



A-570-893  
Administrative Review  
POR: 2/1/2018 – 1/31/2019  
**Public Document**  
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February 28, 2020

**MEMORANDUM TO:** Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for the Preliminary Results of the  
Antidumping Duty Administrative Review of Certain Frozen  
Warmwater Shrimp from the People's Republic of China; 2018-  
2019

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain frozen warmwater shrimp (shrimp) from the People's Republic of China (China). The review covers one mandatory respondent, Shantou Red Garden Food Processing Co., Ltd. (Shantou RGFP), and 87 other companies that were not selected for individual examination. The period of review (POR) is February 1, 2018 through January 31, 2019. We preliminarily find that sales of the subject merchandise were made at prices below normal value (NV). The estimated weighted-average dumping margins are shown in the "Preliminary Results of Review" section of the accompanying *Federal Register* notice.

## II. BACKGROUND

In February 2005, Commerce published in the *Federal Register* the AD order on shrimp from China.<sup>1</sup> Subsequently, on March 28, 2013, pursuant to a section 129 proceeding, Commerce revoked the *Order* with respect to merchandise manufactured by Red Garden Food Processing Co., Ltd. and exported by Shantou Red Garden Foodstuff Co., Ltd. (Shantou RGFS) or Red Garden Food Processing Co., Ltd. (Red Garden).<sup>2</sup>

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<sup>1</sup> See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the People's Republic of China*, 70 FR 5149 (February 1, 2005) (*Order*).

<sup>2</sup> See *Certain Frozen Warmwater Shrimp from the People's Republic of China and Diamond Sawblades and Parts Thereof from the People's Republic of China: Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders*, 78 FR 18958-60 (March

On February 8, 2019, Commerce published in the *Federal Register* a notice of opportunity to request an administrative review of the AD order on shrimp from China for the period February 1, 2018 through January 31, 2019.<sup>3</sup> On May 2, 2019, Commerce initiated an administrative review of the *Order* with respect to 102 companies, including Shantou RGFP and Shantou Red RGFS (but only where the exports of this latter company were of merchandise not produced by particular companies).<sup>4</sup>

Between May 10 and 17, 2019, we received certifications that the following companies had no shipments or sales of subject merchandise during the POR: Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd. (Allied Pacific Aquatic), Allied Pacific Food (Dalian) Co., Ltd. (Allied Pacific Food), Allied Pacific (HK) Co., Ltd. (Allied Pacific), Shantou RGFP, and Shantou RGFS.<sup>5</sup> On June 10, 2019, the Ad Hoc Shrimp Trade Action Committee (the petitioner) withdrew all of its review requests.<sup>6</sup> However, requests for review by the American Shrimp Processors Association (ASPA) (a domestic interested party) remained outstanding.<sup>7</sup> Accordingly, because Commerce received no other requests for review for 14 of the companies for which a review was initiated, we rescinded this review with respect to those 14 entities.<sup>8</sup> We continued the review with respect to the remaining requested companies.

On July 15, 2019, Commerce sent a no shipment inquiry to U.S. Customs and Border Protection (CBP) to determine whether Allied Pacific Aquatic, Allied Pacific Food, Allied Pacific, Shantou RGFP, and Shantou RGFS had entries of subject merchandise during the POR.<sup>9</sup> On the same date, CBP responded that it found no shipments from any of these companies.<sup>10</sup> On July 23,

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28, 2013) (stating, “[r]evocation for Red Garden is specific to: merchandise manufactured by Red Garden Food Processing Co., Ltd., or Chaoyang Jindu Hengchang Aquatic Products Enterprise Co., Ltd., or Raoping County Longfa Seafoods Co., Ltd., or Meizhou Aquatic Products Quick-Frozen Industry Co., Ltd., or Shantou Jinyuan District Mingfeng Quick-Frozen Factory, or Shantou Long Feng Foodstuffs Co., Ltd., and exported by Shantou Red Garden Foodstuff Co., Ltd. or Red Garden Food Processing Co., Ltd.”).

<sup>3</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 2816 (February 8, 2019).

<sup>4</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 18777 (May 2, 2019) (*Initiation Notice*) (stating, in part, that Commerce was initiating this review for Shantou RGFS only with respect to subject merchandise produced by entities other than the following producers: Red Garden Food Processing Co., Ltd., Chaoyang Jindu Hengchang Aquatic Products Enterprise Co., Ltd., Raoping County Longfa Seafoods Co., Ltd., Meizhou Aquatic Products Quick-Frozen Industry Co., Ltd., Shantou Jinyuan District Mingfeng Quick-Frozen Factory, Shantou Long Feng Foodstuffs Co., Ltd.).

<sup>5</sup> See Allied Pacific Aquatic’s, Allied Pacific Food’s, and Allied Pacific’s Letter, “Certain Frozen Warmwater Shrimp from the People’s Republic of China: Notice of No Shipments,” dated May 10, 2019; see also Shantou RGFP’s and Shantou RGFS’s Letter, “Frozen Warmwater Shrimp from the People’s Republic of China; Certification of No Sales,” dated May 17, 2019.

<sup>6</sup> See Petitioner’s Letter, “Certain Frozen Warmwater Shrimp from the People’s Republic of China: Domestic Producers’ Withdrawal of Review Requests,” dated June 10, 2019.

<sup>7</sup> See ASPA’s Letter, “American Shrimp Processors Association’s Request for an Administrative Review,” dated February 27, 2019.

<sup>8</sup> See *Frozen Warmwater Shrimp from the People’s Republic of China: Partial Rescission of Antidumping Duty Administrative Review; 2018-2019*, 84 FR 55555 (October 17, 2019).

<sup>9</sup> See Memorandum, “No Shipment Inquiry with Respect to the Companies Below During the Period 02/02/2018 through 01/31/2019,” dated July 15, 2019 (CBP Initial Response).

<sup>10</sup> *Id.*

2019, however, CBP revised its response to say that it discovered several “Type 1” entries by Shantou RGFP and reclassified these entries as “Type 3” entries.<sup>11</sup> Between July 30 and August 13, 2019, Shantou RGFP made several submissions in which it argued that it was excluded from the *Order* and that CBP had incorrectly reclassified its entries as Type 3.<sup>12</sup>

On September 6, 2019, the petitioner alleged that, prior to the partial revocation of the *Order*, Shantou RGFP operated under a different name, Shantou Jin Cheng Food Co., Ltd. (Shantou JCF).<sup>13</sup> The petitioner further alleged that, shortly before the revocation occurred, Shantou JCF changed its name to Shantou RGFP in order to take advantage of the revocation. The petitioner noted that Shantou RGFP had not disclosed its affiliation with Shantou JCF to Commerce. Therefore, the petitioner requested that Commerce issue a questionnaire regarding information on operations of Shantou RGFP and Shantou JCF following the end of the less-than-fair-value (LTFV) investigation.<sup>14</sup>

On October 7, 2019, we issued the standard non-market economy (NME) questionnaire to Shantou RGFP because record evidence indicated that Shantou RGFP was not revoked from the *Order*.<sup>15</sup> Additionally, on the same date, we accepted the petitioner’s September 6, 2019, new factual information and provided an opportunity for interested parties to comment.<sup>16</sup> Between October 18 and 28, 2019, interested parties submitted comments on the petitioner’s submission.<sup>17</sup>

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<sup>11</sup> See Memorandum, “No Shipment Inquiry with Respect to the Companies Below During the Period 02/01/2018 through 01/31/2019,” dated July 23, 2019. Type 1 entries are entries for normal consumption; Type 3 entries are entries which are subject to AD duties and countervailing duties.

<sup>12</sup> See Shantou RGFP’s Letter, “Frozen Warmwater Shrimp from the People’s Republic of China; Comments on New Factual Information Regarding Shipments by Red Garden Food Processing Co., Ltd.,” dated July 30, 2019 (Shantou RGFP Response to CBP); see also Shantou RGFP’s Letter, “Frozen Warmwater Shrimp from the People’s Republic of China; Response to the Department’s Request for Clarification of Shantou Red Garden Food Processing Co., Ltd.’s name,” dated August 13, 2019 (Shantou RGFP First Name Change Response).

<sup>13</sup> See Petitioner’s Letter, “Certain Frozen Warmwater Shrimp from the People’s Republic of China: Request for Leave to Place New Factual Information on the Record of Proceeding and for Issuance of Questionnaire,” dated September 6, 2019 (Petitioner NFI).

<sup>14</sup> *Id.* at 6-7.

<sup>15</sup> See Commerce’s Letter, “Administrative Review of the Antidumping Duty Order on Frozen Warmwater Shrimp from the People’s Republic of China: Initial Questionnaire,” dated October 7, 2019 (NME Questionnaire).

<sup>16</sup> See Memorandum, “Acceptance of September 6, 2019 New Factual Information,” dated October 7, 2019 (Initial Questionnaire).

<sup>17</sup> See Shantou RGFP’s Letter, “Frozen Warmwater Shrimp from the People’s Republic of China; Response of Red Garden Companies to Domestic Producers’ letter of September 6, 2019,” dated October 18, 2019; see also ASPA’s Letter, “Administrative Review of the Antidumping Duty Order Covering Frozen Warmwater Shrimp from the People’s Republic of China: New Factual Information Regarding Red Garden,” dated October 18, 2019; ASPA’s Letter, “Administrative Review of the Antidumping Duty Order Covering Frozen Warmwater Shrimp from the People’s Republic of China: ASPA’s Response to Red Garden,” dated October 24, 2019 (ASPA SII Request); and Petitioner’s Letter, “Certain Frozen Warmwater Shrimp from the People’s Republic of China: Comments Regarding Red Garden’s October 18 Submission,” dated October 28, 2019.

Between November 12, 2019 and January 22, 2020, Shantou RGFP submitted timely responses to Commerce’s initial and supplemental questionnaires.<sup>18</sup> In these responses, Shantou RGFP stated that it is affiliated with Shantou RGFS.<sup>19</sup>

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), Commerce determined that it was not practicable to complete the preliminary results of this review within the 245 days and postponed the preliminary results by 120 days.<sup>20</sup> The revised deadline for the preliminary results in this review is February 28, 2020.

### **III. SCOPE OF THE ORDER**

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,<sup>21</sup> deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the order, regardless of definitions in the harmonized tariff schedule (HTS), 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, white-leg 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 the 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 the order.

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<sup>18</sup> See Shantou RGFP’s November 12, 2019 Section A Questionnaire Response (Shantou RGFP November 12, 2019 AQR); see also Shantou RGFP’s November 22, 2019 Section C Questionnaire Response (Shantou RGFP November 22, 2019 CQR); Shantou RGFP’s November 22, 2019 Section D Questionnaire Response (Shantou RGFP November 22, 2019 DQR); Shantou RGFP’s December 23, 2019 Supplemental Questionnaire Response (Shantou RGFP December 23, 2019 SQR); Shantou RGFP’s January 8, 2020 Supplemental Questionnaire Response; and Shantou RGFP’s January 22, 2020 Supplemental Questionnaire Response.

<sup>19</sup> See, e.g., Shantou RGFP November 12, 2019 AQR at 3.

<sup>20</sup> See Memorandum, “Frozen Warmwater Shrimp from the People’s Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated September 24, 2019; see also Memorandum, “Frozen Warmwater Shrimp from the People’s Republic of China: Second Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated December 16, 2019.

<sup>21</sup> “Tails” in this context means the tail fan, which includes the telson and the uropods.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.1020); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.0020 and 0306.23.0040); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.0510); (5) dried shrimp and prawns; (6) Lee Kum Kee's shrimp sauce; (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.1040); and (8) certain battered shrimp. Battered 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 individually quick frozen ("IQF") freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also 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 HTS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. These HTS subheadings are provided for convenience and for customs purposes only; the written description of the scope of this order is dispositive.<sup>22</sup>

#### **IV. PRELIMINARY DETERMINATION OF NO SHIPMENTS**

As discussed above, Allied Pacific Aquatic, Allied Pacific Food, Allied Pacific, Shantou RGFP, and Shantou RGFS reported no shipments of subject merchandise to the United States during the POR.<sup>23</sup> We attempted to confirm the no-shipment claims by reviewing information obtained from a CBP data query<sup>24</sup> and by contacting CBP to request that it provide any information that contradicted the no-shipment claims of these companies. CBP responded with certain information concerning POR shipments that supported the no shipment claims of Allied Pacific Aquatic, Allied Pacific Food, Allied Pacific, and Shantou RGFS only.<sup>25</sup>

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<sup>22</sup> On April 26, 2011, Commerce amended the antidumping duty order to include dusted shrimp, pursuant to the U.S. Court of International Trade (CIT) decision in *Ad Hoc Shrimp Trade Action Committee v. United States*, 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission (ITC) determination, which found the domestic like product to include dusted shrimp. See *Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision*, 76 FR 23277 (April 26, 2011); see also *Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam* (Investigation Nos. 731-TA-1063, 1064, 1066-1068 (Review), USITC Publication 4221, March 2011).

<sup>23</sup> See Allied Pacific's Letter, "Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of No Shipments," dated May 10, 2019; see also Shantou RGFP and Shantou RGFS's Letter, "Frozen Warmwater Shrimp from the People's Republic of China; Certification of No Sales," dated May 17, 2019.

<sup>24</sup> See Memorandum, "2016-2017 Antidumping Duty Administrative Review: Certain Frozen Warmwater Shrimp from the People's Republic of China: Release of Customs and Border Production (CBP) Information," dated May 6, 2019.

<sup>25</sup> See CBP Initial Response.

Based on their no-shipment certifications, our analysis of the results of the CBP data queries, and the fact that CBP identified no information that contradicted the no-shipment claims, we preliminarily determine that Allied Pacific Aquatic, Allied Pacific Food, and Allied Pacific did not have any shipments of subject merchandise to the United States during the POR. Consistent with Commerce's practice in NME cases, we have not rescinded the review with respect to these companies, but we will continue the review of these companies and issue instructions to CBP based on the final results of the review.<sup>26</sup>

With respect to Shantou RGFP and Shantou RGFS, however, CBP identified information that contradicted Shantou RGFP's no-shipment claim, and based on information obtained in the course of this review, we find that it had shipments of subject merchandise during the POR. Further, although CBP confirmed that Shantou RGFS had no shipments, we find that this fact is not necessarily dispositive. As noted above, Shantou RGFS and Shantou RGFP are affiliated exporters, and, thus, it may be appropriate to treat them as a single entity in this administrative review. Commerce is considering for the final results whether to collapse Shantou RGFP and Shantou RGFS, and we may issue a supplemental questionnaire to obtain additional information to aid in our analysis.

## V. DISCUSSION OF THE METHODOLOGY

### A. Successor-In-Interest Determination

As noted above, in July 2019, CBP informed Commerce that Shantou RGFP made shipments of subject merchandise during the POR. Shantou RGFP subsequently responded to this finding, arguing that, in fact, its exports of shrimp to the United States are not covered by the *Order*, and that CBP had classified these exports as subject merchandise in error. As support for its position, Shantou RGFP cited the *Exclusion Notice*.<sup>27</sup>

Given Shantou RGFP's statements on this issue, in August 2019, we requested that Shantou RGFP clarify the relationship between itself and Red Garden and that it provide source documentation supporting its explanation.<sup>28</sup> In response, Shantou RGFP claimed that the two companies are the same, and that any confusion over the difference in their names stemmed from a simple clerical error made in the *Exclusion Notice*.<sup>29</sup> Specifically, Shantou RGFP stated:

The cause of this confusion is readily apparent. The Department simply made a clerical error when it excluded "Red Garden Food Processing Co., Ltd." (without "Shantou" preceding the name), rather than excluding "Shantou Red Garden Food Processing Co., Ltd."

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<sup>26</sup> See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

<sup>27</sup> See Shantou RGFP Response to CBP.

<sup>28</sup> See Commerce's Letter, "Administrative Review of the Antidumping Duty Order on Frozen Warmwater Shrimp from the People's Republic of China: Clarification of Company's Name," dated August 8, 2019.

<sup>29</sup> See Shantou RGFP First Name Change Response at 2; see also *Certain Frozen Warmwater Shrimp from the People's Republic of China and Diamond Sawblades and Parts Thereof from the People's Republic of China: Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders*, 78 FR 18958-59 (March 28, 2013) (*Exclusion Notice*).

The error is readily apparent from the Section A response filed by the mandatory respondent, Shantou Red Garden Foodstuff Co., Ltd. March 31, **2004** (in the original investigation). In that original response – filed in the investigation – Shantou Red Garden Foodstuff Co., Ltd., included the business licenses of both it and its sister company, Shantou Red Garden Food Processing Co., Ltd. The enclosed Exhibit contains the relevant pages from the narrative of that response (page A-2) and Exhibit 3 of that response, which contains the business licenses of both Red Garden companies. In each place, “Shantou” Red Garden Food Processing Co., Ltd., is noted. The business license is the official, legal document of Shantou Red Garden Food Processing Co., Ltd.’s name. As such, Commerce in its exclusion order and instructions to U.S. Customs clearly made a clerical error by not using that name.<sup>30</sup>

Based on the information provided by Shantou RGFP, we do not dispute that the company’s business license included the word “Shantou” in the company’s name. However, in the investigation, the company itself referred to its name inconsistently, calling itself “Shantou RGFP” in some places and “RGFP” in others.<sup>31</sup> For this reason, in the final determination of the LTFV investigation, we identified the company “Red Garden Food Processing Co., Ltd.”<sup>32</sup> and in multiple customs instructions to CBP we referred to the company as RGFP.<sup>33</sup> We note that, prior to this point, Shantou RGFP has not objected to the use of this name and, thus, Commerce had no reason to consider this issue.

Subsequent to Shantou RGFP’s August 13, 2019 submission, the petitioner submitted information alleging that Shantou RGFP was previously known as a company named Shantou JCF, and it changed its name to Shantou RGFP shortly before Red Garden was excluded from the *Order*; the petitioner further noted that Shantou RGFP had failed to disclose its affiliation with Shantou JCF.<sup>34</sup> As a result, the petitioner asked Commerce to issue a questionnaire to Shantou RGFP requesting information on the operations of Shantou RGFP and Shantou JCF since the conclusion of the LTFV investigation. In October 2019, Shantou RGFP responded to these comments.<sup>35</sup> As part of this submission, Shantou RGFP acknowledged that it has changed its company name twice since it was established in 2003.<sup>36</sup> Thereafter, ASPA argued that, because Commerce has not made a determination on whether the current iteration of Shantou

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<sup>30</sup> Shantou RGFP First Name Change Response at 2 (emphasis original).

<sup>31</sup> See Shantou RGFP December 23, 2019 SQR at Exhibit SA-28 (citing A-2 and A-4).

<sup>32</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People’s Republic of China*, 69 FR 70997 (December 8, 2004), and accompanying Issues and Decision Memorandum (IDM) at 19.

<sup>33</sup> See, e.g., CBP Message Number 4198205, dated July 16, 2004; CBP Message Number 4306202, dated November 1, 2004; CBP Message Number 4350201, dated December 15, 2004; and CBP Message Number 5041209, dated February 10, 2005.

<sup>34</sup> See Petitioner NFI at 3-4.

<sup>35</sup> See Shantou RGFP Name Change.

<sup>36</sup> *Id.* We note that Commerce revoked the *Order* with respect to Red Garden, which Shantou RGFP claims is the same company as Shantou RGFP.

RGFP is the successor-in-interest to Red Garden, it is not eligible to receive the same treatment under the *Order*.<sup>37</sup> Accordingly, to resolve this question, and in light of potentially relevant changes to Shantou RGFP's corporate structure, Commerce is conducting a successor-in-interest analysis.

Based on the record evidence, Commerce preliminarily finds that Shantou RGFP, as it currently exists, is not the successor-in-interest to the "Red Garden Food Processing Co., Ltd," the company revoked from the *Order* in 2013. Information on the record shows that Shantou RGFP experienced significant changes in ownership, management, production, suppliers, and customers, among other things, that make its operations materially dissimilar from those of Red Garden. Because the analysis on which this preliminary finding is based involves the discussion of business proprietary information, we have included a full discussion of our preliminary analysis in a separate memorandum.<sup>38</sup>

#### B. Non-Market Economy Country Status

Commerce considers China to be an NME country.<sup>39</sup> 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. None of the parties to this proceeding have contested such treatment. Therefore, we continue to treat China as an NME country for purposes of these preliminary results.

#### C. Separate Rates

In proceedings involving NME countries, Commerce maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single dumping margin.<sup>40</sup> In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate-rate status in NME proceedings.<sup>41</sup> It is Commerce's policy to assign all exporters of the subject merchandise from an NME country a single rate unless an exporter can affirmatively demonstrate an absence of

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<sup>37</sup> See ASPA SII Request.

<sup>38</sup> See Memorandum, "Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Successor-In-Interest Determination," dated concurrently with this memorandum.

<sup>39</sup> See *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018), and accompanying IDM at Comment 1; see also *Certain Steel Nails from the People's Republic of China: Final Results of Third Antidumping Duty Administrative Review; 2010-2011*, 78 FR 16651, 16652 (March 18, 2013), and accompanying IDM at Comment 1.

<sup>40</sup> See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); see also *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).

<sup>41</sup> See *Initiation Notice*, 84 FR at 18778.

government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports.<sup>42</sup> Commerce analyzes each entity's export independence under a test first articulated in *Sparklers* and as further developed in *Silicon Carbide*.<sup>43</sup>

In order to demonstrate separate-rate status eligibility, Commerce normally requires an entity, for which a review was requested, and which was assigned a separate rate in a previous segment, to submit a separate-rate certification stating that it continues to meet the criteria for obtaining a separate rate.<sup>44</sup> For entities that were not assigned a separate rate in the previous segment, however, Commerce requires a separate rate application.<sup>45</sup>

In this review, none of the companies for which a review was initiated, except Shantou RGFP, requested a separate rate. For a complete list of companies not receiving a separate rate, *see* the corresponding *Federal Register* notice at Appendix II.

With respect to Shantou RGFP, Commerce timely received a complete response to the Section A portion of the questionnaire from Shantou RGFP which contained information pertaining to its eligibility for separate rate status.<sup>46</sup> Shantou RGFP reported that it is either wholly or partially owned by a domestic entity/entities located in China.<sup>47</sup> In accordance with our practice, we analyzed whether this company demonstrated an absence of *de jure* and *de facto* governmental control over its export activities.

#### *Absence of De Jure Control*

Commerce 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; and (3) any other formal measures by the government decentralizing control of companies.<sup>48</sup>

The evidence provided by Shantou RGFP supports a preliminary finding of the absence of *de jure* government control of export activities based on the following: (1) there is an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of the companies.<sup>49</sup>

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<sup>42</sup> See Policy Bulletin 05.1, Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, dated April 15, 2005, available at <https://enforcement.trade.gov/policy/bull05-1.pdf>.

<sup>43</sup> See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*); *see also* *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*).

<sup>44</sup> See *Initiation Notice*.

<sup>45</sup> *Id.*

<sup>46</sup> See Shantou RGFP November 12, 2019 AQR at 2-10; *see also* Shantou RGFP December 23, 2019 SQR at 3-14.

<sup>47</sup> See Shantou RGFP November 12, 2019 AQR at 2-10; *see also* Shantou RGFP December 23, 2019 SQR at 3-14.

<sup>48</sup> See *Sparklers*.

<sup>49</sup> *Id.*

### *Absence of De Facto Control*

Typically, Commerce considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices (EPs) are set by or are subject to the approval of a government 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; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.<sup>50</sup> As stated in previous cases, there is evidence that certain enactments of the Chinese central government have not been implemented uniformly among different sectors and/or jurisdictions in China.<sup>51</sup> Therefore, Commerce has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude Commerce from assigning separate rates.<sup>52</sup>

The evidence provided by Shantou RGFP supports a preliminary finding of the absence of *de facto* government control based on the following: (1) the company set its own EPs independent of the government and without the approval of a government authority; (2) the company had authority to negotiate and sign contracts and other agreements; (3) the company had autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on the company's use of export revenue.<sup>53</sup>

Therefore, we preliminarily find that the evidence placed on the record of this review demonstrates an absence of *de facto* government control with respect to Shantou RGFP's exports of the merchandise under review.

Based on the absence of both *de jure* and *de facto* government control with respect to the company's exports of the merchandise under review, we preliminarily find that Shantou RGFP has established that it qualifies for a separate rate under the criteria established by *Sparklers* and *Silicon Carbide*.

### *China-Wide Entity*

Because no party requested a review of the China-wide entity and Commerce no longer considers the China-wide entity as an exporter conditionally subject to administrative reviews,

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<sup>50</sup> See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995).

<sup>51</sup> See, e.g., *Silicon Carbide*, 59 FR at 22587.

<sup>52</sup> *Id.*

<sup>53</sup> See Shantou RGFP November 12, 2019 AQR at 2-10; see also Shantou RGFP December 23, 2019 SQR at 3-14.

Commerce is not conducting a review of the China-wide entity.<sup>54</sup> Thus, the rate for the China-wide entity (*i.e.*, 112.81 percent) is not subject to change under this review.<sup>55</sup>

#### D. Surrogate Country and Surrogate Value Data

On October 7, 2019, Commerce sent interested parties a letter inviting comments on the non-exhaustive list of countries Commerce determined are at the same level of economic development as China, surrogate country selection, and surrogate value (SV) data, and specified the deadlines for these respective submissions.<sup>56</sup> On January 29, 2020, we received timely SV data and comments from the petitioner and from Shantou RGFP.<sup>57</sup>

#### E. Surrogate Country

When Commerce is investigating or reviewing imports from an NME country, section 773(c)(1) of the Act directs us to base NV, in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate market economy (ME) country or countries considered to be appropriate by Commerce. Specifically, in accordance with section 773(c)(4) of the Act, in valuing the FOPs, Commerce shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (A) at a level of economic development comparable to that of the NME country; and (B) significant producers of comparable merchandise.<sup>58</sup>

As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME unless we determine that none of the countries are viable options because: (a) they either are not significant producers of comparable merchandise; (b) do not provide sufficient reliable sources of publicly available SV data; or (c) are not suitable for use based on other reasons.<sup>59</sup> Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development. To determine which countries are at the same level of economic development, Commerce generally relies on *per capita* gross national income (GNI)

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<sup>54</sup> See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65969-70 (November 4, 2013).

<sup>55</sup> See *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57872 (September 26, 2014).

<sup>56</sup> See Commerce's Letter, "Administrative Review of the Antidumping Duty Order on Frozen Warmwater Shrimp from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated October 7, 2019 (Surrogate Country and Values Letter). The countries identified in the Attachment to the Surrogate Country and Values Letter are Brazil, Bulgaria, Malaysia, Mexico, Russia, and Turkey (Surrogate Country List).

<sup>57</sup> See Petitioner's Letter, "Certain Frozen Warmwater Shrimp from the People's Republic of China: Information Regarding Selection of Surrogate Values," dated January 29, 2020 (Petitioner's SV Comments); Shantou RGFP's Letter, "Frozen Warmwater Shrimp from the People's Republic of China: Submission of Proposed Surrogate Values," dated January 29, 2020 (Shantou RGFP SV Comments).

<sup>58</sup> For a description of our practice, see Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (*Policy Bulletin 04.1*), available at <https://enforcement.trade.gov/policy/bull04-1.html>.

<sup>59</sup> *Id.*

data from the World Bank’s World Development Report.<sup>60</sup> It is our practice to value inputs using data from the primary surrogate country, in accordance with 19 CFR 351.408(c)(2) and resort to data from a secondary surrogate country only if data from the primary surrogate country are unavailable or unreliable.<sup>61</sup> The sources of the SVs we used in this review are discussed under the “Normal Value” section below. The petitioner submitted Malaysia SV information for consideration.<sup>62</sup> Shantou RGFP submitted India and Malaysia SV information for consideration.<sup>63</sup>

### 1. *Economic Comparability*

Commerce determined that Brazil, Bulgaria, Malaysia, Mexico, Russia, and Turkey are at the same level of economic development as China, based on *per capita* GNI.<sup>64</sup> Therefore, we consider all six countries as having met this criterion of surrogate country selection.

In the Surrogate Country and Values Letter, we requested comments on the list of potential surrogate countries as a starting point for surrogate country selection, pursuant to section 773(c)(4) of the Act, and requested that parties submit for consideration other countries that are at a level of economic development comparable to China.<sup>65</sup> No party submitted comments on the list of potential surrogate countries. Therefore, unless we find that all the countries determined to be equally economically comparable are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data, or are unsuitable for use for other reasons, we will rely on data from one of the surrogate countries Commerce deemed to be economically comparable to China (*i.e.*, Brazil, Bulgaria, Malaysia, Mexico, Russia, and Turkey).

### 2. *Significant Producer of Comparable Merchandise*

Section 773(c)(4)(B) of the Act requires Commerce, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Although the legislative history states that “the term ‘significant producer’ includes any country that is a significant net exporter and, if appropriate, Commerce may use a significant, net exporting country in valuing factors,”<sup>66</sup> that does not preclude reliance on additional or alternative metrics.<sup>67</sup> Moreover, neither the statute nor Commerce’s regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, Commerce looks to other sources, such as the *Policy Bulletin 04.1* for guidance on defining comparable merchandise. The *Policy Bulletin 04.1* states that “the terms

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<sup>60</sup> *Id.*

<sup>61</sup> See, e.g., *Certain Activated Carbon from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61172 (October 9, 2015), and accompanying IDM at Comments 2 and 5.

<sup>62</sup> See Petitioner’s SV Comments at Attachment 11.

<sup>63</sup> See Shantou RGFP SV Comments at SV-1.

<sup>64</sup> See Surrogate Country and Values Letter at Attachment (Surrogate Country List).

<sup>65</sup> *Id.*

<sup>66</sup> See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Conf. Rep. No. 576, 100 Cong. 2d Sess. (1988), reprinted in Cong. Rec. H2032 (Daily Ed. April 20, 1988).

<sup>67</sup> See *Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1262, 1274 n.5 (CIT 2006).

‘comparable level of economic development,’ ‘comparable merchandise,’ and ‘significant producer’ are not defined in the statute.”<sup>68</sup> The *Policy Bulletin 04.1* further states that “in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.”<sup>69</sup> Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.<sup>70</sup> Further, when selecting a surrogate country, the statute requires Commerce to consider the comparability of the merchandise, not the comparability of the industry.<sup>71</sup>

Following our practice, Commerce analyzed exports of comparable merchandise, as defined by the HTS subheadings listed in the order, from the economically comparable countries during the POR as a proxy for production data.<sup>72</sup> We obtained export data using the Global Trade Atlas (GTA) for HTS 0306.17: “Shrimps and Prawns, Frozen, Other Than Cold-Water.”<sup>73</sup> Commerce found that, of the six countries provided in the Surrogate Country and Values Letter, all countries, except Bulgaria, were exporters of comparable merchandise.<sup>74</sup> Therefore, because five countries on the Surrogate Country List satisfy the “economic comparability” and “significant producer” criteria of the surrogate country analysis, Commerce also will consider data availability and reliability in selecting a surrogate country.<sup>75</sup>

### 3. Data Availability

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, Commerce selects the primary surrogate country based on data availability and reliability.<sup>76</sup> When evaluating SV data, Commerce considers several factors including whether the SV data are publicly available, contemporaneous with the POR, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued.<sup>77</sup> There is no hierarchy among these criteria; it is Commerce’s practice to consider carefully the available evidence in light of the particular facts of each industry when undertaking its analysis.<sup>78</sup>

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<sup>68</sup> For a description of our practice see *Policy Bulletin 04.1*, at Background.

<sup>69</sup> *Id.*

<sup>70</sup> In addition, the *Policy Bulletin 04.1* at note 6, states that “if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.”

<sup>71</sup> See *Sebacic Acid from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65675-76 (December 15, 1997) (“{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.”).

<sup>72</sup> See *Certain Uncoated Paper from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 81 FR 3112 (January 20, 2016), and accompanying IDM at Comment 1.

<sup>73</sup> See Memorandum, “Surrogate Values for the Preliminary Results,” dated concurrently with this memorandum (Preliminary SV Memorandum).

<sup>74</sup> *Id.* at Attachment 2.

<sup>75</sup> See *Policy Bulletin 04.1* at Data Considerations.

<sup>76</sup> *Id.*

<sup>77</sup> See *Policy Bulletin 04.1*; see also *Electrolytic Manganese Dioxide from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008), and accompanying IDM at Comment 2.

<sup>78</sup> See *Ad Hoc Shrimp Trade Action Comm. v. United States*, 618 F. 3d 1316, 1322 (Fed. Cir. 2010).

The petitioner and Shantou RGFP submitted SV data for Malaysia, with the exception noted below.<sup>79</sup> As stated above, five countries in the Surrogate Country List satisfy both the “economic comparability” and “significant producer” criteria of the surrogate country analysis. Therefore, Commerce only considered the SV data availability from countries in the Surrogate Country List. However, no party placed SV data on the record for Brazil, Bulgaria, Mexico, Russia, or Turkey. As a result, we have not considered these countries for surrogate country selection purposes, and only analyzed the SV data availability for Malaysia.

Although Shantou RGFP provided Malaysian data to value a majority of its FOPs, it also submitted data from India to value its shrimp FOP.<sup>80</sup> Specifically, Shantou RGFP provided count-size specific, monthly averages of daily ex-farm prices for white shrimp (*Penaeus Vannamei*), for each month of the POR, sold by farmers in Andhra Pradesh, India’s largest shrimp producing region.<sup>81</sup> We note that India’s GNI during the POR was a mere 21 percent of China’s GNI.<sup>82</sup> Thus, for purposes of surrogate country analysis, we find that India does not meet the economic comparability criterion and, therefore, cannot be considered at a level of economic development comparable to China.

The petitioner submitted Malaysian data to value all FOPs, including UN Comtrade data for imports into Malaysia of shrimp classified under HTS subheading 0306.17, which covers “Crustaceans; frozen, shrimps and prawns, excluding cold-water varieties, in shell.”<sup>83</sup> When asked for documentation supporting the form in which Shantou RGFP’s raw shrimp was delivered to its processing facility (*i.e.*, frozen, unfrozen, head-on, head-off, shell-on, shell-off, *etc.*), Shantou RGFP reported that, because the “purchase invoices and slips did not noted (*sic*) the form of shrimp, {Shantou RGFP} only can provide the picture to show the head-on shrimp.”<sup>84</sup> Although the petitioner’s shrimp SV covers frozen shrimp, including headless and tailless shrimp,<sup>85</sup> the image provided by Shantou RGFP appears to show unfrozen, whole shrimp.<sup>86</sup> In addition, although the petitioner’s shrimp SV covers frozen white shrimp species, it also covers other species (*i.e.*, tiger prawns (*Penaeus Monodon*) and River Prawns (*Macrobrachium Rosenbergii*)),<sup>87</sup> while Shantou RGFP reported that all of its sales were of white shrimp.<sup>88</sup>

As noted above, Commerce selects a surrogate country that is at the same level of economic development as the NME unless we determine that none of the countries are viable options because: (a) they either are not significant producers of comparable merchandise; (b) do not

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<sup>79</sup> See Petitioner’s SV Comments at Attachment 11; *see also* Shantou RGFP SV Comments at SV-1.

<sup>80</sup> See Shantou RGFP’s Letter, “Submission of Proposed Surrogate Values,” dated January 29, 2020.

<sup>81</sup> *Id.* at Exhibit 8.

<sup>82</sup> See Surrogate Country List (compare China’s GNI of \$9,470 to India’s GNI of \$2,020).

<sup>83</sup> See Petitioner’s Letter, “Information Regarding Selection of Surrogate Values,” dated January 29, 2020, at Attachment 10.

<sup>84</sup> See Shantou RGFP’s January 9, 2020 Supplemental Questionnaire Response at 34 and Exhibit 7 (Shantou RGFP January 9, 2019 SQR).

<sup>85</sup> See Preliminary SV Memo at Attachment 2.

<sup>86</sup> See Shantou RGFP January 9, 2019 SQR.

<sup>87</sup> See Preliminary SV Memo at Attachment 2.

<sup>88</sup> See Shantou RGFP November 22, 2019 CQR at 12-13.

provide sufficient reliable sources of publicly available SV data; or (c) are not suitable for use based on other reasons.<sup>89</sup> In this case, the record contains data for all FOPs in Malaysia, which is at the same level of comparability and is a significant producer of comparable merchandise, and, therefore, the appropriate surrogate country in this review. Absent any compelling arguments, there is no reason why we would select a surrogate country that is not on the Surrogate Country List, unless those countries are not suitable for use based on other reasons. Moreover, although we have a strong regulatory preference for valuing all FOPs in a single surrogate country,<sup>90</sup> the CIT has held that such a preference must still yield to reason and the sourcing of particular SVs from outside the primary surrogate country.<sup>91</sup>

With respect to Shantou RGFP's shrimp input, the record contains the Indian SV from a country that is not economically comparable to China and an SV based on Malaysian import values for frozen shrimp of various species and forms, neither of which provide an ideal choice for valuation of Shantou RGFP's shrimp input. Accordingly, we looked to the economically comparable countries on the Surrogate Country List to determine whether a reasonably suitable alternative to the options submitted by interested parties is available. In reviewing the Malaysian HTS subheadings of Chapter 0306, Commerce located, and is hereby placing on the record of this review, import data under Malaysian HTS subheading 0306.36.2200, which represents imports of "Shrimps And Prawns Other, Live Whiteleg Shrimps (*Litopenaeus Vannamei*)."<sup>92</sup> Imports under this subheading represent publicly available data that are contemporaneous with the POR, tax and duty exclusive, and are reasonably specific to the unfrozen, whole, white shrimp consumed by Shantou RGFP in its production. Importantly, these data are also sourced from Malaysia, which is at the same level of economic comparability as China and is a significant producer of subject merchandise.

Accordingly, we preliminarily determine Malaysia best satisfies Commerce's criteria for selection as the primary surrogate country in this review, and that all FOPs are most suitably valued in Malaysia, including Shantou RGFP's shrimp input.

#### F. Date of Sale

In identifying the date of sale of subject merchandise, in accordance with 19 CFR 351.401(i), Commerce will normally "use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business" unless a different date better reflects the date on which the material terms of sale (*e.g.*, price and quantity) are established.<sup>93</sup> Furthermore, we have a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.<sup>94</sup>

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<sup>89</sup> *Id.*

<sup>90</sup> See 19 CFR 351.408(c)(2).

<sup>91</sup> See, *e.g.*, *Juancheng Kantai Chem. Co. v. United States*, 2015 Ct. Intl. Trade LEXIS 94, \*65-66, 71 (CIT 2015).

<sup>92</sup> See Preliminary SV Memo at Attachment 3.

<sup>93</sup> See, *e.g.*, *Notice of Final Determinations of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying IDM at Comment 1.

<sup>94</sup> See, *e.g.*, *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 10670 (March 12, 2018), and accompanying

Shantou RGFP reported the date of the invoice issued to its unaffiliated U.S. customer as the date of sale.<sup>95</sup> Commerce found no evidence contrary to Shantou RGFP's claim that the invoice date reflected the date on which the material terms of sale were established. Additionally, Shantou RGFP's invoice and shipment date were the same. Thus, because record evidence does not demonstrate that the material terms of sale were established on another date, Commerce used the invoice date as the date of sale for these preliminarily results, in accordance with 19 CFR 351.401(i).<sup>96</sup>

### G. Normal Comparisons

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Shantou RGFP's sales of subject merchandise from China to the United States were made at less than NV, Commerce compared the EP to the NV as described in the "Export Price" and "Normal Value" sections of this memorandum.

#### 1. *Determination of Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs)) (*i.e.*, the average-to-average method) unless Commerce determines that another method is appropriate in a particular situation. In LTFV investigations, Commerce examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in LTFV investigations.<sup>97</sup>

In recent investigations, Commerce applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>98</sup> Commerce finds that

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Preliminary Decision Memorandum (PDM) at 6-7, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 32629 (July 13, 2018).

<sup>95</sup> See Shantou RGFP November 22, 2019 CQR at 16-17.

<sup>96</sup> See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying IDM at Comment 10; see also *Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-92 (CIT 2001) (upholding Commerce's rebuttable presumption that invoice date is the appropriate date of sale).

<sup>97</sup> See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012), and accompanying IDM at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

<sup>98</sup> See, *e.g.*, *Polyethylene Terephthalate Resin from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 19696 (May 4, 2018), unchanged in *Polyethylene Terephthalate Resin from Taiwan: Final Determination of Sales at Less Than*

the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region, and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer codes. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium, or large (0.2, 0.5, and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

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*Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 48287 (September 24, 2018); *Large Diameter Welded Pipe from Canada: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 43649 (August 27, 2018), unchanged in *Large Diameter Welded Pipe from Canada: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 6378 (February 27, 2019); and *Cast Iron Soil Pipe from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 83 FR 44567 (August 31, 2018), unchanged in *Cast Iron Soil Pipe from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 6767 (February 28, 2019).

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if (1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

## 2. Results of the Differential Pricing Analysis

For Shantou RGFP, based on the results of the differential pricing analysis, Commerce preliminarily finds that 12.8 percent of the value of U.S. sales pass the Cohen’s *d* test,<sup>99</sup> and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Thus, the results of the Cohen’s *d* and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, Commerce has

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<sup>99</sup> See Memorandum, “Analysis for the Preliminary Results,” dated concurrently with this memorandum (Preliminary Analysis Memorandum) at Section V.

preliminarily determined to use the standard method in making comparisons of U.S. prices to NV for Shantou RGFP.

## H. U.S. Price

Pursuant to section 772(a) of the Act, EP is “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,” as adjusted under section 772(c) of the Act.

Commerce considers the U.S. prices of all sales by Shantou RGFP to be EPs, in accordance with section 772(a) of the Act, because they were the prices at which the subject merchandise was first sold before the date of importation by the exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States and CEP methodology was not otherwise warranted based on the facts of this record. For this review, Shantou RGFP reported EP for all sales during the POR.<sup>100</sup>

### 1. *Export Price*

We based EP on packed prices to unaffiliated purchasers in the United States. In accordance with 19 CFR 351.401(c) we adjusted the starting price, where appropriate, in accordance with section 772(c)(2)(A) of the Act. We also deducted domestic and international movement expenses (*i.e.*, domestic and foreign inland freight, domestic and foreign brokerage and handling, marine insurance, international freight, and U.S. duties) in accordance with section 772(c)(2)(A) of the Act.<sup>101</sup> Where movement expenses were provided by Chinese service providers or paid for in an NME currency, we valued these services using SVs.<sup>102</sup>

### 2. *Value-Added Tax*

Commerce’s recent practice in NME cases is to adjust EP (or the CEP) for the amount of any unrefunded, (herein irrecoverable) value added taxes (VAT) in certain non-market economies in accordance with section 772(c)(2)(B) of the Act.<sup>103</sup> In changing this practice, Commerce explained that, when an NME government imposes an export tax, duty, or other charges on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, Commerce will reduce the respondent’s EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.<sup>104</sup> Where the irrecoverable VAT is a fixed percentage of EP or CEP, Commerce explained that the final step in

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<sup>100</sup> See Shantou RGFP November 22, 2019 CQR at 31.

<sup>101</sup> See Preliminary Analysis Memorandum.

<sup>102</sup> See Preliminary SV Memorandum.

<sup>103</sup> See *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, in Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012).

<sup>104</sup> *Id.*; see also *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014), and accompanying IDM at Comment 5.A.

arriving at a tax neutral dumping comparison is to reduce the U.S. EP or CEP downward by this same percentage.<sup>105</sup>

VAT is an indirect, *ad valorem* consumption tax imposed on the purchase (sale) of goods. It is levied on the purchase (sale) price of the good, *i.e.*, it is paid by the buyer and collected by the seller. For example, if the purchase price is \$100 and the VAT rate is 15 percent, the buyer pays \$115 to the seller, \$100 for the good and \$15 in VAT. VAT is typically imposed at every stage of production. Thus, under a typical VAT system, firms: (1) pay VAT on their purchases of production inputs and raw materials (“input VAT”) as well as (2) collect VAT on sales of their output (“output VAT”).

Firms calculate input VAT and output VAT for tax purposes on a company-wide (not transaction-specific) basis, *i.e.*, in the case of input VAT, on the basis of *all input purchases* regardless of whether used in the production of goods for export or domestic consumption, and in the case of output VAT, on the basis of *all sales to all markets*, foreign and domestic. Thus, a firm might pay the equivalent of \$60 million in total input VAT across all input purchases and collect \$100 million in total output VAT across all sales. In this situation, however, the firm would remit to the government only \$40 million of the \$100 million in output VAT collected on its sales because of a \$60 million credit for input VAT paid that the firm can claim against output VAT.<sup>106</sup> As result, the firm bears no “VAT burden (cost)”: the firm through the credit is refunded or recovers all of the \$60 million in input VAT it paid, and the \$40 million remittance to the government is simply a transfer to the government of VAT paid by (collected from) the buyer with the firm acting only as an intermediary. Thus, the cost of output VAT falls on the buyer or the good, not on the firm.

This would describe the situation under Chinese law except that producers in China, in most cases, do not recover (*i.e.*, are not refunded) the total input VAT they paid. Instead, Chinese tax law requires a *reduction in or offset* to the input VAT that can be credited against output VAT. This formula for this reduction/offset is provided in Article 5 of the 2012 Chinese government tax regulation, *Circular on Value-Added Tax and Consumption Tax Policies on Exported Goods and Services (2012 VAT Notice)*:<sup>107</sup>

$$\text{Reduction/Offset} = (\mathbf{P} - \mathbf{c}) \times (\mathbf{T}_1 - \mathbf{T}_2),$$

where,

P = (VAT-free) FOB value of export sales;

c = value of bonded (duty- and VAT-free) imports of inputs used in the production of goods for export;

T<sub>1</sub> = VAT rate; and,

T<sub>2</sub> = refund rate specific to the export good.

Using the example above, if P = \$200 million, c = 0, T<sub>1</sub> = 17% and T<sub>2</sub> = 10%, then the reduction/offset = (\$200 million - \$0) x (17% - 10%) = \$200 million x 7% = \$14 million.

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<sup>105</sup> *Id.*

<sup>106</sup> The credit, if not exhausted in the current period, can be carried forward.

<sup>107</sup> *See, e.g.*, Shantou RGFP November 22, 2019 CQR at Exhibit 5 (2012 VAT Notice).

Chinese law then requires that the firm in this example calculate creditable input VAT by subtracting the \$14 million from total input VAT, as specified in Article 5.1(1) of the *2012 VAT Notice*:

$$\text{Creditable input VAT} = \text{Total input VAT} - \text{Reduction/Offset}$$

Using again the example above, the firm can credit only \$60 million – \$14 million = \$46 million of the \$60 million in input VAT against output VAT. Since the \$14 million is not creditable (legally recoverable), it is not refunded to the firm. Thus, the firm incurs a cost equal to \$14 million, which is calculated on the basis of FOB export value at the *ad valorem* rate of  $T_1 - T_2$ . This cost therefore functions as an “export tax, duty, or other charge” because the firm does not incur it *but for* exportation of the subject merchandise, and under Chinese law it must be recorded as a cost of exported goods.<sup>108</sup> It is for this “export tax, duty, or other charge” that Commerce makes a downward adjustment to U.S. price under section 772(c) of the Act.<sup>109</sup>

It is important to note that under Chinese law, the reduction/offset described above is defined in terms of, and applies to, total (company-wide) input VAT across purchases of all inputs, whether used in the production of goods for export or domestic consumption. The reduction/offset does not distinguish the VAT treatment of export sales from the VAT treatment of domestic sales from an input VAT recovery standpoint for the simple reason that such treatment under Chinese law applies to the company as a whole, not specific markets or sales. At the same time, however, the reduction/offset is calculated on the basis of the FOB value of exported goods, so it can be thought of as a tax on the company (*i.e.*, a reduction in the input VAT credit) that the company would not incur but for the export sales it makes, a tax fully allocable to export sales because the firm under Chinese law must book it as cost of exported goods.

The VAT treatment under Chinese law of exports of goods described above concerns only export sales that are *not* subject to output VAT, the situation where the firm collects no VAT from the buyer, which applies to most exports from China. However, the *2012 VAT Notice* provides for a limited exception in which export sales of certain goods are, under Chinese law, deemed domestic sales for tax purposes and are thus subject to output VAT at the full rate.<sup>110</sup> The formulas discussed above from Article 5 of the *2012 VAT Notice* do not apply to firms that export these goods, and there is therefore no reduction in or offset to their creditable input VAT. For these firms creditable input VAT = total input VAT, *i.e.*, these firms recover all their input

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<sup>108</sup> Article 5(3) of the *2012 VAT Notice* states: “If the tax refund rate is lower than the applicable tax rate, the tax for the difference calculated accordingly shall be included in the cost of exported goods and labor services.”

<sup>109</sup> Because the \$14 million is the amount of input VAT that is not refunded to the firm, it is sometimes referred to as “irrecoverable input VAT.” However, that phrase is perhaps misleading because the \$14 million is not a fraction or percentage of the VAT the firm paid on purchases of inputs used in the production of exports. If that were the case, the value of production inputs, not FOB export value, would appear somewhere in the formula in Article 5 of the *2012 VAT Notice* as the tax basis for the calculation. The value of production inputs does not appear in the formula. Instead, as explained above, the \$14 million is simply a cost imposed on firms that is tied to export sales, as evidenced by the formula’s reliance on the FOB export value as the tax basis for the calculation. The \$14 million is a reduction in or offset to what is essentially a tax credit, and it is calculated based on and is proportional to the value of a company’s export sales. Thus, “irrecoverable input VAT” is in fact, despite its name, an export tax within the meaning of section 772(c) of the Act.

<sup>110</sup> See *2012 VAT Notice*, Article 7. For these goods, the VAT refund rate on export is zero.

VAT. At the same time, export sales of these firms are subject to an explicit output VAT at the full rate,  $T_1$ .<sup>111</sup> Commerce must therefore deduct this tax from U.S. price<sup>112</sup> under section 772(c) of the Act to ensure tax-neutral dumping margin calculations.<sup>113</sup>

In the initial questionnaires, Commerce instructed Shantou RGFP to report VAT on the subject merchandise sold to the United States during the POR and to identify which taxes are unrefunded upon export.<sup>114</sup> Information placed on the record of this review indicates that, according to China's VAT schedule, the standard VAT levied during the period January through April 2018 was 17 percent and the refund rate for the subject merchandise was 15 percent; that during the period May through October 2018, it was 16 percent and the refund rate was 15 percent; and that during the period November 2018 through January 2019, the VAT levy and refund rate were 16 percent.<sup>115</sup> Consistent with our standard methodology, for purposes of these preliminary results, we based the calculation of irrecoverable VAT on the difference between those standard rates, applied to a FOB price at the time of exportation.<sup>116</sup> Thus, because the VAT levy and VAT rebate rates on exports are different during certain periods of the POR, we adjusted Shantou RGFP's U.S. sales for irrecoverable VAT.

### I. Normal Value

Section 773(c)(1) of the Act provides that Commerce shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. Commerce bases NV in an NME context on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under Commerce's normal methodologies. Commerce's questionnaire requires that a respondent provide information regarding the weighted-average FOPs across all of the company's plants and/or suppliers that produce the subject merchandise, not just the FOPs from a single plant or supplier.<sup>117</sup> This methodology ensures that Commerce's calculations are as accurate as possible.<sup>118</sup>

Therefore, we calculated NV based on FOPs reported by Shantou RGFP for the POR, in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). Under section 773(c)(3) of the Act, FOPs include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and

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<sup>111</sup> See 2012 VAT Notice, Article 7.2(1).

<sup>112</sup> Commerce will divide the VAT-inclusive export price by  $(1 + T)$ , where  $T$  is the applicable VAT rate.

<sup>113</sup> Pursuant to sections 772(c) and 773(c) of the Act, the calculation of NV based on FOPs in NME antidumping cases is calculated on a VAT-exclusive basis, so U.S. price must also be calculated on a VAT-exclusive basis to ensure tax neutrality.

<sup>114</sup> See NME Questionnaire.

<sup>115</sup> See Shantou RGFP November 22, 2019 CQR at 18-19 and Exhibit SC-14.

<sup>116</sup> See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013*, 80 FR 33241 (June 11, 2015), and accompanying IDM at Comment 5.

<sup>117</sup> See Initial Questionnaire at Section D.

<sup>118</sup> See, e.g., *Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China*, 79 FR 25572 (May 5, 2014), and accompanying IDM at Comment 7

(4) representative capital costs.<sup>119</sup> We used the FOPs reported by Shantou RGFP for materials, energy, labor, by-products, packing, and freight. In accordance with section 773(c) of the Act and 19 CFR 351.408(c)(1), we calculated the cost of FOPs by multiplying the reported per-unit FOP consumption rates by publicly available SVs.<sup>120</sup> We summed the FOP and freight costs to derive NV.

### *1. Factor Valuations*

As noted above, when selecting from among the available information for valuing FOPs, Commerce's practice is to select, to the extent practicable, SVs which are publicly available, broad market averages, contemporaneous with the POR or closest in time to the POR, product-specific, and tax-exclusive.<sup>121</sup> As appropriate, we adjusted FOP costs by including freight costs to make them delivered values. Specifically, we added a surrogate freight cost, where appropriate, to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory.<sup>122</sup> An overview of the SVs used to calculate weighted-average dumping margins for the mandatory respondent is described below. For a detailed description of all SVs used to calculate the weighted-average dumping margins *see* the Preliminary SV Memorandum.

#### *a. Direct and Packing Materials*

GTA import prices for the primary surrogate country, Malaysia, are generally publicly available, representative of a broad market average, contemporaneous with the POR, product-specific, and tax-exclusive.<sup>123</sup> Thus, we based SVs for Shantou RGFP's direct and packing materials (with the exception of water) on Malaysian import values.<sup>124</sup> Commerce valued water using data provided by Shantou RGFP from "SPAN (Suruhanjaya Perkhidmatan Air Negara) of National Water Service Commission."<sup>125</sup> The value is an average of the rates that would apply based on the actual reported water usage by Shantou RGFP during the POR.<sup>126</sup>

Pursuant to section 773(c)(5) of the Act and the legislative history of the Omnibus Trade and Competitiveness Act of 1988, Commerce continues to apply its long-standing practice of disregarding certain prices as SVs if it has reason to believe or suspect that those prices may have been dumped or subsidized.<sup>127</sup> In this regard, Commerce previously found that it is

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<sup>119</sup> See section 773(c)(3)(A)-(D) of the Act.

<sup>120</sup> See Preliminary SV Memorandum.

<sup>121</sup> 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).

<sup>122</sup> See *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997) (*Sigma Corp.*).

<sup>123</sup> See Preliminary SV Memorandum.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> See Shantou RGFP November 22, 2019 DQR at Exhibit D-10; *see also* Preliminary SV Memorandum.

<sup>127</sup> See Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590.

appropriate to disregard such prices from India, Indonesia, South Korea, and Thailand because we determined that these countries maintain broadly available, non-industry specific, export subsidies.<sup>128</sup> Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, Commerce finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea, and Thailand may have benefitted from these subsidies. Therefore, Commerce has not used prices from these countries in calculating the Malaysian import-based SVs. Commerce similarly disregarded prices from NME countries. Finally, imports that were labeled as originating from an “unspecified” country were excluded from the average value, since Commerce could not be certain that these imports were not from either an NME country or a country with generally available export subsidies.<sup>129</sup>

Commerce adjusted the SVs, as appropriate, for exchange rates and taxes. As appropriate, Commerce adjusted FOP costs by including freight costs to make them delivered values. Specifically, Commerce added a surrogate freight cost, where appropriate, to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent’s factory or the distance from the nearest seaport to the respondent’s factory.<sup>130</sup>

*b. Energy*

Commerce valued electricity using prices provided by Shantou RGFP, as published by the Malaysian Investment Development Authority, showing Tenaga Nasional Berhad’s 2017 tariff schedule.<sup>131</sup>

*c. Labor*

In *Labor Methodologies*,<sup>132</sup> Commerce determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Commerce does not, however, preclude other sources for valuing labor.<sup>133</sup> Rather, we continue to follow our practice of selecting the best available information. Here, we determined that the best data

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<sup>128</sup> See, e.g., *Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying IDM at 4-5; see also *Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005), and accompanying IDM at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying IDM at 17, 19-20; and *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013), and accompanying IDM at IV.

<sup>129</sup> See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008); see also Preliminary SV Memorandum.

<sup>130</sup> See *Sigma Corp.*, 117 F. 3d at 1407-08.

<sup>131</sup> See Shantou RGFP SV Comments at Exhibit SV-4; see also Preliminary SV Memorandum.

<sup>132</sup> See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092-36094 (June 21, 2011) (*Labor Methodologies*).

<sup>133</sup> See *Steel Wire Garment Hangers from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 65616 (November 5, 2014), and accompanying IDM at 11.

source from the primary surrogate country was the labor data from the Malaysia Department of Statistics.<sup>134</sup>

*d. Movement Services*

We used various sources to value movement services. For inland freight and brokerage and handling (B&H), we valued these expenses using a price list for charges related to importing/exporting a standardized cargo of goods in and out of Malaysia, as published in the World Bank's *Doing Business 2019: Malaysia*.<sup>135</sup> Because the GTA import prices for Malaysia were reported on a cost, insurance and freight basis, we did not adjust the input prices by including international freight, marine insurance, and B&H.<sup>136</sup> We valued international freight using price rates from Descartes.com.<sup>137</sup> We did not inflate or deflate the rates because they were in effect during the POR.<sup>138</sup>

*e. Financial Ratios*

Pursuant to 19 CFR 351.408(c)(4), Commerce values selling, general and administrative (SG&A) expenses, factory overhead expenses, and profit using publicly available information gathered from producers of comparable merchandise in the surrogate country. To value factory overhead, SG&A expenses, and profit for these preliminary results, we relied on the 2018 financial statements from CCK Consolidated Holdings Berhad, QL Resources Berhad, and CAB Cakaran Corporation Berhad, which are Malaysian producers of food and animal products, which represent the best available information on the record.<sup>139</sup>

J. Currency Conversion

Where necessary, Commerce 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.

**VI. RECOMMENDATION**

We recommend applying the above methodology for these preliminary results.

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<sup>134</sup> See Shantou RGFP SV Comments at Exhibit SV-3.

<sup>135</sup> See Shantou RGFP SV Comments at Exhibit SV-6; *see also* Preliminary SV Memorandum.

<sup>136</sup> See Import Administration Policy Bulletin 10.2: Inclusion of International Freight Costs When Import Prices Constitute Normal Value (November 1, 2010) at 1-2; *see also, e.g., Certain Quartz Surface Products from the People's Republic of China: Preliminary Determination of Sales at Less Than Sales Value and Postponement of Final Determination*, 83 FR 58540 (November 20, 2018), and accompanying PDM at 31, unchanged in *Certain Quartz Surface Products From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84 FR 23767 (May 23, 2019), and accompanying IDM at Comment 10.

<sup>137</sup> See Petitioner's SV Comments at Attachment 9; *see also* Preliminary SV Memorandum.

<sup>138</sup> *Id.*

<sup>139</sup> See Preliminary SV Memorandum; *see also* Petitioner's SV Comments at Attachments 3 and 4; and Shantou RGFP SV Comments at SV-7.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

2/28/2020

X 

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Signed by: JEFFREY KESSLER

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Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance