjustment but the Canadian market LOT was at a more advanced stage of distribution than the CEP LOT, we made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Act. The CEP offset was calculated as the lesser of: (1) the indirect selling expenses incurred on the third-country sales, or (2) the indirect selling expenses deducted from the starting price in calculating CEP.

D. Cost of Production Analysis

Based on our analysis of the Domestic Producers' allegation, we found that there were reasonable grounds to believe or suspect that MRG's sales of

shrimp in the home market were made at prices below its COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a sales-below-cost investigation to determine whether MRG's sales were made at prices below its COP. See September 10, 2009, memorandum entitled "The Domestic Producers' Allegation of Sales Below the Cost of Production for Marine Gold Products Ltd."

We found that Pakfood and the Rubicon Group made sales below the COP in the 2006–2007 administrative review, the most recently completed segment of this proceeding as of the date of the initiation of this administrative review, and such sales were disregarded. See *Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 73 FR E8–4418 (March 6, 2008); unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 50933 (August 29, 2008). Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Pakfood and the Rubicon Group made sales in their respective comparison markets at prices below the cost of producing the merchandise in the current review period.

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 comparison-market selling expenses and packing costs).

The Department relied on the COP data submitted by MRG, Pakfood, and the Rubicon Group in their most recent supplemental responses to section D of the questionnaire for the COP calculations.

2. Test of Comparison–Market Sales Prices

On a product-specific basis, we compared the weighted-average COP to the prices of home market sales (for MRG and Pakfood) or third-country sales (for the Rubicon Group) of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices, adjusted for any applicable

billing adjustments, were exclusive of any applicable movement charges, rebates, discounts, and direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

In determining whether to disregard comparison-market sales made at prices below the COP, we examine, in accordance with sections 773(b)(1)(A) and (B) of the Act: 1) whether, within an extended period of time, such sales were made in substantial quantities; and 2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent's comparison-market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales because: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act, and 2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the 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 MRG's, Pakfood's and the Rubicon Group's comparison-market 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. Therefore, we 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 comparison-market sales in the ordinary course of trade, we compared EPs or CEPs to the 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. MRG

We based NV for MRG on ex-factory or delivered prices to unaffiliated customers in the home market. We

made deductions, where appropriate, from the starting price for inland freight expenses, under section 773(a)(6)(B)(ii) of the Act.

We made adjustments under section 773(a)(6)(C) of the Act for differences in circumstances-of-sale for imputed credit expenses and bank fees, where appropriate. We also made adjustments in accordance with 19 CFR 351.410(e) for indirect selling expenses incurred on comparison-market or U.S. sales where commissions were granted on sales in one market but not the other. Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of: 1) the amount of commission paid in the U.S. market; or 2) the amount of indirect selling expenses incurred in the comparison market.

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

We also deducted home market packing costs and added U.S. packing costs, in accordance with section 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. Where appropriate, we made adjustments for billing adjustments. We made deductions, where appropriate, from the starting price for inland freight and pre-sale warehousing expenses, under section 773(a)(6)(B)(ii) of the Act.

For NV-to-EP comparisons, we made circumstance-of-sale adjustments for differences in credit expenses and bank charges, pursuant to section 773(a)(6)(C) of the Act. We also made adjustments in accordance with 19 CFR 351.410(e) for indirect selling expenses incurred on comparison-market or U.S. sales where commissions were granted on sales in one market but not the other. Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of: 1) the amount of commission paid in the U.S. market; or 2) the amount of indirect selling expenses incurred in the comparison market.

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

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

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

3. The Rubicon Group

For the Rubicon Group, we calculated NV based on prices to unaffiliated customers. Where appropriate, we made adjustments for billing adjustments and rebates. We also made deductions for movement expenses, including inland freight, pre-sale warehousing, inland insurance, marine insurance, brokerage and handling, gate charges, inspection charges, customs duties, and ocean freight (offset by freight refunds, where appropriate), under section 773(a)(6)(B)(ii) of the Act.

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

For NV-to-CEP comparisons, we made deductions for third-country credit expenses, bank charges, commissions, and repacking expenses, pursuant to 773(a)(6)(C) of the Act. In addition, we made a CEP offset in accordance with section 773(a)(7)(B) of the Act, as discussed above in the "Level of Trade" section.

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

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

We also deducted third-country packing costs and added U.S. packing

costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

F. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison-market sales, NV may be based on CV. Accordingly, for those shrimp products sold by MRG, Pakfood and the Rubicon Group in the United States for which we could not determine the NV based on comparison-market sales, either because there were no useable sales of a comparable product or all sales of comparable products failed the COP test, we based NV on CV.

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 selling, general and administrative (SG&A) expenses, profit, and U.S. packing costs. For the Rubicon Group, Pakfood, and Marine Gold, we calculated the cost of materials and fabrication based on the methodology described in the "Cost of Production Analysis" section, above, and we based SG&A and profit for each respondent on the actual amounts incurred and realized by it in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

For comparisons to EP, we made circumstances-of-sale adjustments by deducting direct selling expenses incurred on comparison-market sales from, and adding U.S. direct selling expenses to, CV, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to CEP, we made circumstance-of-sale adjustments by deducting comparison-market direct selling expenses from CV. We also made adjustments, when applicable, for indirect selling expenses incurred on comparison-market or U.S. sales where commissions were granted in one market but not the other. See 19 CFR 351.410(e).

Currency Conversion

We made currency conversions into U.S. dollars for all spot transactions by MRG, Pakfood, and the Rubicon Group 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. In addition, both MRG and Pakfood reported that they purchased forward exchange contracts which were used to convert the currency in which certain sales transactions were made into home

market currency. Under 19 CFR 351.415(b), if a currency transaction on forward markets is directly linked to an export sale under consideration, the Department is directed to use the exchange rate specified with respect to such foreign currency in the forward sale agreement to convert the foreign currency. *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and*

Canned Warmwater Shrimp from Thailand, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 6; *see also Certain Frozen Warmwater Shrimp from India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 12103, 12113 (March 6, 2008), unchanged in *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative*

Review, 73 FR 40492 (July 15, 2008). Therefore, for MRG and Pakfood we used the reported forward exchange rates for currency conversions where applicable.

Preliminary Results of the Review

We preliminarily determine that weighted-average dumping margins exist for the respondents for the period February 1, 2008, through January 31, 2009¹⁰, as follows:

Manufacturer/Exporter	Percent Margin
Marine Gold Products Limited	2.03
Pakfood Public Company Limited / Asia Pacific (Thailand) Company Limited / Chaophraya Cold Storage Company Limited/ Okeanos Company Limited/ Okeanos Food Company Limited/ Takzin Samut Company Limited (collectively, Pakfood)	1.11
Andaman Seafood Co., Ltd. / Chanthaburi Frozen Food Co., Ltd. / Chanthaburi Seafoods Co., Ltd. / Intersia Foods Co., Ltd. (formerly Y2K Frozen Foods Co., Ltd.)/Phatthana Frozen Food Co., Ltd. / Phatthana Seafood Co., Ltd./Sea Wealth Frozen Food Co. Ltd. /Thailand Fishery Cold Storage Public Co., Ltd. /Thai International Seafoods Co., Ltd. /S.C.C. Frozen Seafood Co., Ltd./ Wales & Co. Universe Limited (collectively, the Rubicon Group)	5.55

The review-specific average rate applicable to the following companies is 3.19 percent:¹¹

Manufacturer/Exporter

A. Wattanachai Frozen Products Co., Ltd.
A.S. Intermarine Foods Co., Ltd.
ACU Transport Co., Ltd.
Anglo-Siam Seafoods Co., Ltd.
Apex Maritime (Thailand) Co., Ltd.
Apitoon Enterprise Industry Co., Ltd.
Applied DB Ind
Asian Seafood Coldstorage (Sriracha)
Asian Seafoods Coldstorage Public Co., Ltd.
Asian Seafoods Coldstorage (Suratthani) Co., Limited
Asian Seafoods Coldstorage (Suratthani) Co.
Assoc. Commercial Systems
B.S.A. Food Products Co., Ltd.
Bangkok Dehydrated Marine Product Co., Ltd.
Bright Sea Co., Ltd.
C.P. Merchandising Co., Ltd.
C P Mdse
C P Retailing and Marketing Co., Ltd.
C Y Frozen Food Co., Ltd.
Chaivaree Marine Products Co., Ltd.
Chaiwarut Co., Ltd.
Charoen Pokphand Foods Public Co., Ltd.
Chonburi L C
Chue Eie Mong Eak Ltd. Part.
Core Seafood Processing Co., Ltd.
Crystal Frozen Foods Co., Ltd. and/or Crystal Seafood
Daedong (Thailand) Co. Ltd.

Daiei Taigen (Thailand) Co., Ltd.
Daiho (Thailand) Co., Ltd.
Dynamic Intertransport Co., Ltd.
Earth Food Manufacturing Co., Ltd.
Findus (Thailand) Ltd.
Fortune Frozen Foods (Thailand) Co., Ltd.
Frozen Marine Products Co., Ltd.
GSE Lining Technology Co., Ltd.
Gallant Ocean (Thailand) Co., Ltd.
Gallant Seafoods Corporation
Global Maharaja Co., Ltd.
Golden Sea Frozen Foods
Golden Sea Frozen Foods Co., Ltd.
Good Fortune Cold Storage Co., Ltd.
Good Luck Product Co., Ltd.
Gulf Coast Crab Intl
H.A.M. International Co., Ltd.
Haitai Seafood Co., Ltd.
Handy International (Thailand) Co., Ltd.
Heng Seafood Limited Partnership
Heritrade Co., Ltd.
HIC (Thailand) Co., Ltd.
High Way International Co., Ltd.
I.T. Foods Industries Co., Ltd.
Inter-Pacific Marine Products Co., Ltd.
K Fresh
K. D. Trading Co., Ltd.
KF Foods
K.L. Cold Storage Co., Ltd.
K & U Enterprise Co., Ltd.
Kiang Huat Sea Gull Trading Frozen Food Public Co., Ltd.
Kingfisher Holdings Ltd.
Kibun Trdg
Klang Co., Ltd.
Kitchens of the Ocean (Thailand) Ltd.
Kongphop Frozen Foods Co., Ltd.
Kosamut Frozen Foods Co., Ltd.

Lee Heng Seafood Co., Ltd.
Li-Thai Frozen Foods Co., Ltd.
Maersk Line
Magnate & Syndicate Co., Ltd.
Mahachai Food Processing Co., Ltd.
May Ao Co., Ltd.
May Ao Foods Co., Ltd.
Merit Asia Foodstuff Co., Ltd.
Merkur Co., Ltd.
Ming Chao Ind Thailand
N&N Foods Co., Ltd.
Namprik Maesri Ltd. Part.
Narong Seafood Co., Ltd.
Nongmon SMJ Products
NR Instant Produce Co., Ltd.
Ongkorn Cold Storage Co., Ltd.
Pacific Queen Co., Ltd.
Penta Impex Co., Ltd.
Pinwood Nineteen Ninety Nine
Piti Seafoods Co., Ltd.
Premier Frozen Products Co., Ltd.
Preserved Food Specialty Co., Ltd.
Queen Marine Food Co., Ltd.
Rayong Coldstorage (1987) Co., Ltd.
S&D Marine Products Co., Ltd.
S&P Aquarium
S&P Syndicate Public Company Ltd.
S. Chaivaree Cold Storage Co., Ltd.
SCT Co., Ltd.
S. Khonkaen Food Industry Public Co., Ltd. and/or S. Khonkaen Food Ind Public
SMP Food Product Co., Ltd.
Samui Foods Company Limited
Sea Bonanza Food Co., Ltd.
SEA NT'L CO., LTD.
Seafoods Enterprise Co., Ltd.
Seafresh Fisheries
Seafresh Industry Public Co., Ltd.

¹⁰ See Footnote 2 regarding the POR for the Rubicon Group and Thai I-Mei.

¹¹ This rate is based on the weighted average of the margins calculated for those companies selected for individual examination, excluding *de minimis*

margins or margins based entirely on facts available.

Search & Serve
 Shianlin Bangkok Co., Ltd.
 Siam Food Supply Co., Ltd.
 Siam Intersea Co., Ltd.
 Siam Marine Products Co. Ltd.
 Siam Union Frozen Foods
 Siamchai International Food Co., Ltd.
 Smile Heart Foods Co. Ltd.
 Southport Seafood
 Star Frozen Foods Co., Ltd.
 STC Foodpak Ltd.
 Suntechthai Intertrading Co., Ltd.
 Surapon Nichirei Foods Co., Ltd.
 Surapon Seafoods Public Co., Ltd. /
 Surapon Foods Public Co., Ltd.
 Surapon Seafood
 Surat Seafoods Co., Ltd.
 Suratthani Marine Products Co., Ltd.
 T.S.F. Seafood Co., Ltd.
 Tanaya International Co., Ltd.
 Tanaya Intl.
 Teppitak Seafood Co., Ltd.
 Tey Seng Cold Storage Co., Ltd.
 Tep Kinsho Foods Co., Ltd.
 Thai-Ger Marine Co., Ltd.
 Thai Agri Foods Public Co., Ltd.
 Thai I-Mei Frozen Foods Co., Ltd.
 Thai Mahachai Seafood Products Co., Ltd.
 Thai Ocean Venture Co., Ltd.
 Thai Patana Frozen
 Thai Prawn Culture Center Co., Ltd.
 Thai Royal Frozen Food Co. Ltd.
 Thai Spring Fish Co., Ltd.
 Thai Union Frozen Products Public Co., Ltd.
 Thai Union Seafood Co., Ltd.
 Thai World Imports & Exports
 The Siam Union Frozen Foods Co., Ltd.
 The Union Frozen Products Co., Ltd.
 Trang Seafood Products Public Co., Ltd.
 Transamut Food Co., Ltd.
 Tung Lieng Trdg
 United Cold Storage Co., Ltd.
 Xian-Ning Seafood Co., Ltd.
 Yeenin Frozen Foods Co., Ltd.
 YHS Singapore Pte
 ZAFCO TRDG

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 case 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 five days after the date for filing case briefs. Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities.

Interested parties who wish to request a hearing or to participate if one is

requested must submit a written request to the Assistant Secretary for Import Administration, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: 1) the party's name, address and telephone number; 2) the number of participants; and 3) a list of issues to be discussed. See 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the respective case briefs.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

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

Where the respondents reported entered value for 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 examined sales for that importer.

Where the respondents did not report entered value for their U.S. sales, 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. With respect to sales of shrimp with sauce, for which no entered value was reported, we will include the total quantity of the merchandise with sauce in the denominator of the calculation of the importer-specific rate because CBP will apply the per-unit duty rate to the total quantity of merchandise entered, including the sauce weight. To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific *ad valorem* ratios based on the estimated entered value.

For the companies which were not selected for individual examination, we will calculate an assessment rate based on the weighted average of the cash deposit rates calculated for the companies selected for individual

examination excluding any which are *de minimis* or determined entirely on facts available.

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). 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 effective during the POR 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 above¹² 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

¹² Effective January 16, 2009, there is no longer a cash deposit requirement for the Rubicon Group or Thai I-Mei in accordance with the *Section 129 Determination*.

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, a previous 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 be 5.34 percent, the all-others rate made effective by the *Section 129 Determination*. 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: March 8, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010-5588 Filed 3-12-10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-810]

Stainless Steel Bar from India: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on stainless steel bar from India. The period of review is February 1, 2008, through January 31, 2009. This review covers imports of stainless steel bar from two producers/exporters: Ambica Steels Limited and Venus Wire Industries Pvt. Ltd. We preliminarily find that sales of the subject merchandise have been made below normal value. If these preliminary results are adopted in our final results,

we will instruct U.S. Customs and Border Protection to assess antidumping duties on appropriate entries. Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: March 15, 2010.

FOR FURTHER INFORMATION CONTACT:

Scott Holland, Seth Isenberg, or Austin Redington, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482-1279, (202) 482-0588, or (202) 482-1664, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1995, the Department of Commerce ("Department") published in the **Federal Register** the antidumping duty order on stainless steel bar ("SSB") from India. *See Antidumping Duty Orders: Stainless Steel Bar from Brazil, India and Japan*, 60 FR 9661 (February 21, 1995). On February 4, 2009, the Department published a notice in the **Federal Register** providing an opportunity for interested parties to request an administrative review of the antidumping duty order on SSB from India for the period of review ("POR") February 1, 2008, through January 31, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 6013 (February 4, 2009).

On February 19, 2009, the Department received a timely request for review from Ambica Steels Limited ("Ambica"). On February 27, 2009, we received a timely request for review from Venus Wire Industries Pvt. Ltd. ("Venus Wire"). Also, on February 27, 2009, we received a timely request from domestic interested parties Carpenter Technology Corp.; Crucible Specialty Metals, a division of Crucible Materials Corp.; Electralloy Co., a G.O. Carlson, Inc. company; and Valbruna Slater Stainless, Inc. (collectively, "Petitioners"), for a review of Venus Wire and its affiliates. On March 24, 2009, in accordance with section 751(a) of the Tariff Act of 1930, as amended ("the Act"), we initiated an administrative review on Ambica and Venus Wire. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 12310 (March 24, 2009).

On April 10, 2009, the Department issued antidumping duty questionnaires to Ambica and Venus Wire. Ambica

submitted its responses to the antidumping questionnaire in May and June 2009. Venus Wire submitted its responses to the antidumping questionnaire in May, June, and July 2009. After analyzing these responses, we issued supplemental questionnaires to Ambica and Venus Wire to clarify or correct information contained in the initial questionnaire responses. We received responses to these supplemental questionnaires from Ambica in September, November, and December, 2009, and January and February, 2010. We received responses to these supplemental questionnaires from Venus Wire in September, November, and December, 2009, and January and March, 2010.

On February 17, 2010, the Department determined that the January 25, 2010, Section D cost reconciliation submitted by Sieves Manufacturing (India) Pvt. Ltd. ("Sieves") (an affiliated company collapsed with Venus Wire, *see* "Affiliation" section below) was filed after the established deadline and, in accordance with 19 CFR 351.302(d)(i), the Department returned the submission to Sieves. *See* Letter from Susan Kuhbach to Sieves "Rejection of Sieves' Section D supplemental response" dated February 17, 2010. The Department later determined that it had previously granted a separate extension until January 25, 2010, for submission of Sieves' cost reconciliation. *See* Memorandum from Austin Redington, International Trade Compliance Analyst to the File entitled, "Extension Request from Sieves," dated January 15, 2010. Thus, because it was timely filed, the Department requested that Sieves re-submit the Section D cost responses that the Department had previously returned. *See* Letter from Brandon Farlander, Program Manager to Sieves entitled "Resubmission of Sieves' Section D supplemental response," dated February 24, 2010.

On October 29, 2009, we extended the time limit for completing the preliminary results of this review to no later than March 1, 2010, in accordance with section 751(a)(3)(A) of the Act. *See Stainless Steel Bar From India: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 74 FR 55814 (October 29, 2009).

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by