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International Trade Administration
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MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Freshwater Crawfish Tail Meat from the People's Republic of China: Decision Memorandum for the Preliminary Results of the New Shipper Review; 2017-2018

I. SUMMARY

The Department of Commerce (Commerce) is conducting a new shipper review of the antidumping duty (AD) order on freshwater crawfish tail meat from the People's Republic of China (China). The new shipper review covers Nanjing Yinxiangchen International Trade Co., Ltd. (Nanjing Yinxiangchen). Commerce preliminarily determines that the sale of subject merchandise was not made at prices below normal value (NV).

II. BACKGROUND

On September 15, 1997, Commerce published an amended final determination and AD order on freshwater crawfish tail meat from China.[1] On April 30, 2018, Commerce published the notice of initiation covering the period of review (POR) September 1, 2017, through February 28, 2018.[2] Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[3] If the new deadline falls on a non-business day, in accordance with Commerce's

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[1] *See Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat from the People's Republic of China*, 62 FR 48218 (September 15, 1997).
[2] *See Freshwater Crawfish Tail Meat from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 83 FR 18775 (April 30, 2018) (*New-Shipper Initiation Notice*).
[3] *See* Memorandum, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

practice, the deadline will become the next business day. The revised deadline for the preliminary results of this review is now March 26, 2019.

We are conducting this review in accordance with sections 751(a)(1), 751(a)(2)(B)(iv), 751(a)(3), 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214.

III. SCOPE OF THE ORDER

The product covered by the AD order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or un-purged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the HTSUS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by U.S. Customs and Border Protection (CBP) in 2000, and HTSUS numbers 0306.19.00.10 and 0306.29.00.00, which are reserved for fish and crustaceans in general. On February 10, 2012, Commerce added HTSUS classification number 0306.29.01.00 to the scope description pursuant to a request by CBP. On September 21, 2018, Commerce added HTSUS classification numbers 0306.39.0000 and 0306.99.0000 to the scope description pursuant to a request by CBP. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

IV. *BONA FIDES* ANALYSIS

Pursuant to section 751(a)(2)(B)(iv) of the Act, any weighted-average dumping margin determined in a new shipper review must be based solely on *bona fide* sales during the POR.[4] Where a review is based on a single sale, exclusion of that sale as non *bona fide* necessarily must end the review.[5] As such, and consistent with Commerce's practice, we examined the *bona fides* of the sale in this new shipper review.[6] In evaluating whether a sale in a new shipper review is commercially reasonable or typical of normal business practices and, therefore, *bona fide*, Commerce considers, *inter alia*, such factors as: (a) the timing of the sale; (b) the price and quantity; (c) the expenses arising from the transaction; (d) whether the goods were resold at a profit; and (e) whether the transaction was made on an arm's-length basis.[7] Accordingly,

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[4] The Trade Facilitation and Trade Enforcement Act of 2015, Pub. Law 114-125 (February 24, 2016), made amendments to section 751(a)(2)(B) of the Act. These amendments apply to this determination.
[5] *See Tianjin Tiancheng Pharmaceutical Co. v. United States*, 366 F. Supp. 2d 1246, 1249-1250 (CIT 2005) (*TTPC*).
[6] *See*, *e.g.*, *Honey from the People's Republic of China: Rescission and Final Results of Antidumping Duty New Shipper Reviews*, 71 FR 58579 (October 4, 2006), and accompanying Issues and Decision Memorandum (IDM) at comment 1b.
[7] *See TTPC*, 366 F. Supp. 2d 1246, 1249-1250. *See also* section 751(a)(2)(B)(iv)(I) – (VII).

Commerce considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise."[8]

In *TTPC*, the Court of International Trade (CIT) affirmed Commerce's decision that any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,[9] and found that the weight given to each factor investigated will depend on the circumstances surrounding the sale.[10] Finally, in *New Donghua*, the CIT affirmed Commerce's practice of evaluating the circumstances surrounding a sale in a new shipper review so that a respondent does not unfairly benefit from an atypical sale and obtain a lower dumping margin than the producer's usual commercial practice would dictate.[11] Where Commerce finds that a sale is not *bona fide*, Commerce may exclude the sale from its export price calculations.[12]

Based on our analysis of the factors described above, we preliminarily find that Nanjing Yinxiangchen's U.S. sale is a *bona fide* transaction. Moreover, based on this finding, the company's responses to our questionnaires, and its eligibility for a separate rate (*see* the "Separate Rates" section below), we preliminarily determine that Nanjing Yinxiangchen qualifies as a new shipper company during this POR.[13]

V. DISCUSSION OF THE METHODOLOGY

A. Non-Market Economy Country Status

Commerce considers China to be a non-market economy (NME) country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding contested NME treatment for China. Therefore, for the preliminary results of this new shipper review, we treated China as an NME country and applied our current NME methodology in accordance with section 773(c) of the Act.

B. Surrogate Country

In AD proceedings involving NME countries, pursuant to section 773(c)(1) of the Act, Commerce determines NV based on the value of the NME producer's factors of production (FOPs). Also pursuant to section 773(c)(1), valuation of the factors of production is based on the

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[8] *See Hebei New Donghua Amino Acid Co. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (*New Donghua*) (citing *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002), and accompanying IDM (New Shipper Review of Clipper Manufacturing Ltd.)).
[9] *See TTPC*, 366 F. Supp. 2d at 1250.
[10] *Id.* at 1263.
[11] *See New Donghua*, 374 F. Supp. 2d at 1344.
[12] *See TTPC*, 366 F. Supp. 2d at 1249.
[13] *See* Memorandum, "New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China – *Bona Fides* Sales Analysis of Nanjing Yinxiangchen International Trade Co., Ltd.," dated concurrently with this memorandum.

best available information regarding such factors in an appropriate market economy country or countries. In accordance with section 773(c)(4) of the Act, in valuing the FOPs Commerce uses, to the extent possible, the prices or costs of the FOPs in one or more market-economy countries that are at the same level of economic development to that of the NME country and that are also significant producers of merchandise comparable to the subject merchandise. Commerce has determined that Romania, Malaysia, Russia, Mexico, Brazil, and Kazakhstan are countries that are at the same level of economic development to that of China.[14] None of these countries are a significant producer of freshwater crawfish tail meat, but Malaysia is a significant producer of comparable merchandise, that is processed seafood.[15]

As stated in 19 CFR 351.408(c)(2), Commerce's preference is to value all FOPs in a single surrogate country. Thus, in this instance, we have publicly available data from Malaysian sources which allows the valuation of almost all the FOPs required to calculate NV. We do not have publicly available data on the record from any of the other potential surrogate countries listed above.[16]

We have on the record contemporaneous financial statements from a Malaysian frozen seafood processor[17] and therefore, we preliminarily find that, pursuant to section 773(c)(1) of the Act, the Malaysian frozen seafood manufacturer's 2017 Annual Report constitutes the "best available information." The frozen seafood manufacturer is located in Malaysia, which is a significant producer of comparable merchandise and is at the same level of economic development to China. In addition, it is the country we have selected as the primary surrogate country and, as discussed above, it is Commerce's preference to value FOPs in a single primary surrogate country.

We are unable to value the whole crawfish input in any of the potential surrogate countries. Instead, we valued whole crawfish using contemporaneous information with respect to that input, *i.e.*, imports of crawfish into Spain from Portugal during the 2017-2018 POR as reported by *Agencia Tributaria* under the Integrated Tariff of the European Communities (TARIC) code 0306.39.10, which represents the appropriate classification of Spanish imports of whole

[14] *See* Commerce Letter, "Freshwater Crawfish Tail Meat from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information," dated August 6, 2018.
[15] *See* Memorandum, "Freshwater Crawfish Tail Meat from the People's Republic of China: Selection of Surrogate Country," dated concurrently with this memorandum.
[16] *See* Nanjing Yinxiangchen's Letter, "Re: Freshwater Crawfish Tail Meat from the People's Republic of China: Surrogate Value Comments," dated October 29, 2018 (Nanjing Yinxiangchen Surrogate Value Comments)
[17] *Id.* at Exhibit SV-9.

crawfish. Spain is a significant producer of freshwater crawfish and therefore, we relied on Spanish values in previous reviews for this input.[18]

With regard to crawfish shells, Nanjing Yinxiangchen requested that Commerce consider using import data provided by the Global Trade Atlas (GTA) under Malaysian tariff schedule 0508.00.2000 to value the scrap by-product.[19] After careful review, we find that the Malaysia tariff schedule 0508.00.2000 is a basket category that includes non-chitin containing echinoderms and decorative shells of various kinds and does not appear to include the shells comparable to the crawfish shell or scrap produced as a by-product from processing crawfish tail meat.[20] Thus, we have looked at other data sources to value the scrap by-product input. In previous reviews, Commerce has used a 2001 Indonesian price quote to value the scrap by-product input.[21] We find it reasonable to use this data source again to value the scrap by-product input because it is public information, represents a price on a wet-weight basis, which is

[18] *See*, *e.g.*, *Freshwater Crawfish Tail Meat from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012*, 78 FR 61333 (October 3, 2013) (*11/12 FCTM Prelim*), and accompanying Preliminary Decision Memorandum (PDM) at "Surrogate Country" (unchanged in *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012*, 79 FR 22947 (April 25, 2014) (*11/12 FCTM Final*), and accompanying IDM); *Freshwater Crawfish Tail Meat from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review; 2012-2013*, 79 FR 60134 (October 6, 2014) (*FCTM 12/13 Prelim*), and accompanying PDM at "Surrogate Country" (unchanged in *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2012-2013*, 79 FR 75535 (December 18, 2014) (*12/13 FCTM Final*)); *Freshwater Crawfish Tail Meat from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2013-2014*, 80 FR 60624 (October 7, 2015) (*13/14 FCTM Prelim*), and accompanying PDM at "Surrogate Country" (unchanged in *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2013–2014*, 81 FR 21840 (April 13, 2016) (*13/14 FCTM Final*), and accompanying IDM); *Freshwater Crawfish Tail Meat from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review; 2014–2015*, 81 FR 24656 (October 12, 2016) (*14/15 FCTM Prelim*), and accompanying PDM at "Surrogate Country" (unchanged in *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2014-2015*, 82 FR 17634 (April 12, 2017) (*14/15 FCTM Final*), and accompanying IDM); *Freshwater Crawfish Tail Meat from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Rescission of Review in Part, and Preliminary Intent To Rescind New Shipper Review; 2015–2016*, 82 FR 26435 (June 7, 2017) (*15/16 FCTM Prelim*), and accompanying PDM at "Surrogate Country" (unchanged in *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of New Shipper Review; 2015-2016*, 82 FR 47469 (October 12, 2017) (*15/16 FCTM Final*), and accompanying IDM); *Freshwater Crawfish Tail Meat from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews, and Rescission of Review in Part; 2016-2017*, 83 FR 52201 (October 16, 2018) (*16/17 FCTM Prelim*), and accompanying PDM at "Surrogate Country" (unchanged in *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2016-2017*, 84 FR 2489 (February 7, 2019) (*16/17 FCTM Final*)).
[19] *See* Nanjing Yinxiangchen Surrogate Value Comments at 3.
[20] *See 11/12 FCTM Final* and accompanying IDM at 3-9.
[21] *Id.*

consistent with how Chinese producers sell their crawfish scrap,[22] and because no interested party has placed on the record an alternative data source to consider in valuing the scrap by-product. Although in this review, Indonesia is no longer on the list of countries at the same level of economic development as China, Commerce relies on the "best available information, pursuant to section 773(c)(1) of the Act. Furthermore, Commerce shall utilize "to the extent possible" surrogate values from countries that are (1) at a level of economic development comparable to that of the relevant nonmarket economy country and (2) significant producers of comparable merchandise. However, when data are not available from the preferred surrogate countries, as is the case in this review, Commerce may look to other data sources.[23] As such, we have identified another data source that we have placed on the record to value the scrap by-product. Thus, we find the 2001 Indonesian price quote is the best information available to value crawfish scrap.

C. Separate Rate

In AD proceedings involving NME countries, Commerce relies on a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single AD rate.[24] Thus, Commerce will assign all exporters this single rate unless an exporter can demonstrate that it is sufficiently independent from the government such that it is entitled to a separate rate. Commerce assigns separate rates in NME proceedings only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities under a test developed by commerce.[25]

In the *New-Shipper Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.[26]

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[22] *See Notice of Preliminary Results of Antidumping Duty New Shipper Reviews: Freshwater Crawfish Tail Meat from the People's Republic of China*, 67 FR 52442, 52446 (August 12, 2002) (unchanged in *Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty New Shipper Review, and Final Rescission of Antidumping Duty New Shipper Review*, 68 FR 1439 (January 10, 2003)). *See also 16/17 FCTM Prelim* and accompanying PDM at 7 (unchanged in *16/17 FCTM Final*).
[23] *See Policy Bulletin 04.1* at 4-5.
[24] *See*, *e.g.*, *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893 (June 18, 2015), and accompanying IDM at Comment 35; *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006).
[25] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), and *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586-87 (May 2, 1994) (*Silicon Carbide*). *See also 15/16 FCTM Prelim* and accompanying PDM at 8-10 (unchanged in *15/16 FCTM Final*).
[26] *See New-Shipper Initiation Notice*, 83 FR at 18776.

1. Absence of *De Jure* Control

Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[27]

The evidence provided by Nanjing Yinxiangchen supports a preliminary finding of an absence of *de jure* government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) legislative enactments decentralizing control of the company; and (3) formal measures by the government decentralizing control of the company.[28]

2. Absence of *De Facto* Control

As stated in previous cases, there is some evidence that certain enactments of the Chinese central government have not been implemented uniformly among different sectors and/or jurisdictions in China.[29] Therefore, Commerce determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of government control which would preclude Commerce from assigning separate rates. Commerce typically considers the following four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by, or subject to the approval of, a government agency; (2) whether the respondent has the 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 the disposition of profits or financing of losses.[30]

Nanjing Yinxiangchen has made the following assertions: (1) it establishes its own export prices; (2) it negotiates contracts without guidance from any government entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans.[31] Based on the information on the record of this new shipper review, Commerce preliminarily determines that there is an absence of *de facto* governmental control over the export activities of Nanjing Yinxiangchen.

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[27] *See Sparklers*, 56 FR at 20589; *see also 15/16 FCTM Prelim* and accompanying PDM at 8-10 (unchanged in *15/16 FCTM Final*).
[28] *See* Nanjing Yinxiangchen's Letter, "Re: Freshwater Crawfish Tail Meat from People's Republic of China: Request for New Shipper Review," dated March 26, 2018 at 3-4 (Nanjing Yinxiangchen RNSR). *See* also, Nanjing Yinxiangchen's May 29, 2018, section A questionnaire response at A-1 through A-9. (Nanjing Yinxiangchen QRA)
[29] *See 12/13 FCTM Prelim* and accompanying PDM at "Separate Rates" (unchanged in *12/13 FCTM Final*); *see also Silicon Carbide*, 59 FR at 22586-87.
[30] *See Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 n.3 (May 8, 1995); *Silicon Carbide*, 59 FR at 22586-87. *See also 15/16 FCTM Prelim* and accompanying PDM at 9-10 (unchanged in *15/16 FCTM Final*)
[31] *See* Nanjing Yinxiangchen RNSR at 3-6, and QRA at A-6 to A-9.

Given that Commerce found that Nanjing Yinxiangchen operates free of *de jure* and *de facto* governmental control, we preliminarily determine that it satisfies the criteria for a separate rate.

D. Fair Value Comparisons

To determine whether the sale of subject merchandise by Nanjing Yinxiangchen was made at less than NV, we compared its export price (EP) to NV, as described in the "Export Price" and "Normal Value" sections below.

1. Determination of Comparison Method

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

In recent investigations, Commerce applied a "differential pricing" analysis for determining whether application of the A-T method is appropriate in a particular situation pursuant to section 777A(d)(1)(B) of the Act and 19 CFR 351.414(c)(1). Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this new shipper review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the A-A method in calculating a respondent's weighted-average dumping margin.

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

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

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

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

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

2. Results of the Differential Pricing Analysis

With respect to Nanjing Yinxiangchen, we do not have two or more sales to compare in order to test whether a pattern of prices that differ significantly exists. Accordingly, we have not conducted a differential pricing analysis. Thus, we determined whether Nanjing Yinxiangchen sold subject merchandise at less than NV using the standard comparison method. Specifically, we compared the applicable month's weighted-average NV to the EP in our AD margin calculations.

E. U.S. Price

For Nanjing Yinxiangchen, in accordance with section 772(a) of the Act, we based the U.S. price on EP because the record information indicates that the first sale to an unaffiliated purchaser was made prior to importation and CEP was not otherwise warranted. We calculated EP based on the packed free-on-board (FOB)-China-port price to the first unaffiliated purchaser in the United States. In accordance with section 772(c) of the Act, we calculated net EP by deducting foreign inland-freight expenses and foreign brokerage and handling expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States. We based all movement expenses reported on surrogate values because a Chinese company provided the movement services.

Commerce's practice in NME cases is to adjust EP and CEP for the amount of any un-refunded (herein, "irrecoverable") value-added tax (VAT), in accordance with section 772(c)(2)(B) of the Act.[32] In changing the practice, Commerce explained that when an NME government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, Commerce will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.[33] Where the irrecoverable VAT is a fixed percentage of EP or CEP, Commerce explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. EP or CEP downward by this same percentage.[34]

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[32] *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36483-84 (June 19, 2012) (*Methodological Change*).
[33] *Id.*; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014), and accompanying IDM at Comment 5.A.
[34] *See Methodological Change*, 77 FR at 36483.

Commerce's methodology, as explained above and applied in this review, essentially amounts to performing two basic steps: (1) determining the amount (or rate) of the irrecoverable VAT tax on subject merchandise; and (2) reducing U.S. price by the amount (or rate) determined in step one. Information placed on the record of this review by Nanjing Yinxiangchen indicates that, according to the Chinese VAT schedule, the standard VAT levy is 17 percent and the rebate rate for subject merchandise is 15 percent.[35] Therefore, for purposes of these preliminary results, we removed from U.S. price, for Nanjing Yinxiangchen, the appropriate amount related to VAT, which is the difference of these rates, two percent.[36]

F. Date of Sale

Section 351.401(i) of Commerce's regulations states that, normally, we will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that we may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.[37]

Nanjing Yinxiangchen reported that the date of shipment precedes the date of invoice.[38] Consistent with our long-standing practice, where shipment date precedes invoice date, we find that the shipment date better reflects the date on which the material terms of sale were established.[39] Therefore, we preliminarily used Nanjing Yinxiangchen's shipment date as the date of sale for its U.S. sale.[40]

G. Normal Value

Section 773(c)(1) of the Act provides that Commerce shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Commerce uses an FOP methodology

[35] *See* Nanjing Yinxiangchen's June 14, 2018 Section C & D Questionnaire Responses (Nanjing Yinxiangchen CDQR) at C-26 to C-28 and Exhibits C-2 and C-3.
[36] For details on our price adjustments related to VAT, *see* Memorandum, "Administrative Review of the Antidumping Duty Order on Freshwater Crawfish Tail Meat from the People's Republic of China: Preliminary Results Analysis Memorandum for Nanjing Yinxiangchen Co., Ltd.," dated concurrently with this memorandum (Preliminary Results Analysis Memo).
[37] *See 15/16 FCTM Prelim* and accompanying PDM at 14-15 (unchanged in *15/16 FCTM Final*). *See also Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying IDM at Comment 10; *see also Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.
[38] *See* Nanjing Yinxiangchen's CDQR at C-7.
[39] *See 15/16 FCTM Prelim* and accompanying PDM at 14-15 (unchanged in *15/16 FCTM Final*).
[40] For more details on our calculation, s*ee* Preliminary Results Analysis Memo.

because the presence of government controls on various aspects of NMEs render price comparisons and the calculation of production costs invalid under its normal methodologies.[41]

In accordance with section 773(c) of the Act, we relied on the FOP data reported by Nanjing Yinxiangchen for the POR. We calculated NV by adding together values for the FOPs, general expenses, profit, and packing costs. Specifically, we valued materials, labor, and packing by multiplying the reported per-unit rates for the FOPs consumed in producing the subject merchandise by the average per-unit surrogate values described below. We added freight costs for the material inputs. We calculated the freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. This adjustment is in accordance with the decision by the United States Court of Appeals for the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-1409 (CAFC 1997), which held that Commerce has discretion to choose a methodology to determine freight components if it does not substantially overvalue total freight expenses. We increased the calculated costs of the FOPs by adding surrogate general expenses and profit.[42]

H. Surrogate Values

In selecting surrogate values, we considered the quality, specificity, and contemporaneity of the data.[43] For these preliminary results, in selecting the best available data for valuing FOPs in accordance with section 773(c)(1) of the Act, we followed our practice of choosing publicly available values which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive.[44] We also considered the quality of the source of surrogate

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[41] *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part*, 70 FR 39744, 39754 (July 11, 2005) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003-2004 Administrative Review and Partial Rescission of Review*, 71 FR 2517 (January 17, 2006)). *See also 15/16 FCTM Prelim* and accompanying PDM at 15-16 (unchanged in *15/16 FCTM Final*).
[42] *See* Surrogate Value Memorandum.
[43] *See*, *e.g.*, *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002), and accompanying IDM at Comment 6; *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China,* 66 FR 31204 (June 11, 2001), and accompanying IDM at Comment 5. *See also 15/16 FCTM Prelim* and accompanying PDM at 16 (unchanged in *15/16 FCTM Final*).
[44] *See*, *e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004) (unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004)). *See also 15/16 FCTM Prelim* and accompanying PDM at 8-10 (unchanged in *15/16 FCTM Final*).

information in selecting surrogate values.[45] For those surrogate values that are not contemporaneous with the POR, we adjusted for inflation using country-specific consumer prices (CPI) or purchase price indices (PPIs) as reported in the *International Financial Statistics* and published by the International Monetary Fund.[46]

Furthermore, we disregarded import prices that we have reason to believe or suspect may be subsidized.[47] In this regard, we previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we determined that these countries maintain broadly available, non-industry specific export subsidies.[48] Additionally, we disregarded prices from NME countries.[49]

We used the following surrogate values in our margin calculation for the preliminary results of this new shipper review:

We valued freshwater crawfish using the publicly available data for Spanish imports of whole crawfish from Portugal for the 2017-2018 POR.[50] Specifically, we used the data sourced from *Agencia Tributaria* under the TARIC code 0306.39.10 to value freshwater crawfish. We valued the crawfish shell by-product using a 2001 price quote from Indonesia for wet crab and shrimp shells and inflated this value using the Indonesian CPI to make it contemporaneous with the POR.[51]

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[45] *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Preliminary Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 74 FR 32539, 32543 (July 8, 2009) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 844 (January 6, 2010)).
[46] *See* Surrogate Value Memorandum.
[47] *See* Section 773(c)(5) of the Act; *see also Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46795 (August 6, 2015).
[48] *See, e.g., Steel Threaded Rod from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712 (July 14, 2014); *Biodiesel from the Republic of Indonesia*, 82 FR 53471 (November 16, 2017); *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016); *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 5378 (January 31, 2014); *Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012); *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013).
[49] *See*, *e.g.*, *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 9591, 9599-9600 (March 5, 2009) (unchanged in *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656 (July 24, 2009) (unchanged in *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Notice of Antidumping Duty Order*, 74 FR 46971 (September 14, 2009))).
[50] *See* Surrogate Value Memorandum.
[51] *Id*.

We used the *Global Trade Atlas* online data to value packing materials.[52] We used data published by Suruhanjaya Perkidmatan Air Negara (SPAN), Malaysia's National Water Service Commission to value water.[53] We valued electricity using data published by Tenaga Nasional, Malaysia's largest electricity provider.[54]

We valued non-refrigerated truck freight using the World Bank's *Doing Business 2018 – Malaysia*,[55] which we find to be contemporaneous, specific to the cost of shipping goods in Malaysia, and representative of a broad market average.[56] Because we could not find any reliable information from Malaysia, or any of the five other countries determined to be economically comparable to China,[57] we valued refrigerated truck freight based on price quotations from CTC Freight Carriers of Delhi, India, dated April 30, 2004, placed originally on the record of the 2009-2010 administrative review.[58] To make it contemporaneous with the POR, we inflated this value using the Indian CPI.[59]

We valued foreign brokerage and handling expenses using the information in the World Bank Group's *Doing Business 2018 – Malaysia.*[60] This source provides a price list based on a survey case study of the procedural requirements necessary to export a standardized cargo of goods by ocean transit from Malaysia. Because data reported in this source were current and, thus, contemporaneous with the POR, no adjustment was necessary.

In these preliminary results, we valued labor using the mean nominal hourly labor cost per employee by economic activity for Malaysia as published by the International Labour Organization. A more detailed description of the wage rate calculation methodology is provided in the Surrogate Value Memorandum.[61]

Finally, we valued factory overhead, SG&A, and profit by using a Malaysian frozen seafood manufacturer's 2017 audited financial statements. For more specific information concerning our use of the 2017 financial statements of the Malaysian manufacturer of frozen seafood, *see* the Surrogate Value Memorandum.

VI. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal

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[52] *Id*.
[53] *See* Nanjing Yinxiangchen Surrogate Value Comments at 3 and Exhibit SV-4.
[54] *Id.* at 2 and Exhibit SV-3.
[55] *Id.* at 4 and Exhibit SV-9.
[56] *See* Surrogate Value Memorandum.
[57] *Id*.
[58] *See Preliminary Results Freshwater Crawfish Tail Meat from the People's Republic of China: of Antidumping Duty Administrative Review and Intent To Rescind Review in Part*, 76 FR 62349, 62355 (October 7, 2011) (unchanged in *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review in Part*, 77 FR 21529 (April 10, 2012)).
[59] *Id. See also* Surrogate Value Memorandum.
[60] *See* Nanjing Yinxiangchen Surrogate Value Comments at 3 and Exhibit SV-7.
[61] *See* Surrogate Vale Memorandum.

Reserve Bank. These exchange rates are available on the Enforcement and Compliance website at http://enforcement.trade.gov/exchange/index.html.

VII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

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Agree Disagree

3/26/2019

X

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance