DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–805]

Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands; Final Results of Antidumping Administrative Review; Correction

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

ACTION: Notice of Final Results of the Antidumping Duty Administrative Review; Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands; Correction.

CORRECTION: On July 16, 1997, the Department published in the **Federal Register** the final results of administrative review in connection with *Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands,* covering the period June 1, 1995, through May 31, 1996. (62 FR 38,058) The Department inadvertently omitted the word ''not'' in the second sentence of the ''Department's Position'' with respect to Comment 6. Pursuant to 19 CFR 353.28 (d) of the Department's regulations, we correct this sentence to read: ''As explained at length in the final results of the first administrative review, the Department determined not to accept Akzo's accounting method for the amortization of goodwill expense as reasonable''.

EFFECTIVE DATE: August 1, 1997.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan at (202) 482–0193, Eugenia Chu at (202) 482–3964, or Ellen Knebel at (202) 482–0409, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Dated: July 22, 1997.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat From the People's Republic of China

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

EFFECTIVE DATE: August 1, 1997.

FOR FURTHER INFORMATION CONTACT: Elisabeth Urfer, Rebecca Trainor, or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4052, (202) 482–0666, or (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR Part 353 (April 1, 1996).

Final Determination

We determine that freshwater crawfish tail meat (crawfish tail meat) from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act.

Case History

The Crawfish Processors Alliance is the petitioner in this investigation. As discussed in the preliminary determination, the following PRC exporters submitted full questionnaire responses in a timely manner: China Everbright Trading Company (China Everbright), Binzhou Prefecture Foodstuffs Import and Export Corp. (Binzhou), Yancheng Fengbao Aquatic Food Co., Ltd. (Yancheng Fengbao), Yancheng Foreign Trade Corp. (Yancheng FTC), Huaiyin Foreign Trade Corp. (Huaiyin FTC), Jiangsu Cereals, Oils & Foodstuffs Import & Export Corp. (Jiangsu Cereals), Jiangsu Light Industrial Products Import & Export (Group) Yangzhou Co. (Jiangsu Light), Lianyungang Yupeng Aquatic Products (Yupeng), Jiangsu Overseas Group Corp. (Jiangsu Overseas), Anhui Cereals, Oils and Foodstuffs Import & Export Corp. (Anhui Cereals), Qidong Baolu Aquatic Products Co., Ltd. (Qidong Baolu), Shandong Foodstuffs Import & Export parte. Corp. (Shandong), Nantong Delu Aquatic Food Co., Ltd. (Nantong Delu), Huaiyin Ningtai Fisheries Co., Ltd. (Huaiyin Ningtai), and Yancheng Baolong Aquatic Foods Co., Ltd. (Yancheng Baolong). Four of these firms, Anhui Cereals, Qidong Baolu, Shandong, and Jiangsu Overseas, reported no shipments during the period of investigation (POI). The Department selected the following six exporters (collectively referred to as ''respondents'') and their respective suppliers, to examine in this investigation: (1) China Everbright; (2) Binzhou; (3) Huaiyin FTC; (4) Yancheng FTC; (5) Jiangsu Light; and (6) Yupeng. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat From the People's Republic of China* 62 FR 14393 (March 26, 1997) (preliminary determination).

Since the preliminary determination in this investigation, the following events have occurred:

On April 3, 1997, we requested additional information regarding the size and grading of crawfish in Spain and the United States. We received a response from petitioner on April 17, 1997. In April and May 1997 we verified the respondents' questionnaire responses. On May 13, 1997, we received a request for a clarification of the scope of this investigation from Red Chamber Co. (Red Chamber). Red Chamber requested that the Department determine that shell-on crawfish tails produced in and exported from China to the United States are not within the scope of the investigation. On June 9, 1997, we received a request for a suspension agreement from respondents; however, no suspension agreement resulted from this request. Petitioner and respondents submitted case briefs on June 9, 1997, and rebuttal briefs on June 17, 1997. A public hearing was held on June 24, 1997.

Scope of the Investigation

The product covered by this investigation is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the investigation are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the

Harmonized Tariff Schedule of the United States (HTS) under item numbers 0306.19.00.10 and 0306.29.00.00. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this investigation is dispositive.

Period of Investigation

The POI is March 1, 1996 through August 31, 1996.

Separate Rates

Each of the participating respondent exporters has requested a separate, company-specific antidumping rate. For four of these respondents, we are able to calculate an antidumping margin that is not based on total facts available. These respondents, Binzhou, Huaiyin, China Everbright, and Yancheng FTC, are owned by all the people.

As stated in *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*), and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China,* 60 FR 22545 (May 8, 1995) (*Furfuryl Alcohol*), ownership of a company by all the people does not require the application of a single rate. Accordingly, all four are eligible for consideration for a separate rate.

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test originally set forth in the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), and amplified in *Silicon Carbide.* Under the separate rates criteria, the Department assigns separate rates in nonmarket economy (NME) cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. *De Jure* Control

The respondents have placed on the administrative record a number of documents to demonstrate absence of *de jure* control. Respondents submitted the Civil Law of the People's Republic of China, issued on April 12, 1988 (the Civil Law) and the ''Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People,'' adopted April 13, 1988 (the Industrial Enterprises Law). The Department has previously determined that the Civil Law does not confer *de jure* independence on the branches of government-owned and controlled enterprises. *See Sigma Corp.* v. *United States,* 890 F. Supp. 1077, 1080 (CIT 1995). However, the Industrial Enterprises Law has been analyzed by the Department in past cases and has been found to sufficiently establish an absence of *de jure* control of companies ''owned by the whole people,'' such as those participating in this case. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China,* 60 FR 29571, 29573 (June 5, 1995) (*Steel Drawer Slides); Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China,* 60 FR 14725, 14727 (March 20, 1995); and *Furfuryl Alcohol.* The Industrial Enterprises Law provides that enterprises owned by ''the whole people'' shall make their own management decisions, be responsible for their own profits and losses, choose their own suppliers, and purchase their own goods and materials. The Regulations of the People's Republic of China for Controlling the Registration of Enterprises as Legal Persons (Legal Persons Regulations), issued on July 13, 1988 by the State Administration for Industry and Commerce of the PRC, provide that, to qualify as legal persons, companies must have the ''ability to bear civil liability independently'' and the right to control and manage their businesses. These regulations also state that, as an independent legal entity, a company is responsible for its own profits and losses. *See Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China,* 60 FR 56046 (November 6, 1995) (*Manganese Metal*). Respondents have also submitted the ''Foreign Trade Law of the People's Republic of China,'' enacted May 12, 1994 (the Foreign Trade Law), which allows producers to export without using trading companies, and further demonstrates the absence of *de jure* control. *See, e.g., Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China,* 61 FR 19026 (April 30, 1996) (*Bicycles*); and *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Melamine Institutional Dinnerware Products from the People's Republic of China,* 61 FR 43337 (August 22, 1996) (*Melamine*). We have also placed on the record of this case the ''Law of the People's Republic of China on Chinese Contractual Joint Ventures'' (April 13, 1988) which has been submitted as evidence of absence of *de jure* control with respect to Chinese-foreign joint venture corporations in other proceedings. *See* our Concurrence Memorandum dated March 18, 1997 (Preliminary Concurrence Memorandum); and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determinations: Brake Drums and Brake Rotors from the People's Republic of China,* 61 FR 53190, 53192 (October 10, 1996) (Brake Drums and Rotors). The articles of this law authorize joint venture companies to make their own operational and managerial decisions. At verification, we examined a MOFTEC-issued lists of goods that are restricted for export, and we confirmed that crawfish tail meat does not appear on these lists. We also confirmed that the PRC government does not impose quotas or licensing restrictions on crawfish tail meat.

In sum, in prior cases, the Department has analyzed the Chinese laws and regulations on the record in this case, and found that they establish an absence of *de jure* control. We have no new information in these proceedings which would cause us to reconsider this determination.

2. *De Facto* Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental authority; (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. *See, e.g., Silicon Carbide* and *Furfuryl Alcohol.*

Respondents have asserted the following: (1) They establish their own export prices; (2) they negotiate contracts without guidance from any governmental entities or organizations; (3) they make their own personnel decisions; and (4) they retain the proceeds of their export sales, use profits according to their business needs, and have the authority to obtain loans. In addition, respondents' questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination

among exporters. During verification proceedings, Department officials reviewed such evidence as sales documents, company correspondence which documented price negotiations, company business plans, and bank statements. *See, e.g., Verification of Sales for Huaiyin Foreign Trade Corporation (Huaiyin) in the Antidumping Duty Investigation of Freshwater Crawfish Tail Meat from the People's Republic of China (PRC),* dated June 2, 1997 and *Verification of Sales for Binzhou Perfecture Foodstuffs Import and Export Corp. (Binzhou) in the Antidumping Duty Investigation of Freshwater Crawfish Tail Meat from the People's Republic of China (PRC),* dated June 2, 1997. We examined each company's business license and confirmed the issuing authority does not impose any type of restriction on respondents' businesses. We also discussed with company officials the processes involved with setting prices, electing management, and determining business plans and sales targets. We found that each company sets its own prices, negotiates contracts, selects its own management, and retain proceeds from export sales. This information supports a finding that there is a *de facto* absence of governmental control of export functions. Consequently, we are applying separate rates to the respondents for which we can calculate an antidumping margin that is not based on total facts available.

In addition, we attempted to conduct a separate rates verification for Yancheng Fengbao, which claimed to be an exporter of subject merchandise during the POI in its December 13, 1996 separate rates response to section A of the Department's questionnaire. This company had not been selected for our investigation. At verification we found that Yancheng Fengbao had served only as a supplier, not an exporter, of crawfish tail meat during the POI. *See* Verification of Separate Rates for Yancheng Fengbao Aquatic Foods Company, Ltd., June 6, 1997, and the ''Rate for Respondents Not Selected'' section of this notice. Because Yancheng Fengbao is not an exporter, we have not granted Yancheng Fengbao a separate rate.

China-Wide Rate

We are applying a single antidumping deposit rate—the China-wide rate—to all exporters in the PRC other than those firms that were fully responsive to our requests for information. This determination is based on our presumption that the export activities of the companies that failed to respond are controlled by the PRC government. *See, e.g., Sigma Corp.* v. *the United States,* 1997 U.S. App. LEXIS 16506 (Fed. Cir. July 7, 1997).

We did not receive a response from the PRC's Ministry of Foreign Trade and Economic Cooperation (MOFTEC) to our letter requesting the identification of producers and exporters, and information regarding the production and sales of crawfish tail meat exported to the United States. Furthermore, we received only limited information with respect to the Chinese crawfish industry from the China Chamber of Commerce for Import & Export of Foodstuffs, Native Produce, & Animal By-Products (the China Chamber). Therefore, we do not know the universe of PRC crawfish tail meat exporters. The petition named 61 PRC producers and/or exporters of crawfish tail meat and we received responses from fifteen exporters. Furthermore, we have evidence on the record confirming that there are at least some additional exporters. *See* Memorandum to the File: Crawfish Import Statistics, dated March 31, 1997 (PIERS Data Memorandum). Therefore, we conclude that not all exporters of crawfish tail meat responded to our questionnaire.

Further, consistent with Department practice, we presume government control of these and all other PRC companies which have not established that they are entitled to separate rates. As discussed above, all PRC exporters that have not qualified for a separate rate have been treated as a single enterprise subject to government control. Because that single enterprise failed to respond to the Department's requests for information, that single enterprise is considered to be uncooperative.

Section 776(a)(2) of the Act provides that:

> If an interested party or any other person—(A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Accordingly, the Department based the China-wide antidumping rate on facts otherwise available. In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may draw an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. Section 776(b) provides that such an adverse inference may be based on secondary information, including information drawn from the petition.

The non-responding exporters have failed to cooperate by not acting to the best of their ability to comply with the Department's request for information. Accordingly, consistent with section 776(b)(1) of the Act, we have drawn an adverse inference, and applied as total adverse facts available, the margin from the petition, as adjusted. *See* Memorandum from Elisabeth Urfer to Edward Yang, Corroboration of Petition, March 18, 1997 (Corroboration Memorandum), on file in Room B–099 of the Commerce Department.

Section 776(c) of the Act provides that when the Department relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information with independent sources reasonably at the Department's disposal. The Statement of Administrative Action (SAA) accompanying the URAA clarifies that the petition is ''secondary information.'' *See* SAA at 870. The SAA also clarifies that ''corroborate'' means to determine whether the information used has probative value. *Id.*

In accordance with this requirement, we corroborated the margins in the petition to the extent practicable. *See* Corroboration Memorandum. The petitioner based export prices on actual FOB and CIF price quotations from exporters of Chinese crawfish tail meat. We compared the starting prices used by petitioner to prices derived from U.S. import statistics, and found that the similarity to the import statistics corroborated the starting prices in the petition. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from South Africa,* 61 FR 24271, 24273 (May 14, 1996); and *Brake Drums and Rotors.* Petitioner made deductions to the export price for foreign inland freight, using the average distance between cities where crawfish tail meat is processed in the PRC and the ports from which the majority of Chinese crawfish tail meat is exported. We could not corroborate the freight rate used by petitioner with other information on the record; therefore, we adjusted the freight rate used in the petition based on the surrogate value used in the margin calculations. We made no other adjustments to export price. Petitioner based normal value

(NV) on surrogate factor values obtained from Spanish import data and publicly available information from India. We confirmed the accuracy of petitioner's NV data by comparing the values used in the petition with values obtained from publicly available information collected in these and previous NME investigations. We adjusted petitioner's NV calculation using current Spanish import statistics. *See* Corroboration Memorandum.

Rate for Respondents Not Selected

As stated above, several PRC companies which reported shipments during the POI submitted full questionnaire responses in a timely manner and claimed eligibility for separate rates, but were not selected for analysis in this investigation. It would be inappropriate to assign these fully cooperative respondents a rate based on adverse facts available. Therefore, we have assigned these cooperative respondents a weighted-average dumping margin based on the calculated margins of the four selected respondents that fully cooperated, except those that were zero or *de minimis*. *See Brake Drums and Rotors*. As noted in the separate rates section above, our verification of Yancheng Fengbao revealed that Yancheng Fengbao was not an exporter of crawfish tail meat during the POI. Therefore, for the final determination, we are removing Yancheng Fengbao from the group of exporters to whom we are assigning a cooperative weighted-average antidumping margin.

Facts Available

Section 776(a)(2)(D) of the Act provides that if an interested party provides information that cannot be verified, the Department shall, subject to Section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination. For a further discussion of the use of facts otherwise available, *see* the ''China-Wide Rate'' section above.

Consistent with sections 776 (a)(2) and (b)(1) of the Act, we have determined to assign an antidumping margin based on total adverse facts available to two exporters, Jiangsu Light and Yupeng. We have assigned total facts available to Jiangsu Light because: (1) Jiangsu Light failed to report three of the factories which supplied a significant portion of subject merchandise sold during the POI; (2) Jiangsu Light failed to report a significant portion of its U.S. sales; (3) Jiangsu Light failed to report U.S. sales commissions; and (4) we could not verify the factors of production for one of Jiangsu Light's reported suppliers, Baoying Coldstorage Factory (Baoying). We have also assigned Yupeng, a producer and exporter, a margin based on the total facts available, because we could not verify Yupeng's factors of production. At verification, we also found several discrepancies, including misreported quantities, total prices, terms of sale and shipment dates, for a significant portion of Yupeng's reported U.S. sales. As total facts available, we have assigned the corroborated margin from the petition. *See* the Final Concurrence Memorandum, dated July 24, 1997 (Final Concurrence Memorandum).

Fair Value Comparisons

To determine whether respondents' sales of the subject merchandise to the United States were made at less than fair value, we compared United States Price (USP) to NV, as described in the ''United States Price'' and ''Normal Value'' sections of this notice.

United States Price

We based USP on export price (EP) in accordance with section 772(a) of the Act, because the crawfish tail meat was sold directly to the first unaffiliated purchaser in the United States prior to importation, and constructed export price methodology was not otherwise indicated by the facts in this case. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted average NVs to POI-wide weighted-average EPs.

We corrected the respondents' data for errors and minor omissions submitted to the Department or found at verification, as follows:

1. China Everbright

We calculated EP in accordance with our preliminary calculations, except that, based on findings at verification, we: (1) Corrected freight distances and removed inland insurance expenses; (2) corrected the terms of sale for all sales; and (3) corrected the unit price, ship date, and supplier for certain U.S. sales where these items were incorrectly reported.

2. Binzhou

We calculated EP in accordance with our preliminary calculations except that, based on findings at verification, we: (1) Excluded two U.S. sales which we found had been made before the POI; (2) corrected freight distances and removed inland insurance expenses; (3) changed ship dates and sale dates, and adjusted quantities, for certain sales; and (4) substituted the NVs for the factories that actually supplied the merchandise sold, based upon our determination that certain sales had been incorrectly reported as being made by particular factories.

3. Huaiyin

We calculated EP in accordance with our preliminary calculations except that, based on findings at verification, we: (1) Corrected freight distances, removed inland freight insurance and added expenses incurred for marine insurance and brokerage expenses; (2) changed the terms of sale for all reported sales; and (3) changed ship dates and adjusted quantities for certain sales.

4. Yancheng Foreign Trade

We calculated EP in accordance with our preliminary calculations except that we corrected inland freight distances and the terms of sale for certain sales where these items were incorrectly reported.

5. Yupeng

As noted above, we used total facts available for Yupeng.

6. Jiangsu Light

As noted above, we used total facts available for Jiangsu Light.

Normal Value

Factors of Production

We calculated NV based on factors of production cited in the preliminary determination, making adjustments for specific verification findings. To calculate NV, we multiplied the verified factors of production usage rates by the appropriate surrogate values for the various inputs. We have used the same surrogate sources as in the preliminary determination and have used more recent publications where available. We are applying facts available to our calculation of NV for both Baoying and Lianyungang Haifu Aquatic Farming Corporation (Haifu), producers for Jiangsu Light and China Everbright, respectively. As facts available, we are using the corroborated NV from the petition. We are using facts available for Baoying because we were unable to verify reported input amounts for several significant inputs. We are using facts available for Haifu because, at verification: (1) We could not reconcile Haifu's sales and cost data, (2) Haifu could not demonstrate how reported labor factors were calculated, and (3) we could not verify reported water usage amounts. *See Final Analysis Memorandum from Elisabeth Urfer to the file*, dated July 24, 1997 (Final Analysis Memorandum).

At verification, we found that several factories did not use all of the reported packing materials, and reported incorrect per-unit packing material usage amounts. We also found discrepancies between reported and actual distances between each factory and its supplier of various inputs. In our calculation of NV for the final determination, we are using the actual per-unit amounts, the actual distances and the actual packing materials used, as found at verification. *See* the Final Analysis Memorandum.

Based on our findings at verification, we have made additional company specific adjustments as follows:

1. Qidong Baolu: We calculated NV in accordance with our preliminary calculations except for the following changes based on findings at verification: (1) We corrected reported per-unit amounts for tail meat, by-product, electricity, unskilled labor, skilled labor, indirect labor, unskilled packing labor, and skilled packing labor; (2) because we were unable to verify water usage rates, we used, as facts available, the highest of ranged public water amounts submitted in the public versions of the December 23, 1996 section D submissions for other factories; (3) we have removed labels from the calculation since these are not used by Qidong Baolu, and have added a factor for plastic bands which Qidong Baolu did not originally report; and (4) we corrected the distances between Qidong Baolu and its suppliers of packing materials, and the usage amounts for packing materials.

2. Haifu: As noted above, we are basing our calculation of NV for Haifu entirely on the facts available.

3. Jiangsu Gangyu Shakou Freezer Factory (Shakou): We calculated NV in accordance with our preliminary calculations except that, based on findings at verification, we: (1) Corrected reported per-unit amounts for tail meat, by-product, coal, water, electricity, indirect labor, skilled labor, unskilled labor, skilled packing labor, and unskilled packing labor; (2) removed the paper and labels which Shakou does not use to package crawfish tail meat; and (3) replaced reported distances for suppliers of packing materials and per-unit amounts of packing materials with actual distances and amounts, respectively.

4. Jiangsu Gangyu Pengchen Aquatic Company (Pengchen): We calculated NV in accordance with our preliminary calculations except that, based on findings at verification, we: (1) Corrected per-unit usage amounts for by-product, coal, and electricity; (2) used, as facts available, the highest total ranged public water usage figure submitted in the December 23, 1996 section D submissions for other factories, since we were unable to verify reported water amounts; (3) used, as facts available, the higher of the corroborated petition rate for labor or the highest total ranged public labor usage figure submitted in the December 23, 1996 submissions for other factories, since we were unable to verify reported labor usage rates; (4) removed the packing materials of paper and labels which Pengchen does not use to package crawfish tail meat; and 5) replaced reported distances for suppliers of packing materials and per-unit amounts of packing materials with actual distances and amounts, respectively.

5. * * * [1]: We calculated NV in accordance with our preliminary calculations except that, based on findings at verification, we: (1) Corrected per-unit amounts for by-product, electricity, unskilled labor, unskilled packing labor and water; (2) removed the labels which * * * does not use to package crawfish tail meat; and (3) replaced reported distances for suppliers of packing materials and per-unit amounts of packing materials with actual distances and amounts, respectively.

6. Yupeng: As noted above, we are applying total facts available to Yupeng.

7. Xinghua Meat Processing Factory (Xinghua): Since we are using the total facts available for Jiangsu Light, the exporter which Xinghua supplied during the POI, we are not using Xinghua's factors of production data for the final determination.

8. Yancheng Fengbao: We calculated NV in accordance with our preliminary calculations except that, based on findings at verification, we: (1) Included expenses which Yancheng Fengbao incurs for barge freight for the transportation of coal, and valued this freight expense using an August 1993 U.S. Embassy Cable which was used in *Steel Drawer Slides;* (2) removed labels from the calculation since we found that Fengbao does not use this input to package crawfish tail meat; (3) replaced reported distances for suppliers of packing materials and per-unit amounts of packing materials with actual distances and amounts, respectively; (4) used, as facts available, the highest total ranged public water usage figure submitted in the December 23, 1996 section D submissions for other factories, since we were unable to verify reported water amounts; and (5) used, as facts available, the higher of the corroborated petition rate for labor or the highest total ranged public labor usage figure submitted in the December 23, 1996 submissions for other factories, since we were unable to verify reported labor usage rates.

9. Baoying: As noted above, we are basing our calculation of NV for Baoying entirely on the facts available.

10. Jiangsu Funing Aquatic Corporation: We calculated NV in accordance with our preliminary calculations except that, based on findings at verification, we: (1) Corrected reported per-unit amounts for tail meat, by-product, water, electricity, indirect labor, skilled labor, unskilled labor, skilled packing labor, and unskilled packing; and (2) replaced reported distances for suppliers with actual distances.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Additional Changes for the Final Determination

For the final determination, we have recalculated labor using data from the 1996 Yearbook of Labor Statistics (YLS), which provides more contemporaneous labor rates for India than the 1995 edition used for the preliminary determination. *See* the Final Analysis Memorandum.

Summary of Comments Received

Comment 1: Market-Oriented Industry: Respondents argue that they have responded to every inquiry and have submitted all information in their power to submit, all of which supports the conclusion that the crawfish tail meat industry in the PRC is a market-oriented industry (MOI). Respondents further argue that to require them to develop information about every other potential producer or exporter, including all the companies which have gone out of business, is overly burdensome and fundamentally unfair. They assert that there is no readily available source of the type of information the Department requires and that no individual respondent has the ability to provide information about other unrelated companies. Respondents contend that, if the Department truly intends to recognize and encourage the changes in the PRC by which some industries are market

[1] The name of this factory is business proprietary information.

oriented, the Department ought not demand proof which is impossible to obtain.

Respondents argue that the MOI analysis in this case is relatively simple, as the components of the crawfish industry are few. Respondents maintain that Congress expects the Department to use actual data from the NME when doing so provides the most fair and accurate calculation. Respondents assert that the costs of the two most significant input factors in the processing of crawfish tail meat, the raw material (live crawfish), and labor, are determined by market forces. As support, respondents cite data on the record which they claim establish that prices paid to fisherman for live crawfish in the PRC vary from company to company, and fluctuate based on market supply and demand. Furthermore, respondents claim the crawfish tail meat prices charged by exporters are negotiated between the exporters and their customers, and are in no way controlled by the PRC government. Respondents also maintain that information on the record establishes that the PRC government has no control over wages paid to workers in crawfish processing factories and export companies. Respondents further contend that the cost of utilities such as coal and electricity are not controlled by the government and that data on the record reveals that prices paid for these utilities are subject to market forces. Respondents maintain that regulation of utilities in the PRC is not a valid reason for denying MOI treatment because U.S. utilities, as well as the utilities industries in many other market economy countries, are regulated. In support of the above arguments, respondents cite to applicable PRC laws which have been submitted for the record in this case.

Respondents claim that, although land in the PRC is collectively owned or owned by ''all the people,'' companies still contract for the use of land. Respondents argue that government ownership of land cannot suffice to conclude that the crawfish industry is not market oriented. Respondents cite to exhibit AE of their February 7, 1997 submission, which provides evidence that in Hong Kong, a country considered by the Department to be a market economy, ''All land * * * is held by the government, which sells or grants leasehold interests.'' Respondents assert that a similar situation exists in Louisiana where wild crawfish are harvested by individual fisherman from a common property: the Atchafalaya Basin. Respondents note that, as in the PRC, individual fisherman in Louisiana harvest crawfish from a common resource without paying for the privilege. In summary, respondents argue that the crawfish industry in the PRC is a newly established, niche industry which operates freely, according to market forces alone, and is essentially the same as the industry in the United States. Respondents maintain that there is no evidence that any part of the crawfish industry in the PRC is controlled by the government, and that therefore the crawfish industry is a prime candidate for MOI treatment.

Petitioner argues that the Chinese crawfish tail meat industry should not be treated as an MOI because the conditions to allow normal value to be based on NME country prices and costs as stipulated in section 773(c)(1)(B) of the Act have not been met in this case.

Petitioner maintains that, given the large number of companies that did not respond to the Department's questionnaire, and the failure of the Chinese government to respond to the Department's request for information, the Department cannot determine the universe of Chinese crawfish producers, and therefore cannot make a determination with respect to industry conditions required for the existence of an MOI. Petitioner contends that both the respondents and the PRC government had ample opportunity to provide information concerning the Chinese crawfish industry. Petitioner states that there are other cases in which the Department was similarly unable to determine whether the industry in question was market-oriented because it did not receive a response from the Chinese government. Petitioner argues that the Department should not change its long-established practice of requiring information about all producers and exporters in order to accommodate respondents in this case.

Petitioner asserts that the one-page letter from the China Chamber of Commerce dated March 6, 1997 does not provide enough detail or support for the statements made in the letter. Petitioner claims that the statement contained in this letter, that ''the total export volume of the 15 respondents was close to the total import volume to the U.S., and therefore, they reflected the general situation of this industry in our country in all aspects,'' is contradicted by other evidence on the record. Petitioner maintains that the discrepancies which the Department found between the volume and value of crawfish tail meat exported during the POI as reported by the respondents, and the volume and value contained in the U.S. import statistics also indicate the lack of complete information regarding the universe of PRC producers and exporters.

Even if the universe of producers and exporters could be determined, petitioner asserts that MOI conditions are still not met because labor in China is not market determined, and because respondents failed to demonstrate that certain utilities, including coal and electricity, are purchased at market-determined prices. Petitioner argues that coal and electricity are significant inputs used in the production of crawfish tail meat, and that in its past practice, the Department has pointed out the problem with finding an MOI when significant material inputs are not based on market-determined prices. Petitioner cites a World Bank discussion paper entitled ''The Sectoral Foundations of China's Development,'' which the Department cited in *Silicon Carbide*, and which states:

> that much of the coal supply of the PRC is subject to central regulation of both price and allocation. Coal not subject to central regulation is often subject to regulation by provincial price boards. The PRC's coal market is also distorted by substantial ''in-plan'' production.

Petitioner further contends that labor in China is not market-determined because workers in China are not free to move from one province to another, but are required to obtain work visas. Petitioner claims that these restrictions on workers' movements distort the labor rates in the PRC. In summary, petitioner supports the finding of the Department in the preliminary determination that the Chinese crawfish industry is not an MOI, and argues that this decision should be affirmed in the final determination.

Respondents counter that petitioner's assertion that workers are not free to move from one province to another in the PRC is untrue, and is not supported by any evidence on the record. Respondents also refute petitioner's claim that the number of exporters named in the petition who responded to the Department's questionnaire constitutes only a small percentage of the entire PRC crawfish industry. Respondents argue the 15 companies who responded to the Department's questionnaires account for approximately 60–80% of the total product involved in this investigation. Respondents assert that the Department should not penalize cooperating respondents simply because, allegedly, some smaller exporters failed to respond. Respondents maintain that all the evidence before the Department supports the conclusion that the industry is entirely market-driven.

Department's Position: We continue to determine that the crawfish tail meat industry in the PRC does not constitute an MOI. In past cases, the Department has identified three conditions which must be met in order for an MOI to exist:

(1) For the merchandise under review, there must be virtually no government involvement in setting prices or amounts to be produced;

(2) The industry producing the merchandise under review should be characterized by private or collective ownership; and

(3) Market-determined prices must be paid for all significant inputs, whether material or non-material (e.g., labor and overhead), and for all but an insignificant portion of all the inputs accounting for the total value of the merchandise under review.

Preliminary Determination, 62 FR at 14394. *See also Amendment to Final Determination of Sales at Less than Fair Value and Amendment to Antidumping Duty Order: Chrome-plated Lug Nuts from the People's Republic of China,* 57 FR 15054 (April 24, 1992) *(Lug Nuts Amended Final); Final Determination of Sales at Less than Fair Value: Sulfanilic Acid from the People's Republic of China,* 57 FR 29705 (July 6, 1992); and *Porcelain-on-Steel Cooking Ware from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review,* 62 FR 4250, 4251 (January 29, 1997). ''The Department's analysis with respect to such claims centers around a government's role in economic activity.'' *Pure and Alloy Magnesium from the Russian Federation; Notice of Preliminary Determination of Sales at Less Than Fair Value,* 59 FR 55427, 55430 (November 7, 1994). Consistent with past practice, we require information on the entire industry, or virtually the entire industry, in order to make an affirmative determination that an industry is market oriented. *See, e.g., Chrome-Plated Lug Nuts from the People's Republic of China; Final Results of Administrative Review,* 61 FR 58514, 58516 (November 15, 1996). We require this information early in the proceeding to allow time to obtain home market prices and/or cost data from respondents, should we make an affirmative MOI determination. As stated in the preliminary determination, we received questionnaire responses from only 25 percent of the 61 exporters named in the petition, and our analysis of Port Import/Export Reporting Services (PIERS) import data revealed that several Chinese exporters who did not respond to our questionnaire exported the subject merchandise into the U.S. during the POI.

Although we received a letter from the China Chamber on March 6, 1997, this letter did not adequately respond to the Department's original request for information, and did not provide the necessary information regarding the universe of PRC crawfish producers and exporters. Moreover, the letter was submitted too late in the proceeding for us to obtain the additional information necessary to fully analyze the respondents' MOI request. The China Chamber did not submit any other evidence on this issue. *See* Memorandum to the File, ''Letter Submitted by Respondent's in the Investigation of Freshwater Crawfish Tail Meat From the People's Republic of China,'' dated March 18, 1997.

We note that Mr. Zhang Zhibiao of the China Chamber stated at the public hearing in this case, held on June 24, 1997, that the China Chamber had collected detailed information regarding the crawfish industry. However, the China Chamber failed to provide the Department with the results of this research, nor did it inform us that it had collected this information until the time of the public hearing. Therefore, we were not able to consider this information in our analysis of whether the crawfish tail meat industry is an MOI.

In sum, there is insufficient data on the record to support an MOI finding.

Comment 2: Surrogate Value for Live Crawfish: Respondents argue that Spanish import statistics that the Department used in the preliminary determination should not be used as a surrogate value for the raw material input of live crawfish, because there is no evidence that the crawfish imported into Spain from Portugal are of the same type, grade, or size as that which is customarily used for tail meat. Respondents correctly note that Spain does not have a crawfish tail meat production industry. According to respondents, it is also a fact ''that most, if not all, tail meat comes from small crawfish.'' Respondents' Rebuttal Brief at 3. Therefore, respondents conclude, Spain would only import crawfish suitable for sale as whole crawfish, meaning the crawfish imported from Portugal ''most likely * * * contain substantially more large and medium crawfish, and possibly none of the small, peeler variety.'' *Id.* at 4. On this basis, respondents argue that the crawfish imported into Spain cannot serve as a surrogate value for the crawfish input processed into tail meat in the PRC.

In addition, respondents contend that, contrary to petitioner's statements, information on the record indicates that Louisiana crawfish are graded according to size. This record information, they claim, establishes that prices vary according to size, with the largest sizes obtaining the highest price. Respondents cite to the Memorandum from the Department's crawfish team to Joseph A. Spetrini, dated April 4, 1997, ''Meeting with Domestic Crawfish Processors and Farmers'' (Louisiana Memorandum), which states that Louisiana crawfish larger than 15 pieces per pound are classified as ''jumbo'' crawfish. Respondents maintain that this memorandum contradicts all other evidence on the record, including the findings of the International Trade Commission (ITC). Respondents argue that the timing of the meeting—long after the POI and after the preliminary determination—indicates that Louisiana processors had a strong incentive to show that all sizes of crawfish are used for tail meat. However, respondents claim that the use of larger sizes of crawfish in tail meat would run contrary to the economic interests of processors. In support of their argument, respondents also cite to the ITC finding that only 15 percent of Louisiana crawfish is used for tail meat. Respondents further maintain that all the information on the record in this investigation confirms that, at least to some extent, all processors grade crawfish, if no more than by removing the largest crawfish to be sold whole boiled, at premium prices.

Alternatively, respondents argue that, if the Department continues to use an average price to compute the cost of live crawfish, the Department must adjust that price by removing the prices of large crawfish to derive a more accurate estimate of the cost of the raw material which is actually used for tail meat. Respondents argue that large crawfish, in both the PRC and the United States, are systematically removed, or graded out, and sold whole. Respondents imply that, for this reason, they pay less for the smaller crawfish they use to produce tail meat. Respondents assert that the use of an unadjusted average price to value the live crawfish input, as was done in the preliminary determination, is methodologically incorrect because it includes the prices of the most expensive, larger grades of crawfish, and overestimates the fair cost of the raw material used for tail meat in China. Respondents cite information on the record indicating that smaller peeler grade crawfish is less expensive throughout the world, including POI prices for three different sizes of crawfish in Spain.

Respondents assert that, in appropriate cases, the Department

routinely adjusts raw material inputs for qualitative differences. Respondents cite several determinations, including *Manganese Metal,* in which the Department was unable to develop surrogate value information for the actual chemical used by NME respondents, and therefore used a substitute chemical, with necessary adjustments made to the price of the substitute to reflect appropriate concentration levels. *See also Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China,* 58 FR 48833, 48836 (September 20, 1993); *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium from the Ukraine,* 60 FR 16432, 16433 (March 30, 1995); and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order,* 62 FR 6189 (February 11, 1997). The purpose of the Department's surrogate value methodology, according to respondents, is to derive a fair and accurate value of the subject merchandise. Respondents contend that, to achieve these statutory objectives in this case, the Department must make adjustments to the price of crawfish imported into Spain.

Petitioner argues that publicly available published information (PAPI) used to value factors of production should be readily available to both parties in the investigation, and adjustments made to PAPI as suggested by respondents, would introduce uncertainty and unfairness into the NME methodology. Petitioner contends that adjustments to the raw material value of live crawfish are unwarranted because respondents have not provided evidence that only small and peeler-grade crawfish are used to produce tail meat in China.

Petitioner argues that the Department correctly valued the input of live crawfish based on the average Spanish import price for fresh (not frozen) crawfish imported from Portugal during the period of January through November 1996. Petitioner also affirms the Department's choice of publicly available contemporaneous import information published by the Spanish Ministry of Customs in Madrid. Petitioner argues that Spain is a significant producer of whole crawfish, and that whole crawfish is a comparable product within the meaning of section 773(c)(4)(B) of the Act. In support of the Department's decision that Spain is a significant producer of comparable merchandise, petitioner cites to the Concurrence Memorandum which states that Spain exported 704 tons of fresh and frozen crawfish during 1996. Petitioner adds that Spain is also at a level of economic development more comparable to China than other countries which were significant producers of a comparable product.

Petitioner claims that the record does not support respondents' contention that only small, peeler-grade crawfish are used by the Chinese crawfish tail meat processors. Petitioner argues that information contained in its April 18, 1997 submission reveals that Chinese processors use all sizes of crawfish, including large and jumbo sizes, for tail meat. Petitioner also cites to this submission as evidence on the record that live crawfish imported from Portugal are ungraded, random-count crawfish which are graded by machine in the Spanish processing plants. Citing to the Verification Report of Qidong Baolu Aquatic Products, Co., Ltd., dated June 3, 1997 (Qidong Verification Report), at p. 4., petitioner asserts that the statements made by company officials during verification provides further evidence that all sizes of live crawfish are processed into tail meat in the PRC. Petitioner notes that, as evidenced by findings from the Department's trip to Louisiana, field grading is rarely used in the U.S. crawfish industry. (*See* the Louisiana Memorandum.)

Department's Position: We continue to determine that the average Spanish import price for fresh (not frozen) crawfish imported from Portugal is the most appropriate surrogate market economy basis for valuing whole crawfish, the primary input for crawfish tail meat. As a threshold matter, Spain exported over 704 tons of crawfish, and imported over 354 tons of crawfish during 1996, amounts which we have determined are significant within the meaning of section 773(c)(4)(B) of the Act. Moreover, although Spain is not at a level of economic development comparable to that of the PRC, the per capita gross national product (GNP) of Spain is more similar to that of China than is the per capita GNP of the United States, the only other known significant producer of comparable merchandise.

Furthermore, we disagree with respondents' argument that Spain uses only large crawfish. We find that Spanish processors import and use all sizes of crawfish. The information provided by the United States Foreign Commercial Service (USFCS) office in Barcelona, Spain supports our conclusion. The USFCS reported that the range of sizes used by a processor in Spain fall mostly within the medium size category and include some large and some small sizes as well. *See* the Preliminary Concurrence Memorandum. The Department relied upon this evidence for the preliminary determination. Moreover, because of the critical nature of this issue in this case, after the preliminary determination we invited interested parties to submit any available information regarding the crawfish industry and grading system (if any) in both Spain and the United States. *See* Department Letter to the Parties, April 3, 1997. Respondents failed to offer any actual evidence contradicting the determination that all sizes of crawfish are imported and processed in Spain. By contrast, petitioner submitted evidence supporting the Department's conclusion. *See* Letter to William M. Daley from the Crawfish Processors Alliance dated April 17, 1997.

On this basis, although Spain does not process crawfish into tail meat, we have determined that the crawfish imported from Portugal into Spain for processing is comparable to the crawfish input used by PRC processors in the production of tail meat. Further, respondents do not contest that the processing of seafood in India is comparable to the processing of crawfish into tail meat in the PRC. We consider whole crawfish to be a ''comparable product'' for the purpose of selecting a raw material surrogate, just as Indian processed seafood is a comparable product for purposes of valuing factory overhead, SG&A and profit in accordance with Section 773(c)(4) of the Act. Therefore, we have reasonably complied with the requirements of section 773(c)(4)(B) that, ''to the extent possible,'' we rely upon factor information from one or more market economy countries that are ''significant producers of comparable merchandise.''

Furthermore, the record does not support respondents' contention that, in the PRC, large crawfish are systematically removed, or graded out, and sold whole. At verification, we found that Chinese processors purchase mixed sizes of harvested crawfish by the kilogram, rather than on the basis of particular sizes; there is no evidence on the record that PRC crawfish harvesters routinely grade crawfish by size in the field. We also found that certain Chinese producers do not grade out large crawfish even after purchase; thus, at least some Chinese producers process all sizes of live crawfish into tail meat. See, e.g., the Qidong Verification Report. Furthermore, there is no evidence in the record indicating that

any Chinese processor pays higher prices for mixed size crawfish based upon the processor's intent to grade out the larger crawfish later for sale at a premium price. Further, as demonstrated above, the Spanish use all sizes of crawfish without grading out the large variety. Therefore, we reject respondents' argument that we should adjust the average import statistics price for mixed crawfish imported into Spain from Portugal by somehow removing the allegedly more expensive prices corresponding to large crawfish.

Similarly, the Department's determinations cited by respondents are not applicable. In each of those cases, the Department found that a certain chemical compound or other product, which was used as a factor of production in the NME country, was measurably different from the most comparable input in the surrogate country. Therefore, the Department adjusted the surrogate product price to reflect the appropriate chemical concentration levels. *See Pure Magnesium from the Ukraine,* 60 FR at 16433; *Helical Spring Lock Washers from the PRC,* 58 FR at 48833. Because the material input product in the present case, crawfish, is the same in Spain and the PRC, there is no reason to adjust the Spanish surrogate prices. As demonstrated above, producers in both countries buy mixed crawfish, for which they pay a single price, regardless of whether they intend to grade the crawfish and regardless of the intended use.

Comment 3: Adjustment for Labor Costs: Respondents further argue that the Department should adjust the surrogate raw material cost to reflect the large differential in labor rates between the United States or Spain and the PRC, using the differences between the U.S. or Spanish labor rates and the Indian labor rate, depending upon whether Spain or the United States is used to value harvested crawfish. Respondents state that information on the record establishes that the crawfish tail meat industry is labor intensive, and that it is recognized that the PRC has a competitive advantage in this industry because of its low labor rates. Moreover, respondents assert that the most significant cost component of the raw material, live crawfish, is the remuneration to the fishermen or laborers who harvest the crawfish. Respondents claim that in the PRC, the costs for harvesting live crawfish are substantially lower, not only because of low labor costs but also because there is no investment component for harvesting crawfish; all crawfish are wild and harvested from common resources such as lakes. Respondents maintain that, therefore, whether the Department uses U.S. or Spanish import prices to value the raw material input of live crawfish, the surrogate price must be adjusted for the differentials in labor rates and costs in order to derive a fair and accurate estimate of the true cost of the raw material used in the PRC.

Petitioner argues that the Department should not adjust the raw material input to reflect differential labor costs of harvesting live crawfish. Petitioner asserts that respondents' suggestion of using NME labor rates to adjust market-economy labor rates is contrary to the purpose of the NME factors of production methodology. Petitioner claims that the use of presumptively unreliable NME data would taint reliable market economy data.

Department's Position: We disagree with respondents. We have determined that it is not appropriate to adjust the surrogate value to account for alleged differences between the labor cost in the country in which the input is valued and the labor costs in another country which is more economically comparable to the NME country. The fact that Spain is a country not comparable to India or the PRC does not necessarily mean that the import price would be different between the two countries.

In this case, we relied upon the import price for Spain, a country which is not economically comparable to the PRC. Respondents do not contest the Department's authority under section 773(c)(4) of the Act to rely upon surrogate value data from Spain in the absence of data from an economically comparable country. Contrary to respondents' assertions, however, we do not find that an adjustment based on wage rate differentials is warranted. This type of adjustment is not required by the statute, nor do we consider such an adjustment to be feasible.

Section 773(c)(1) of the Act requires the Department to value the factors of production ''based on the best available information . . . in a market economy country or countries considered to be appropriate by the [Department].'' Section 773(c)(4) adds that, ''to the extent possible,'' the factors should be valued in an economically comparable country. ''The statute does not specify what constitutes best available information. Therefore, these decisions are within [the Department's] discretion.'' *Shieldalloy,* 947 F. Supp. at 532.

First, we disagree that the low wage rates in the PRC are relevant. It is precisely because prices and costs (including wages) in the PRC are not market determined that we are using the NME methodology, which relies on surrogate values.

Second, it would be purely speculative to base such an adjustment on a difference in wage rates between Spain and a comparable surrogate country. It is far from certain what effect, if any, differences in wage rates would have on the total cost or the price of the product in a comparable surrogate country. Moreover, for the Department to attempt such an adjustment, whether to account for the alleged impact of a differential in labor rates, or any other costs underlying the price of the imported product would require a complex economic analysis. There are a number of factors, including production and regional demand and supply functions as well as the availability of input substitutions, which may impact substantially upon the ultimate market price for a particular imported product. The impact of these factors would be difficult if not impossible to determine with any certainty. For instance, in the instant case, there are a number of factors which would be extremely difficult to know, including the relative productivity of the labor used in harvesting crawfish and capital investment.

Furthermore, the determinations cited by respondents are not applicable. These determinations reflect the Department's practice of adjusting for physical differences between the input produced in the NME country and the input on which the surrogate value is based. All of the determinations cited by respondents, including the CIT's decision in *Shieldalloy Metallurgical Corp.* v. *United States,* 947 F. Supp. 525 (CIT 1996), involved adjustments of this nature. In contrast, the adjustment sought by respondents in this case involves an external cost, labor, incurred to produce or obtain the identical input.

Comment 4: Application of the Facts Available: Pursuant to section 776(a) and (b) of the Act, petitioner argues that the Department should use total facts otherwise available or partial facts otherwise available, as appropriate, to calculate the margins for those Chinese companies that failed to cooperate by not acting to the best of their ability to comply with the Department's requests for information. Petitioner contends that the Department should apply the China-wide rate to those companies that responded to the questionnaire but knowingly or recklessly provided false, incorrect, or incomplete information. Petitioner specifically advocates the application of the facts otherwise available for the companies whose reported data was either unverifiable,

misreported or incomplete. Petitioner requests the application of total facts available because of the following findings at verification: (1) Respondents acknowledged that the cost of certain packing materials for one factory was submitted for all factories. (2) For several respondents, counsel acknowledged that reported inland freight distances were based on ''guesses.'' (3) A consultant for respondents acknowledged that, for Fengbao, he used estimated total input and output figures used to calculate factor usage rates for raw materials, by-products, and labor input. (4) A consultant for respondents attributed inconsistencies between reported and verified figures at Baoying to illegible faxes. These inconsistencies were found in almost every category of factors of production data, and petitioner notes that the consultant tried to decipher the illegible documentation without attempting to verify the accuracy of the information. (5) Jiangsu Light failed to report a certain percentage of its sales during the POI. (6) Binzhou reported high-priced sales made prior to the POI as sales made during the POI, and these sales comprised a significant percentage of the value of Binzhou's total sales reported for the POI. (7) Shakou failed to report a portion of direct and indirect labor hours. (8) Baoying failed to report a portion of temporary labor hours. (9) Huaiyin misrepresented the terms of sale for all reported sales, and thereby failed to report certain movement expenses.

Petitioner contends that the Department should apply total facts available to certain respondents because, as petitioner claims is indicated by the above, they knowingly or recklessly submitted false, incorrect, or incomplete information. Petitioner argues that such conduct undermines the investigation and therefore warrants punishment through the application of the China-wide rate of 201.63 percent.

For discrepancies that do not involve an element of bad faith, such as the submission of correct data that nonetheless could not be verified due to inadequate bookkeeping records, petitioner advocates the application of partial facts otherwise available. Petitioner requests that the Department use the highest adverse result from either the petition or the respondents' submission as partial facts otherwise available. Petitioner cites the *Notice of Final Determination of Sales at Less Than Fair Value: Persulfates from the People's Republic of China,* 62 FR 27222, 27225 (May 19, 1997) (*Persulfates*), in which the Department applied the ''greatest weight'' used for packing material to a respondent who failed to cooperate by not acting to the best of its ability to provide such information.

Respondents argue that the Department should not penalize cooperating companies for mistakes made in good faith. Respondents claim there were several circumstances in this case which contributed to difficulties in providing completely error-free responses within the deadlines imposed by the Department. Respondents note that the Department requested responses during the off-season when PRC crawfish processing plants were closed and when most of the individual representatives with detailed information were unavailable. Furthermore, respondents assert that the crawfish industry in the PRC is a new industry and is characterized by unsophisticated ''mom and pop'' operations, which, in many cases, lack sophisticated accounting systems or records. Respondents also point to the fact that some of the discrepancies found at verification revealed that the correct information was more favorable to respondents than the incorrectly reported estimates. For example, some companies significantly overestimated the distances between suppliers and factories. Therefore, respondents assert that mistakes such as these were not intentional means of trying to understate costs. In view of the foregoing, respondents attest that they acted in complete good faith and provided the best information possible under the circumstances; thus, punishment for mistakes made would be unreasonable and unfair.

Department's Position: We agree with the petitioner's argument with respect to our general practice of using the facts otherwise available, and our application of total facts available for certain companies. However, we disagree with some of petitioner's recommendations. Section 776(a)(2)(D) of the Act provides that if an interested party provides information that cannot be verified, the Department shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination. In addition, as petitioner noted, section 776(b) provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. Department officials made numerous requests over the course of verification for documentation supporting the reported usage rates for inputs such as labor and water. Despite these requests, several companies failed to provide supporting documentation to explain one or several reported per-unit input amounts. However, we do not believe that it would be appropriate to apply total facts available to companies who cooperated with the Department to the best of their ability with respect to the majority of their reported information, yet could not support reported values for one or two items. In the case of Haifu, Pengchen, and Yancheng Fengbao, for which we could not verify reported usage amounts for labor, we are using, as facts available, the higher of the corroborated labor factor from the petition or the highest of the ranged public labor amounts submitted in the December 23, 1996 section D submissions for other factories. For Yancheng Fengbao, Qidong, and Pengchen, where we could not verify reported water usage rates, we are using, as facts available, the highest of the ranged public information amounts submitted in the December 23, 1996 section D submissions for other factories. The petition does not contain a usage amount for water.

Where we found small discrepancies which could be explained, such as by clerical errors, we determined that it is best to use the actual data as found at verification. Huaiyin, for example, incorrectly reported its terms of sale; we consider this to be a clerical error rather than evidence of non-cooperation, and we are therefore substituting the actual terms of sale. Similarly, our final NV calculation for Shakou reflects the additional labor hours that we found at verification. At Binzhou, two sales which were reported as having been made during the POI were actually made before the POI. Therefore, we have removed these sales from the data base sales listing. We acknowledge that respondents in many cases estimated reported distances and packing material usage rates. However, we have determined that it is appropriate to use the actual amounts and distances as found at verification, rather than facts available, given the relatively minor nature of the factor in the NV calculation, and the fact that reported amounts and distances were generally higher than the verified amounts. See the ''Normal Value'' section of this notice.

We are also using the facts available for our entire NV calculations for Haifu and Baoying because we could not verify certain significant factors of production for these two suppliers. For suppliers Pengchen, Yancheng Fengbao, and Qidong Baolu, we are using partial facts available in our calculation of NV because we could not verify usage amounts for one or two inputs.

We have determined that the application of the total facts available is warranted where respondents failed to provide requested information for several different inputs/reported items, and failed to report significant sales data. As discussed in the ''Facts Available'' section above, we are applying total adverse facts available to Jiangsu Light and Yupeng.

Comment 5: Whether Shell-on Crawfish Tails are included in the Scope of the Investigation: Red Chamber, an interested party in this investigation, requested that the Department issue a scope clarification to determine that shell-on crawfish tails produced in and exported from China, and sold to the United States, are not within the scope of the antidumping duty investigation. Red Chamber described its patented process for creating shell-on crawfish tails by removing the heads and by making a U-shaped incision to remove the belly shell from the crawfish tail.

Red Chamber argues that the Department made a ministerial error by omitting the word ''peeled'' from the scope of the investigation. Red Chamber claims that, unlike the crawfish tail meat described in the scope as stated in the petition, shell-on crawfish tails are neither peeled nor blanched. The entire tail, including the meat still attached to the shell, is exported to the United States, and is not further processed in the United States or in a third country prior to sale to the final consumer. The consumer peels the tails after cooking them.

Red Chamber contends that, by omitting the word peeled from the scope of the investigation contained in the initiation, and the preliminary determination, the Department failed to define the scope of the investigation in accordance with the petition, and therefore committed a ministerial error. Red Chamber cites the description of crawfish tail meat in the petition which specifically includes peeled as a characteristic of crawfish tail meat.

> Tail meat is a peeled crawfish product, which is usually blanched prior to peeling. Whole crawfish, including live and whole boiled crawfish, whether frozen, fresh, or chilled, are not included within the scope of the petition.

Antidumping Petition, in the Matter of: Crawfish Tail Meat from China, September 20, 1996 (Petition), at 3–4.

Red Chamber also notes that in the clarification of the petition, petitioner stated that ''In the United States, crawfish are sold primarily in three forms: (1) Live, (2) whole boiled, and (3) tail meat (that is peeled) * * *'' Letter to the U.S. Department of Commerce from Will E. Leonard and James Taylor, Jr., Ablondi, Foster, Sobin & Davidow, P.C., on behalf of petitioners, dated October 7, 1996 (supplement to the petition), at 1–2. Red Chamber further cites the supplement to the petition, where petitioner defines the forms of tail meat as ''(1) Fresh or frozen, (2) washed or with fat on, and (3) purged or unpurged, or (4) some combination of these forms.'' Supplement to the petition at page 2. Based on these definitions, Red Chamber asserts that petitioners specifically excluded unblanched, unpeeled, shell-on tails in all their forms and claims that, in their case brief, petitioners cite no authority to justify the Department ignoring the express language of the petition.

Red Chamber argues that the Department performs only a ministerial role in reviewing a petition and initiating an antidumping duty investigation and, therefore, is required to define the scope as precisely drawn in the petition. In support of this contention regarding the ministerial role of the Department, Red Chamber cites to 19 CFR 351.201(b) of the Department's regulations. Red Chamber further cites to *NTN Bearing Corp of America* v. *United States* 747 F. Supp. 726 (September 7, 1990) where NTN Bearing Company argued that upon receipt of an antidumping petition, the Department's role in examining its sufficiency is limited to a ministerial function. Red Chamber maintains that in the current case, the petition is narrowly drawn and very specific and, therefore, the Department may not provide its own interpretation of the scope. Red Chamber claims that petitioners admit numerous times that peeled tail meat is the subject of their petition and acknowledge that they are required to specifically define the intended scope of their petition. Red Chamber asserts that this error meets the test of ''significant ministerial error'' as defined in either section 351.224(g) (1) or (2) of the regulations because the exclusion of unblanched, unpeeled, shell-on tails from the scope of the proceeding is tantamount to a zero-percent weighted-average dumping margin, as compared to the China-wide rate of 201.63 percent found in the preliminary determination. Red Chamber further argues that the Department should reject petitioner's request that the Department define the scope in accordance with the definition for the tariff number and the General Rules of Interpretation (GRI) contained in the HTS. Red Chamber notes that tariff numbers contained in the scope are not dispositive and, by extension, the definitions associated with those tariff numbers are not relevant. Red Chamber contends that petitioner cannot convince the Department to expand the scope of the investigation on the basis of speculation of possible future circumvention attempts on the part of Red Chamber. Red Chamber argues that there is no authority to include a product in the scope of an order based on pure speculation of future circumvention by importers of that product.

Respondents agree with Red Chamber that shell-on tails, as described above, should not be included within the scope of this investigation.

Petitioner argues that the Department should deny the request by Red Chamber that the Department clarify the scope of the investigation to exclude shell-on crawfish tail meat. Petitioner cites the scope of the investigation, which states that ''the product covered by this investigation is freshwater crawfish tail meat, *in all its forms* * * *'' Petitioner argues that, since shell-on crawfish tails are simply another form of crawfish tail meat, they are included in the scope of the investigation. Petitioner states that in its description of the subject merchandise, the word ''peeled'' was used because peeled tail meat was the only form of the product with which petitioner was familiar at the time. Petitioner claims that it was not aware then, or now, of the existence of shell-on crawfish tail meat in the marketplace and, therefore, did not intentionally omit shell-on tail meat from the scope. Petitioner notes that the scope description contained in the notice of initiation does not include the word ''peeled.'' Petitioner further argues that according to the GRI 2 (a) of the HTS, tail meat with its shell on is ''unfinished'' tail meat, and that a tariff description covers the product described whether ''finished or unfinished.'' Petitioner maintains that if the Department were to exclude shell-on tail meat from the scope of this investigation, respondents could easily flood the market with crawfish tail meat and continue the injury already caused to the petitioner by imported frozen, peeled tail meat. Petitioner contends that frozen shell-on crawfish tail meat could be imported in large quantities, either directly into the United States or through Mexico, where it could be blanched and peeled with little or no capital investment.

Department's Position: We disagree with Red Chamber. The courts have repeatedly held that the Department ''has inherent authority to define the scope of an antidumping duty investigation.'' *NTN Bearing Corp. of*

America v. *United States,* 747 F. Supp. 726, 731 (CIT 1990). The Department ''generally exercises this broad discretion to define and clarify the scope of an antidumping investigation in a manner which reflects the intent of the petition.'' *Kern-Liebers USA, Inc.* v. *United States,* 881 F. Supp. 618, 621 (CIT 1995) (quoting *Minebea Co.* v. *United States,* 782 F. Supp. 117, 120 (CIT 1992), *aff'd on other grounds,* 984 F.2d 1178 (Fed. Cir. 1993)). However, the Department's discretion permits interpreting the petition in such a way as to best effectuate not only the intent of the petition, but the overall purpose of the antidumping law as well. As stated by the CIT in *NTN Bearing,* the case cited by Red Chamber, if the Department ''determine[s] the petition to be overly broad, or insufficiently specific to allow proper investigation, or in any other way defective, it possesse[s] the inherent authority to redefine and clarify the parameters of its investigation.'' 747 F. Supp. at 731; *accord Torrington Co.* v. *United States,* 745 F. Supp. 718, 721–22 (CIT 1990). Moreover, contrary to Red Chamber's argument, the Department may fashion the scope of an order so as to prevent circumvention by parties in the future ''employing inventive import strategies.'' *NTN Bearing* at 731.

In the present case, the petition described the merchandise subject to the investigation as crawfish tail meat ''in all its forms.'' Antidumping Petition, Sept. 20, 1996, at 3. The petition did not state that ''unpeeled'' tail meat was to be excluded from the scope; the petition merely described tail meat as ''a peeled crawfish product.'' *Id.* at 4. Later, in responding to the Department's request to further explain the different forms in which tail meat might enter the United States, the petitioner emphasized its intent only to exclude fresh tail meat (as opposed to frozen). Letter on behalf of petitioner, Oct. 7, 1996, at 1–2. Again, while referring to tail meat generally as ''peeled,'' the petitioner did not indicate an intent to exclude ''unpeeled'' tail meat from the scope of the investigation. *Id.*

In its initiation notice and preliminary determination, the Department adopted the scope of the petition, and described the covered merchandise as crawfish tail meat ''in all its forms.'' However, the Department specifically deleted reference to the adjective ''peeled.'' This omission on the Department's part did not constitute a ministerial error, as Red Chamber contends. Rather, the Department adopted the phrase ''in all its forms'' in order to make the scope appropriately comprehensive and inclusive. Referring to ''peeled'' tail meat would unnecessarily narrow the scope of the investigation, and would leave any resulting order open to circumvention.

Moreover, the Department's definition of the scope of its investigation is not inconsistent with the intent of the petitioner. In the first place, the petitioner has not used the word ''peeled'' consistently in all of its submitted descriptions of the subject merchandise. More pointedly, in responding to Red Chamber's request, the petitioner has expressly supported the Department's definition of the scope of the investigation. As noted above, in the petitioner's view, crawfish tail meat, ''in all its forms,'' includes ''unpeeled'' as well as ''peeled'' merchandise. So-called ''shell-on'' crawfish tails are simply another form of crawfish tail meat, which are therefore included within the scope of the investigation.

For the foregoing reasons, the Department properly included unpeeled crawfish tail meat within the scope of its investigation. To the extent crawfish tail meat with the shell on is unpeeled, it is included within the scope. In any event, shell-on tail meat falls within the category of crawfish tail meat ''in all its forms,'' and is therefore included within the scope of the investigation.

Additional Change to Calculation Due to Ministerial Error

We have changed international freight for all exporters due to a ministerial error found in the program. In the preliminary determination we inadvertently multiplied the value for international freight, expressed in dollars, by the Indian exchange rate. For the final determination we have not multiplied international freight by the exchange rate.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of crawfish tail meat from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of our notice of the preliminary determination in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or posting of bond equal to the weighted-average amount by which the NV exceeds EP as indicated in the chart below. This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weight average margin percentage
China Everbright Trading Company	156.77
Binzhou Prefecture Foodstuffs Import Export Corp	119.39
Huaiyin Foreign Trade Corp	91.50
Yancheng Foreign Trade Corp	108.05
Jiangsu Cereals, Oils & Foodstuffs Import & Export Corp	122.92
Yancheng Baolong Aquatic Foods Co., Ltd	122.92
Anhui Cereals, Oils and Foodstuffs Import & Export Corp.	122.92
Nantong Delu Aquatic Food Co., Ltd	122.92
China-wide Rate	201.63

The China-wide rate applies to all entries of subject merchandise except for entries from exporters that are identified individually above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and

all securities posted will be refunded or canceled.

If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 733(f) of the Act.

Jeffrey P. Bialos,

Acting Assistant Secretary for Import Administration.

Dated: July 24, 1997.

[FR Doc. 97–20281 Filed 7–31–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–602]

Industrial Phosphoric Acid From Belgium; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On June 6, 1997, the Department of Commerce (the Department) published the preliminary results of review of the antidumping duty order on industrial phosphoric acid (IPA) from Belgium (52 FR 31439; August 20, 1987). The review covers one manufacturer, Société Chimique Prayon-Rupel (Prayon), and exports of the subject merchandise to the United States during the period August 1, 1995, through July 31, 1996.

We gave interested parties an opportunity to comment on the preliminary results of review. Since we did not receive any comments, we have not changed our analysis for the final results from that presented in the preliminary results of review.

EFFECTIVE DATE: August 1, 1997.

FOR FURTHER INFORMATION CONTACT: David Genovese, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 353 (1997).

Background

On August 30, 1996, FMC Corporation and Albright & Wilson Americas, two domestic producers of IPA, requested an administrative review of the antidumping duty order on IPA from Belgium with regard to Prayon. The Department initiated the review on September 17, 1996 (61 FR 48882), covering the period August 1, 1995, through July 31, 1996. On June 6, 1997, the Department published the preliminary results of review (62 FR 31073). The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The products covered by this review include shipments of IPA from Belgium. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2809.20. The HTS item number is provided for convenience and U.S. Customs purposes. The written description remains dispositive.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. The Department received no comments. Accordingly, we have determined that a margin of 8.54 percent exists for Prayon for the period August 1, 1995, through July 31, 1996. The Department will issue appraisement instructions directly to the U.S. Customs Service.

The following 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 these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Prayon will be 8.54 percent; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, earlier reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review, earlier reviews, or the original investigation, whichever is the most recent; and (4) the ''all others'' rate, as established in the original investigation, will be 14.67 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 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 notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 25, 1997.

Jeffrey P. Bialos,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–20382 Filed 7–31–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

University of Arizona; Notice of Decision on Application for Duty-Free Entry of Scientific Instruments

This decision is made pursuant to section 240 of the Trade and Tariff Act