

**FINAL RESULTS OF DETERMINATION PURSUANT TO COURT REMAND**

Hontex Enterprises Inc. d/b/a Louisiana Packing Company v. United States of America

Slip Op. 03-17, Court No. 00-00223 (CIT February 13, 2003)

**SUMMARY**

On February 13, 2003, the United States Court of International Trade (CIT) issued an order in Hontex Enterprises, Inc., d/b/a/ Louisiana Packing Co. v. United States, Slip Op. 03-17, Court No. 00-00223 (Hontex), remanding the case to the Department of Commerce (the Department) and requesting that the Department further explain its methodology and decision to collapse the two respondents, Ningbo Nanlian Frozen Foods Company, Ltd. (Ningbo Nanlian) and Huaiyin Foreign Trade Corporation (5) (HFTC5), as determined in Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Administrative Antidumping Duty and New Shipper Reviews, and Final Rescission of New Shipper Review, 65 FR 20948 (April 19, 2000) (Final Results) and accompanying Issues and Decision Memo for the Administrative Review of the Antidumping Duty Order on Freshwater Crawfish Tail Meat from the People's Republic of China From Edward C. Yang to Joseph A. Spetrini (Decision Memo), dated April 19, 2000.

Specifically, the CIT's February 13, 2003 order requires the Department to (1) clearly set out the nonmarket economy (NME) collapsing methodology used in the Final Results, and clearly articulate why such methodology is a permissible interpretation of the antidumping statute, or develop a different methodology and clearly articulate why it is a permissible

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interpretation of the statute; (2) detail the manner in which either such methodology departs from existing regulations dealing with collapsing in market economy countries and the justifications and authority for doing so; (3) explain how the temporal aspect of the relationship between the companies affected its determination, and if the temporal aspect of the relationship was not taken into account, take it into account, or explain why it should not be taken into account; (4) state with specificity the numerous factors used to reach its finding that a “significant potential for manipulation” of pricing and export decisions existed; and (5) state with specificity the factors used in its determination that Ningbo Nanlian and HFTC5 were intertwined. See Hontex, Slip Op. 03-17 at 51.

The CIT further ordered the Department to identify specific evidence on the record sufficient to support a finding under any new methodology or determination or, if no new methodology or determinations are developed, to identify specific evidence on the record of (1) how the activities and relationship of Mr. Philip Wei (a/k/a Wei Wei) (Mr. Wei) with respect to Ningbo Nanlian and HFTC5 constituted a “web of control relationships” such that a finding of affiliation between Ningbo Nanlian and HFTC5 was justified; (2) how the activities and relationship of Mr. Wei with respect to Ningbo Nanlian and HFTC5 could justify a finding that a “significant potential for the manipulation” of pricing and export decisions existed; and (3) the specific pricing and/or export activities that were subject to “significant potential for manipulation.” Id. at 51-52. The CIT further requested that the Department detail the manner in which Ningbo Nanlian and HFTC5 were “little more than separate distribution channels from the same producer to the same customer” during the period of review (POR) and state how such

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activities were in violation of the antidumping law, including any finding of affiliation and “substantial potential for manipulation.” Id. at 52.

We have examined the record for the March 26, 1997 through August 31, 1998 administrative review period (97/98 administrative review), articulated the NME methodology used in the Final Results, and responded in accordance with the Court’s February 13, 2003 order in all other aspects. We continue to find that HFTC5 and Ningbo Nanlian did not operate independently and that they should be subject to the same antidumping duty rate.

### DISCUSSION

The following discussion is in response to the CIT’s remand order of February 13, 2003, which requires the Department to further explain its methodology and decision to collapse the two respondents, Ningbo Nanlian and HFTC5, as determined in the Final Results. As instructed by the Court, we have identified the NME collapsing methodology, we have applied it to the facts of this particular case, we have indicated how the methodology differs from the Department’s market economy methodology, and we have provided the Court with the facts on the record to demonstrate that these companies should be collapsed and treated as a single entity.

#### **1. The Department’s methodology for treating two exporters as a single entity is in accordance with law.**

In an antidumping investigation or administrative review involving an NME country, within the meaning of section 771(18) of the Tariff Act of 1930, as amended (the Act), the Department presumes that there is common government control over all producers and exporters

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in that country. A single, country-wide antidumping duty deposit rate is therefore assigned to all exporters in that country, unless an exporter can demonstrate that its export activities are independent of government control. For each such exporter, the Department calculates a separate, individual antidumping duty deposit rate (“separate rate”) based exclusively on that exporter’s U.S. sales and factors-of-production data.

Thus, the Department’s “separate rate” practice makes it possible to overcome the presumption of common government control on the “export side.” However, overcoming the presumption of common government control as it relates to export activities does not necessarily rule out *other* possible types of common control over exporters. In other words, where the presumption of common government control over their export activities is overcome in the case of two exporters, the Department may consider whether these two exporters should be treated as a single entity and receive a single rate, where the Department concludes that there is a significant potential for manipulation of export pricing and export selling activities.

The Department’s policy regarding separate rates in NME cases, as well as its practice of collapsing certain producers in market economy cases (see, e.g., section 351.401(f) of the Department’s regulations),<sup>1</sup> recognizes that it is sometimes appropriate to treat two or more

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<sup>1</sup>19 CFR 351.401(f) of the Department’s regulations, provides: (1) the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production; and (2) in identifying a significant potential for the manipulation of price and production, the factors the Secretary may consider include: (i) the level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or

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companies as a single entity—and to determine a single weighted-average margin for that entity. Neither the statute nor the regulations contain guidelines for determining when two or more NME exporters should receive the same rate for reasons *other* than being subject to government control. However, the export activities of two or more NME exporters may be “intertwined” by means other than government control, such that it is appropriate to treat such exporters as a single entity and to determine a single weighted-average margin for that entity. Accordingly, it is appropriate to consider whether the Department will treat two or more exporters as a single exporter where those exporters have a significant potential for the manipulation of export prices or exporting activities.<sup>2</sup>

In reaching our determination, we examined the statutory definition of affiliation and the Department’s regulations concerning collapsing in evaluating whether Ningbo Nanlian and HFTC5 should be treated as a single entity, applying the provisions to an NME context. In this response to the Court, elements of these provisions are referenced not to signal the sequential application of the provisions, but are referenced instead because they are useful for sorting out the degree to which Ningbo Nanlian and HFTC5 are intertwined.

We find the following control provisions of section 771(33) of the Act to be instructive: “(F) Two or more persons directly or indirectly controlling, controlled by, or under common

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significant transactions between the affiliated producers.

<sup>2</sup> Prior to the review under consideration, the Department had encountered few, if any, NME cases in which there was evidence of such “intertwining” on the record.

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control with, any person; (G) Any person who controls any other person and such other person.<sup>3</sup>

For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.”

According to the Department’s regulations codified at 19 CFR 351.102(b), in determining whether “control” over another person exists, “the Secretary will consider the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretary will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. The Secretary will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control” (emphasis added).

The legislative history makes clear that the statute does not require majority ownership for a finding of control.<sup>4</sup> Rather, the statutory definition of control encompasses both legal and operational control. Control by persons may be by individuals or groups, and multiple persons may control, individually and jointly, one or more entities. See Certain Welded Carbon Steel

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<sup>3</sup> The Department applies these affiliation provisions in an NME context when determining whether an NME exporter and its U.S. importer should be considered affiliated, and therefore whether the NME exporter should be required to report export sales on a constructed export price or export price basis. See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People’s Republic of China, 65 FR 19873, 19874 (April 13, 2000).

<sup>4</sup> The Statement of Administrative Action (SAA) states that: “[t]he traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm ‘operationally in a position to exercise restraint or direction’ over another even in the absence of an equity relationship.” See SAA, H.R. Doc. No. 103-316, Vol. 1, at 838.

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Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 62 Fed. Reg. 53808, 53815 (Oct. 16, 1997). Additionally, evidence of actual control is not required; it is the ability to control that is at issue. See also Antidumping Duties; Countervailing Duties; Proposed Rules, 61 FR 7308, 7310 (February 27, 1996). The Department may consider control to arise from the potential for manipulation of price and production. See Certain Welded Carbon Standard Steel Pipe and Tubes From India; Final Results of New Shippers Antidumping Duty Administrative Review, 62 FR 47632, 47638 (September 10, 1997).

In NME cases, the Department does consider the principle of “control,” as reflected in the provisions of section 771(33), to be instructive. As such, the Department may evaluate whether exporters in an NME context are controlling one another or are under the common control of another entity. We may also examine whether individuals in the employ of both companies are making, or are in the position to make, decisions concerning export sales, including decisions concerning export prices and terms of sale, for both companies. In this analysis, the Department has the responsibility to examine actual control or the potential to control both companies, and to manipulate decisions concerning export sales. See e.g., Hontex, Slip Op. 03-17 at 37 (quoting Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1191 (Fed. Cir. 1990) (“It is the Department’s duty to implement ‘the basic purpose of the [ \* \* \* ] statute – determining current margins as accurately as possible.”). It is also the Department’s “responsibility to prevent circumvention of the antidumping law.” See Queen’s Flowers de Colom. v. United States, 981 F. Supp. 617, 622 (CIT 1997). Thus, in carrying out its statutory duties, the Department must be prepared to address a situation in which one exporter that chooses not to cooperate, and is

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therefore assigned a high adverse facts available rate, seeks to channel exports through another exporter with a lower rate over which it has control. Otherwise, the Department would be remiss in its obligation to prevent actions which undermine the effectiveness of the antidumping law.

In considering the extent to which control occurs in an NME context, the Department examines the temporal aspect of such control. While the Department does not “rule out the possibility that a short-term relationship could result in control,”<sup>5</sup> it does examine the extent to which control occurs across any given period of review. Accordingly, the Department’s analysis of the temporal aspect of the relationship between the two companies is contained in part 4 of these Results of Remand, below.

In its remand order, the Court also states that “to the extent that Commerce has followed its market economy collapsing regulations, the NME exporter collapsing methodology is necessarily permissible.” See Hontex, Slip Op. 03-17 at 35. In addition to examining the criteria in its collapsing regulation, however, it is also appropriate in an NME context, where the Department examines the export activities of NME exporters, to consider whether such operations are intertwined through the involvement in both entities’ export decisions. The Department examines both companies’ export decisions because the export decisions are of primary concern to the Department in the NME context for purposes of assigning antidumping rates.

## 2. The Department’s determination that HFTC5 and Ningbo Nanlian should receive a

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<sup>5</sup> See Antidumping Duties, Countervailing Duties: Final Rule, 62 FR 27296, 27298 (May 19, 1997) (Final Rule).

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**single rate is supported by substantial record evidence.**

As explained above, in examining whether NME exporters should be collapsed and treated as one entity, the Department applies the factors identified in its regulations concerning collapsing, in addition to examining the export decisions of the exporters being examined. In addressing whether a significant potential for manipulation exists, the Department will consider whether there is common control among the exporters, based on the concept of control provided for in section 771(33) of the Act.

In the review under consideration, we found that the evidence on the record demonstrated that, during the POR, Mr. Wei served both as vice chairman and vice general manager of Ningbo Nanlian, and vice general manager of HFTC5. We then considered whether Mr. Wei's extensive, simultaneous involvement with both HFTC5 and Ningbo Nanlian encompassed the potential to exercise restraint or direction over both entities. As discussed in detail below, there is substantial evidence on the record showing that, during the POR, Mr. Wei was the assistant (or "vice") general manager of HFTC5,<sup>6</sup> as well as the vice general manager and vice chairman of the board of directors of Ningbo Nanlian. The evidence on the record further shows that, because he was a member of the management of each entity, Mr. Wei's potential to exercise restraint or direction over both HFTC5 and Ningbo Nanlian was significant, and covered concurrent time periods within the POR, as discussed below.

***a. Mr. Wei Was in a Position of Control with Respect to HFTC5 and Ningbo Nanlian***

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<sup>6</sup> Throughout the record, Mr. Wei is referred to by the respondents as HFTC5's "vice general manager," or "assistant general manager," interchangeably.

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Substantial record evidence supports our determination that Mr. Wei was in a position of control with respect to HFTC5 and Ningbo Nanlian. Record evidence demonstrates that Ningbo Nanlian and HFTC5 were small companies, with small management staffs. Ningbo Nanlian's management consisted only of a general manager and a vice-general manager. See Ningbo Nanlian Section A Questionnaire Response, dated December 8, 1998, at page 3 and Exhibit 6. HFTC5's management consisted only of [ \* \* \* ]. See HFTC5 supplement to its Section A Questionnaire Response, dated February 5, 1999 at Exhibit 1. Ningbo Nanlian's management "control{ed} the joint venture company and ma{de} all decisions regarding budget, sales, and pricing." See Ningbo Nanlian Section A Questionnaire Response, dated December 8, 1998 at page 2. In addition, Ningbo Nanlian's "management's decisions" were "subject only to review by the Board of Directors," which, according to Ningbo Nanlian's organizational chart, was superior in authority to Ningbo Nanlian's management. Id. HFTC5 was "controlled by the management (General Manager and Vice General Manager) . . . ." See HFTC5 Section A Questionnaire Response, dated December 22, 1998, at page 3. Given the small number of individuals who were overseeing each of these NME exporters, and given the authority of the management and/or directors of each as explained by each entity, it is clear that a vice general manager and/or vice chairman of the board of directors of these entities would have been in a legal and operational position to exercise restraint or direction over each entity.

### *i. Mr. Wei's Relationship with Ningbo Nanlian*

Mr. Wei was in a legal and operational position to exercise restraint or direction over Ningbo Nanlian. Mr. Wei was one of only two members of Ningbo Nanlian's management

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during the POR. According to Ningbo Nanlian's official, government-issued business license—which indicates a period of validity from January 23, 1998 to January 22, 2013—Mr. Wei was the Vice Chairman of Ningbo Nanlian's Board of Directors, as well as Ningbo Nanlian's Vice General Manager. See Ningbo Nanlian Section A Questionnaire Response, dated December 8, 1998 at Exhibit 4. The Chinese business license is the legal document which establishes the identity of a Chinese company. See Memorandum From Edward C. Yang to Joseph A. Spetrini, Relationship of Ningbo Nanlian Frozen Foods Co., Ltd and Huaiyin Foreign Trade Corporation (5), (Relationship Memo) dated April 7, 2000, at page 7.

There is no specific evidence, aside from assertions (in Ningbo Nanlian's submissions, and reiterated in the verification report), on the record to indicate that Mr. Wei ever relinquished these positions with Ningbo Nanlian, or that he ever ceased working for Ningbo Nanlian. Had Ningbo Nanlian's claims that Mr. Wei ceased to be associated with Ningbo Nanlian been accurate, Ningbo Nanlian could have provided a copy of its new government-issued business license showing that Mr. Wei had been replaced as Vice Chairman or Vice General Manager, copies of resignation letters, or any number of items of documentary evidence to support its assertions. Furthermore, at verification, when the Department asked who, if not Mr. Wei, was "responsible for coordinating exports for Ningbo during the POR," the Department was first told that this individual was "not available." See Verification Report, at page 10. The Department then asked if this individual could be brought to the office. Id. Ningbo Nanlian advised the Department that they would contact him. Id. Later, Ningbo Nanlian advised the Department that this individual no longer worked for the company. Id.

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Further, Ningbo Nanlian indicated that Mr. Edward Lee, the sole owner of Louisiana Packing, asked Mr. Wei to work on Ningbo Nanlian's crawfish tail meat sales during the POR. See Ningbo Nanlian's March 20, 2000 submission, at 10-11. Louisiana Packing is a [ \* \* \* ] percent owner of the Ningbo Nanlian joint venture. See Relationship Memo, at page 1. Thus, Mr. Lee was, via his sole ownership of Louisiana Packing, one of the two owners of Ningbo Nanlian. Evidence of Mr. Wei's potential to influence, control or manipulate Ningbo Nanlian's U.S. sales efforts during the POR includes Mr. Wei's approval stamp or "chop" (generally recognized as the equivalent of a signature in the United States) on "various of the documents . . . as an indication to Mr. Lee, when he received the documents upon entry into the U.S., that Mr. Wei had prepared them." See Ningbo Nanlian's March 20, 2000 submission, at 10-11; see also Verification Report, at pages 7-8.

As Mr. Wei himself indicated at the Ningbo Nanlian verification, he worked on Ningbo Nanlian's U.S. crawfish tail meat sales during the POR, "preparing export documents," inspecting products, and preparing and stamping his approval on invoices. Id. at pages 8-9. Mr. Wei also represented Ningbo Nanlian at Ningbo Nanlian's verification, and fully participated in the verification process, along with Mr. Lee and Mr. Lin Zhongnan (Ningbo Nanlian's chairman and general manager). See Verification Report, generally. Mr. Wei's preparation and approval of "various" sales and export documents, and his full participation in the verification of Ningbo Nanlian, constitute further evidence that Mr. Wei was operationally in a position to exercise restraint or direction over Ningbo Nanlian.

Further, although Mr. Lee described Mr. Wei as his "agent" (as opposed to a vice general

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manager or vice director), Mr. Wei indicated that he did not have any agreement setting forth the terms of his work for Mr. Lee. Ningbo Nanlian offered no other proof that Mr. Lee, Louisiana Packing, or Ningbo Nanlian agreed to employ Mr. Wei as an agent. See Verification Report, at 7 and 10. There is no dispute that the work performed by Mr. Wei included work on export sales of crawfish tail meat to the United States, performed for the benefit of Ningbo Nanlian. Nor is there any dispute that Mr. Wei was paid by Ningbo Nanlian (via Ningbo Nanlian's owner, Mr. Lee). Because he worked for Ningbo Nanlian during the POR, and was paid by Ningbo Nanlian for this work, Mr. Wei was certainly employed by Ningbo Nanlian during the POR.

Furthermore, according to Ningbo Nanlian, Mr. Wei was involved with Ningbo Nanlian's formation as a joint venture. His involvement in Ningbo Nanlian's formation included execution of the joint venture contract that created Ningbo Nanlian. See Article [ \* \* \* ] of the joint venture contract forming Ningbo Nanlian, at Exhibit 3 of the Verification Report, dated March 13, 2000. Mr. Wei's signature appears on the joint venture contract. According to Ningbo Nanlian, Mr. Wei was asked to work on the formation of the Ningbo Nanlian joint venture by Mr. Edward Lee. See Ningbo Nanlian's March 20, 2000 submission, at page 10. It is reasonable to conclude that a founder of a small business entity would be unavoidably involved in setting up the business structure and operations of that entity. Thus, as a founder of Ningbo Nanlian, involved in setting up the business structure and operations for Ningbo Nanlian, Mr. Wei would have been in a position to exercise restraint or direction over Ningbo Nanlian, at the very least during the period over which the company was formed. Furthermore, the Department has not been provided with information in this review to establish that Mr. Wei ever relinquished the

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authority or influence inherent in his status as company founder.

*ii. Mr. Wei's Relationship with HFTC5*

Mr. Wei was also in a legal and operational position to exercise restraint or direction over HFTC5. Mr. Wei was one of HFTC5's [ \* \* \* ] managers during the POR. From “October 26, 1997, through the POR, Mr. Wei was a part-time consultant for HFTC(5).” See Ningbo 2/17/00 Supplemental Response). Furthermore, it is not disputed that Mr. Wei was employed by HFTC5, until at least October 26, 1997. Id. at 1. However, as discussed further below, the evidence on the record indicates that Mr. Wei's involvement with HFTC5—as a member of HFTC5's management—extended into the POR.

After October 26, 1997, Mr. Wei continued to work for HFTC5, writing letters as the representative of HFTC5, contacting HFTC5's U.S. customers, meeting and/or maintaining correspondence with Customs officials and HFTC5's U.S. customers concerning crawfish tail meat sales, signing sales documents (including sales confirmations) as the representative of HFTC5, and attending trade fairs as HFTC5's representative. See Ningbo Nanlian's January 31, 2000 submission, at page 5; see also Ningbo 2/17/00 Supplemental Response, at Exhibit 1. For example, [ \* \* \* ] See Ningbo 2/17/00 Supplemental Response, at Exhibit 1.

On March 4, 1998, acting as the Vice General Manager of HFTC5, Mr. Wei faxed a letter to Customs, stating that “my name is Philip Wei. I am Vice General Manager of Huaiyin Foreign Trade Corporation. I am in charge of crawfish business to U.S.” See Customs Memo, at page 1. On March 25, 1998, Mr. Wei again contacted Customs, acting as the representative of HFTC5. Id. at page 6. On April 6, 1998, Mr. Wei again [ \* \* \* ] . See Ningbo 2/11/00 Supplemental

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Response, at Exhibit 1. On April 16, 1998, Mr. Wei signed a U.S. sales agreement as the representative of HFTC5. See HFTC5 Supplemental Questionnaire Response, dated February 5, 1999, at Exhibit 2. On [ \* \* \* ]. See Ningbo 2/11/00 Supplemental Response, at Exhibit 1.

On [ \* \* \* ]. See Ningbo 2/17/00 Supplemental Response, at Exhibit 1. On June 7, 1998, as the representative of HFTC5, Mr. Wei corresponded with Customs. See Customs Memo, at page 11. [ \* \* \* ]. See Ningbo 2/17/00 Supplemental Response, at Exhibit 1.

In June 1998, Customs officials visited the premises of HFTC5 to discuss crawfish exports. At this meeting, Mr. Wei, present as the representative of HFTC5, again identified himself as HFTC5's vice general manager. See Customs Memo, at page 1. [ \* \* \* ]. See Ningbo 2/17/00 Supplemental Response, at Exhibit 1. In the fall of 1998, Mr. Wei, acting as the representative of HFTC5, and along with other HFTC5 company officials, met with Customs. At this meeting, Mr. Wei again identified himself as the vice general manager of HFTC5. See Customs Memo, at page 1.

[ \* \* \* ]. See Ningbo 2/17/00 Supplemental Response, at pages 3-4. From October 26, 1997, through the POR, Mr. Wei also assisted HFTC5 on matters regarding non-subject merchandise. Id. at page 5.

Mr. Wei further explained his employment by HFTC5 while participating in the verification of Ningbo Nanlian. For example, Mr. Wei would contact U.S. customers for HFTC5, by writing letters and faxes, and by making phone calls. See Verification Report, at 6. Mr. Wei also said that he was authorized to, and in fact did, sign HFTC5 sales contracts. Id. Further, although Mr. Wei described himself as a "consultant" to HFTC5, instead of an

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employee, Mr. Wei stated that he did not have a consulting contract with HFTC5, and offered no other proof that HFTC5 agreed to employ him as a consultant. *Id.* at 7.

Mr. Wei was also paid by HFTC5, for his work for HFTC5, during the POR. *Id.* at 1. In addition, the sums of money paid to Mr. Wei by HFTC5 [ \* \* \* ] after October 26, 1997, the date on which Mr. Wei was supposed to have scaled back his involvement with HFTC5 from full-time, salaried employment, to part-time consultancy. See Ningbo 2/17/00 Supplemental Response, at page 1. Specifically, Mr. Wei was paid [ \* \* \* ] for his full-time, salaried work for the approximately 5-month period from June 1997 to October 26, 1997. This suggests an annual income (for full-time, salaried work) of approximately [ \* \* \* ], and a monthly income of approximately [ \* \* \* ]. *Id.* However, after Mr. Wei allegedly resigned from HFTC5 on October 26, 1997—after which date he allegedly scaled back to “part-time” work, performed in response to requests that HFTC5 “periodically” or “occasionally” made—Mr. Wei was paid [ \* \* \* ] for the period of October 27, 1997 to December 31, 1997. *Id.* at 1-3. This suggests an annual income of approximately [ \* \* \* ], and a monthly income of approximately [ \* \* \* ]. Furthermore, Mr. Wei’s annual income for calendar year 1998 totaled [ \* \* \* ], suggesting a monthly income of [ \* \* \* ]. *Id.* This information conflicts with claims that HFTC5 only “occasionally” or “periodically” requested Mr. Wei’s “part-time” help. If anything, Mr. Wei’s employment by HTFC5 increased in depth and importance after October 26, 1997, and into the POR. This [ \* \* \* ] suggests that the above discussion and itemization of Mr. Wei’s known efforts, undertaken as the representative of HFTC5, serve as an indicator of significant, long-term employment, covering a time period that

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includes the POR. As Mr. Wei himself indicated at the Ningbo Nanlian verification, he had been “performing services for” HFTC5 and Ningbo Nanlian “concurrently” during the POR. See Verification Report, at 9.

Additional evidence regarding Mr. Wei’s employment by HFTC5 was in the sole possession of HFTC5, and HFTC5 refused to allow the Department to verify its responses. See Final Results, 64 FR at 55238. Verification of the respondent’s information is integral to the Department’s dumping analysis. See section 351.307(a) of the Department’s regulations. It provides the only opportunity in which the Department can satisfy itself of the completeness and accuracy of the respondent’s submitted questionnaire responses. If the Department were to conclude that it should have gathered more evidence of Mr. Wei’s involvement with HFTC5 as a prerequisite to drawing any conclusions about Mr. Wei’s potential to exercise restraint or direction over HFTC5, it would inappropriately reward HFTC5 for its refusal to cooperate with the Department’s review.

Furthermore, HFTC5 failed to provide any verified evidence in support of its claim that Mr. Wei was anything less than a manager, or that he did not have the potential to exercise restraint or direction over HFTC5. HFTC5 never provided the Department with a copy of a contract or other document establishing a part-time consultant or independent contractors’ arrangement between Mr. Wei and HFTC5. And because HFTC5 refused to allow the Department to verify, the Department never had the opportunity to establish the accuracy of HFTC5's claims that Mr. Wei was not a manager, or that he did not have the potential to exercise restraint or direction over HFTC5.

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Nevertheless, as discussed above, evidence on the record demonstrates that Mr. Wei was the vice general manager of HFTC5 during the POR (and was therefore in a position to exercise restraint or direction over HFTC5). Although HFTC5 asserted during the review that Mr. Wei resigned from the company on October 26, 1997, it is clear from the evidence on the record, that Mr. Wei held himself out as being the “vice” or “assistant” general manager of HFTC5 on numerous occasions during the POR.

Even if the Department found HFTC5's argument, that Mr. Wei resigned from the position of assistant general manager on October 26, 1997, compelling (which we do not), there is other information on the record that renders this claim immaterial. For example, HFTC5 had to be aware of the uncontested fact that Mr. Wei was holding himself out as HFTC5's assistant (or “vice”) general manager to the PRC government, Customs, and U.S. crawfish tail meat customers, throughout the POR. If Mr. Wei was working under anything near the level of supervision that HFTC5 claims he was subject to (see Ningbo Nanlian's January 31, 2000 submission, at page 5), then it is entirely reasonable to conclude that HFTC5 was aware of the title Mr. Wei was using in his correspondence, and in his face-to-face meetings with PRC and U.S. Government officials.<sup>7</sup>

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<sup>7</sup> We note that, under the concept in U.S. agency law, a principal may be held responsible for the acts of its agent, if the agent acts with the apparent authority of the principal. See e.g., 2A C.J.S. *Agency* § 140 (2003) (“‘apparent authority’ is such authority as the principal . . . permits, as well as such authority which the principal by lack of care causes or allows,” and “the principal’s liability attaches regardless of whether the authority was actual or apparent . . .”). While U.S. agency law does not apply to entities in the PRC, the obvious underlying rationale for this rule is instructive here. If Mr. Wei was actually acting or misrepresenting himself as HFTC5's vice general manager to the PRC government, Customs, and U.S. crawfish tail meat customers, throughout the POR, and if HFTC5 did not refute these claims, then HFTC5 can

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To summarize, the facts on the record indicate that Mr. Wei was HFTC5's vice general manager, and was directly responsible for sales negotiations and decisions for HFTC5's crawfish tail meat exports to the United States during the POR. As noted above, HFTC5 was “controlled by the management (General Manager and Vice General Manager) . . . .” See HFTC5 Section A Questionnaire Response, dated December 22, 1998, at page 3.

By virtue of the fact that, during the POR, Mr. Wei served as the vice general manager of HFTC5, as well as the vice general manager and vice chairman of the board of directors of Ningbo Nanlian, Mr. Wei was legally or operationally in a position to exercise restraint or direction over both of these NME exporters during the POR. Consequently, the Department concludes that it is appropriate to treat HFTC5 and Ningbo Nanlian as exporters under common control.

***iii. Close Supplier Relationships***

The Department’s regulations provide that in determining whether “control” over another person exists, within the meaning of section 771(33) of the Act, the Secretary will consider the existence of close supplier relationships. See 19 C.F.R. section 351.102(b). As discussed in detail below, the Department also concludes that YFF and Louisiana Packing (the joint venture owners of Ningbo Nanlian) had the ability to control [ \* \* \* ] Ningbo Nanlian by virtue of their positions as supplier and U.S. importer [ \* \* \* ] .

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reasonably be said to have approved, adopted and accepted Mr. Wei’s representations and activities. There is no evidence on the record indicating that HFTC5 ever communicated to Mr. Wei any disapproval of, or disagreement with, Mr. Wei’s representations that he was HFTC5's vice general manager during the POR, or of any activity undertaken by Mr. Wei in his asserted capacity as HFTC5's vice general manager during the POR.

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Specifically, during the 1997 crawfish season, [ \* \* \* ] .<sup>8</sup> See Relationship Memo, at page 5. Also during the 1997 season, [ \* \* \* ] purchased [ \* \* \* ] % of the crawfish sold in the United States by [ \* \* \* ] . See Exhibit 1 of HFTC5's February 2, 2000 supplemental questionnaire response; see also, Ningbo Nanlian Section A Questionnaire Response, dated December 8, 1999, at page 13. During the 1998 crawfish season (within the POR for both Ningbo Nanlian and HFTC5), Ningbo Nanlian purchased 100 percent of the crawfish it sold to the United States from YFF, purchased 100 percent of the crawfish produced by YFF, and made 100 percent of its U.S. sales through Louisiana Packing. See Relationship Memo, at page 5; see also, Verification Report, at page 2.

In addition, during the 1997 season, [ \* \* \* ] percent of the crawfish tail meat sold in the U.S. [ \* \* \* ] was supplied by [ \* \* \* ] , and sold through [ \* \* \* ] . Id. Furthermore, during the 1997 season, [ \* \* \* ] purchased [ \* \* \* ] percent of the crawfish tail meat produced by [ \* \* \* ] . Id. Thus, [ \* \* \* ] were reliant upon one another for a major portion of [ \* \* \* ] U.S. sales during the POR. Furthermore, because during the POR, 100 percent of the crawfish tail meat sold in the United States by Ningbo Nanlian was supplied by YFF, and sold through Louisiana Packing, Ningbo Nanlian was reliant upon both YFF and Louisiana Packing for its U.S. sales during the POR.

The relationships between these entities were long-term, covering entire production seasons. HFTC5 and Ningbo Nanlian were also both exporting to the United States during that

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<sup>8</sup> The crawfish season in China generally lasts from early April until mid-September, so the bulk of subject merchandise produced during the 1997 season would have been sold and exported to the U.S. during the March 26, 1997 to August 31, 1998 POR.

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portion of the POR applicable to both entities (i.e., April 1, 1998 to August 31, 1998).<sup>9</sup>

Furthermore, YFF and Louisiana Packing had the potential to impact decisions, made by [ \* \* \* ] Ningbo Nanlian, concerning pricing of the subject merchandise, by virtue of the magnitude of their relationships with [ \* \* \* ]. First of all, as noted above, Ningbo Nanlian was a joint venture, formed and owned by YFF and Louisiana Packing. Entities that are the founders and owners of a third entity would certainly have the potential to impact business decisions of the third entity. YFF and Louisiana Packing would have further influence over Ningbo Nanlian by virtue of their roles as Ningbo Nanlian's exclusive supplier and exclusive U.S. importer, respectively. [ \* \* \* ].

***b. Other Evidence Demonstrates Common Control Between HFTC5 and Ningbo Nanlian***

***i. Relationships Between Mr. Lee/Louisiana Packing and HFTC5 and Ningbo Nanlian also Evidence Common Control***

In addition to the existence of these supplier relationships, there is further evidence on the record indicating that, during the POR, Mr. Lee, and his company, Louisiana Packing, were legally or operationally in a position to exercise restraint or direction over the operations of [ \* \* \* ] Ningbo Nanlian [ \* \* \* ]. Again, Mr. Lee was the sole owner of Louisiana Packing, which was itself the [ \* \* \* ] percent owner and U.S. parent company of the Ningbo Nanlian joint venture. As [ \* \* \* ] percent owner, Mr. Lee (via Louisiana Packing) had the ability to exercise direction over Ningbo Nanlian, as evidenced by the fact that Mr. Lee himself directed Mr. Wei to set up the Ningbo Nanlian joint venture, and work on the company's crawfish tail meat export

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<sup>9</sup> HFTC5 sold subject merchandise to U.S. customers as late as [ \* \* \* ]. See Exhibit 8 of HFTC5's April 8, 1999 response.

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sales efforts during the POR, and by the fact that Mr. Lee participated in the Ningbo Nanlian verification as a representative and co-owner of Ningbo Nanlian, answering questions and providing explanations on the Ningbo Nanlian's behalf. See Ningbo Nanlian's March 20, 2000 submission, at pages 10-11; see also, Verification Report, generally. Further, as the Department first learned at verification, Mr. Lee had actually been [ \* \* \* ]. See Verification Report, at 2. It stands to reason that, in [ \* \* \* ], Mr. Lee was taking some degree of responsibility for [ \* \* \* ] U.S. sales activities during the POR. After all, [ \* \* \* ] are a business expense attributable to [ \* \* \* ] U.S. sales of crawfish tail meat. It is therefore also reasonable to infer that Mr. Lee had some actual—or at the very least, potential—control over [ \* \* \* ] U.S. sales activities during the POR.

### ***ii. Cooperation Between HFTC5 and Ningbo Nanlian***

Finally, while Ningbo Nanlian and HFTC5 were described as “competitors” by Mr. Wei (Id. at 9), there is substantial information on the record indicating that these two entities had a cooperative relationship. First, as noted above, Mr. Lee, the sole owner of Ningbo Nanlian's U.S. joint venture parent company, [ \* \* \* ] for the POR. Furthermore, throughout the administrative review, HFTC5 provided Ningbo Nanlian with numerous documents (several of which contained significant quantities of business proprietary information), which Ningbo Nanlian then submitted to the Department on its own behalf. See e.g., Ningbo Nanlian's January 31, 2000 response, at exhibits 2, 5 and 6. In fact, one of Ningbo Nanlian's responses contains several proprietary documents of HFTC5 that actually reveal HFTC5's U.S. customers. See Ningbo Nanlian's February 17, 2000 response, at Exhibit 1. These examples certainly provide

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evidence of cooperation between the two entities that should be considered in determining whether there is a potential for manipulation of pricing and selling decisions between Ningbo Nanlian and HFTC5. Furthermore, if the Department had been permitted to verify HFTC5, it might have found even more such evidence of cooperation between the two companies.

In light of the above, because Mr. Wei, and [ \* \* \* ], were legally or operationally in a position to control (*i.e.*, exercise restraint or direction over) both Ningbo Nanlian and HFTC5 during the POR, the Department finds further reason to conclude that it is appropriate to treat HFTC5 and Ningbo Nanlian as exporters under common control.

*c. Substantial Evidence Supports the Conclusion That HFTC5 and Ningbo Nanlian Should be Treated as a Single Entity*

The Court stated that “to the extent that Commerce has followed its market economy collapsing regulations, the NME exporter collapsing methodology is necessarily permissible.” See Hontex, Slip Op. 03-17 at 35. The Court further noted, in “reducing its market economy collapsing methodology to regulation, Commerce focused its analysis on ‘affiliated producers,’” as reflected in 351.401(f). Id. at 36. There, the Court also found that applying the collapsing practice to NME exporters, rather than NME producers, is consistent with a “reasonable interpretation of the antidumping statute.” Id. at 37-38.

In light of the Court’s statements concerning the Department’s ability to “collapse” NME exporters in appropriate circumstances, the Department analyzed whether, in this case, it would be appropriate to treat HFTC5 and Ningbo Nanlian as a single entity. For the reasons given below, we have determined that it is appropriate to treat HFTC5 and Ningbo Nanlian as a single entity.

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As discussed above, the Department concludes that HFTC5 and Ningbo Nanlian were under common control during the POR. Also, it is not disputed that HFTC5 and Ningbo Nanlian exported identical products—*i.e.*, crawfish tail meat—during that period. The Department also finds that there was a significant potential for the manipulation of decisions on export prices and terms.

First, the fact that Mr. Wei and [ \* \* \* ] were each legally or operationally in a position to exercise restraint or direction over (i.e., control) both HFTC5 and Ningbo Nanlian during the POR, as discussed in detail above, necessarily leads to the conclusion that there was significant potential for the manipulation of decisions on export prices and terms between these NME exporters. For example, if one person or entity controls two exporters, it stands to reason that that person or entity would have the potential ability to set or influence the export prices and terms of sale. The controlling person or entity would also have the potential ability to funnel particular sales through the exporter with the favorable antidumping rate, or price U.S. sales at less than fair value, and then mask dumped U.S. sales by funneling them through an exporter that refuses to participate in the Department's antidumping duty administrative review, thus manipulating future antidumping margins. Such manipulation of antidumping margins would affect what prices the exporters would be able to charge for future U.S. sales.

Furthermore, using section 351.401(f)(ii) of the Department's regulations as a guide, the Department considered the extent to which managerial employees of HFTC5 sit on the board of directors of Ningbo Nanlian. As discussed in detail above, during the POR, Mr. Wei served as a managerial employee (vice general manager) of HFTC5, as well as a member (vice chairman) of

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the board of directors of Ningbo Nanlian.

Furthermore, using section 351.401(f)(iii) of the Department's regulations as a guide, the Department considered whether Ningbo Nanlian and HFTC5's operations were intertwined, such as through the sharing of sales information, the sharing of employees, or significant transactions between the two entities. Ningbo Nanlian and HFTC5 shared sales information through their common employment of Mr. Wei, who, as a manager, as described in detail above, undertook a decisive role in the U.S. sales process of each entity. Through this common management, Ningbo Nanlian and HFTC5 necessarily shared Mr. Wei's knowledge of U.S. customers, sales prices, market conditions, international sales and shipping practices, and other information that Mr. Wei would have accumulated in working for HFTC5 since 1988.

See Verification Report, at 5.

Following those parts of 19 C.F.R. section 351.401(f) of the Department's regulations applicable to the facts of this case, and for the reasons discussed in sections 1, 2, and 3 above, the Department concludes that it is appropriate to treat the NME exporters Ningbo Nanlian and HFTC5 as a single entity.

**3. Analysis of the Temporal Aspect of the Relationship Between the Involved Parties Supports the Department's Conclusion that Ningbo Nanlian and HFTC5 Should be Collapsed.**

Although the Department did not specifically address the temporal aspect of the relationship between the Ningbo Nanlian and HFTC5 in its Final Results, the time period in which Mr. Wei's activities took place did affect the Department's determination. The record

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clearly demonstrates that Mr. Wei's actions on behalf of both companies were not limited to one or two occasions. Rather, the record is clear that Mr. Wei's actions as a high level manager for both companies occurred repeatedly over the course of the period of review. As the Department noted in its Relationship Memo:

{I}n the year after the antidumping duty order was issued, [ \* \* \* ] to the newly formed Ningbo Nanlian, a joint venture between YFF and Louisiana Packing. Simultaneously, Louisiana Packing switched its imports from [ \* \* \* ] and became Ningbo Nanlian's exclusive importer. As this happened, the same individual was acting, whether or not "officially,"<sup>10</sup> as the vice general manager of both HFTC5 and Ningbo Nanlian, although his salary was paid in part by Louisiana Packing. This individual continued to exercise significant responsibility over the export selling functions of both companies throughout the POR.

See Relationship Memo, at page 5.

The period of review for HFTC5 lasted from March 26, 1997 to August 31, 1998.

Ningbo Nanlian's period of review was April 1, 1998 through August 31, 1998. As the following list demonstrates, Mr. Wei's actions on behalf of both companies spanned both periods and did not constitute "sporadic contacts" or "temporary circumstances":

- March 1997 through at least October 1997, Mr. Wei was employed by HFTC5. See Ningbo 2/17/00 Supplemental Response, at page 1.
- After October 26, 1997, Mr. Wei continued to conduct business for HFTC5 by writing letters for HFTC5, contacting U.S. customers for HFTC5, signing sales documents for HFTC5, including sales confirmations, and attending trade fairs for HFTC5. Id. at pages 1-3.
- December 15, 1997 - Mr. Wei was paid [ \* \* \* ] by HFTC5 for work completed for HFTC5 for the period October 27, 1997 through December 31, 1997. Id. at page 1.

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<sup>10</sup> It is important to note that in the Summer and Fall of 1998, Mr. Wei identified himself as HFTC5's vice general manager in the presence of HFTC5's general manager and the director of the Huaiyin Foreign Economic and Trade Committee. See Customs Memo, at page 1.

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- [ \* \* \* ]” Id. at Exhibit 1.
- January 23, 1998 - Effective date of Ningbo Nanlian’s business license. The business license, submitted to the Department on December 8, 1998, identifies Mr. Wei as Ningbo Nanlian’s Vice Chairman and Vice General Manager. Louisiana Packing appointed Mr. Wei to this position.
- March 4, 1998 - Mr. Wei contacts Customs via fax and states “My name is Philip Wei. I am Vice General Manager of Huaiyin Foreign Trade Corporation. I am in charge of crawfish business to U.S.” See Customs Memo, at page 1.
- March 6, 1998 - Customs responds to Mr. Wei, Vice General Manager of HFTC5. Id. at page 5.
- March 25, 1998 - Mr. Wei contacts Customs on behalf of HFTC5. Id. at page 6.
- April 1, 1998 through August 31, 1998 - Mr. Wei prepared export documentation for Ningbo Nanlian’s shipments of subject merchandise. See Ningbo Nanlian Memorandum in Response to Verification Report (Ningbo Verification Memo), dated March 24, 2000, at pages 10-11.
- April 1, 1998 through August 31, 1998 - Mr. Lee of Louisiana Packing paid Mr. Wei for work completed on behalf of Ningbo Nanlian during Ningbo Nanlian’s period of review. See Verification Report, at page 9.
- April 6, 1998 - [ \* \* \* ] . See Ningbo 2/11/00 Supplemental Response, at Exhibit 1.
- April 16, 1998 - Customs contacts Mr. Wei at HFTC5 to discuss antidumping duty rates for HFTC5's exports of crawfish. See Customs Memo, at page 8.
- [ \* \* \* ] . See Ningbo 2/11/00 Supplemental Response, at Exhibit 1.
- [ \* \* \* ] . See Ningbo 2/17/00 Supplemental Response, at Exhibit 1.
- June 7, 1998 - Mr. Wei, as the representative of HFTC5, contacts Customs official Leo Lin. See Customs Memo, at page 9.
- [ \* \* \* ] . See Ningbo 2/17/00 Supplemental Response, at Exhibit 1.
- June 1998 - Customs officials visit HFTC5 to meet with Mr. Wei to discuss HFTC5's exports of crawfish. At the meeting, Mr. Wei presents himself to Customs as HFTC5's

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Vice General Manager. See Customs Memo, at page 1.

- June 15, 1998 - Customs contacts HFTC5 to thank Mr. Wei for showing HFTC5's "company operations" to Customs. See Customs Memo, at page 10.
- July 13, 1998 - Mr. Wei contacts Customs on behalf of HFTC5 regarding antidumping duty rates for HFTC5's exports of crawfish. Id. at page 12.
- [ \* \* \* ]. See Ningbo 2/17/00 Supplemental Response, at Exhibit 1.
- Fall, 1998 - Mr. Wei, along with other HFTC5 company officials, meet again with Customs. At the meeting, Mr. Wei once again identifies himself as the Vice General Manager of HFTC5. Mr. Wei presents Customs with a business card which states "Wei Wei, Vice General Manager, Huaiyin Foreign Trade Corp." See Customs Memo, at pages 1-3.
- November 25, 1998 - Mr. Wei was paid [ \* \* \* ] by HFTC5 to act on its behalf for the period January 1998 through August 31, 1998. See Ningbo 2/17/00 Supplemental Response, at page 1.
- From October 26, 1997 through the period of review, on behalf of HFTC5, Mr. Wei also contacted U.S. customers [ \* \* \* ] regarding HFTC5's sales of crawfish. Id. at pages 3-4.

An additional fact should be noted: the crawfish season generally lasts from April to mid-September of any given year. Mr. Wei, as demonstrated above, was highly active in HFTC5 and Ningbo Nanlian's crawfish export business during the height of the crawfish processing season. Verification of HFTC5 would likely have shed further light on Mr. Wei's actions on behalf of HFTC5 and Ningbo Nanlian. However, HFTC5 refused to permit verification and did not allow the Department to visit its facilities.

In sum, far from providing "occasional" assistance with translating documents and using his English skills, as Mr. Lee claimed Mr. Wei did, the fact remains that record evidence demonstrates that Mr. Wei served as a vice general manager for both Ningbo Nanlian and HFTC5 in overlapping periods during the POR and contributed significant time and efforts to

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both companies. Furthermore, Louisiana Packing was in a position to exercise restraint or direction over Mr. Wei, and consequently, the U.S. export operations of [ \* \* \* ] Ningbo Nanlian [ \* \* \* ] during the POR.

**4. The Department has Indicated the Factors Used to Reach its Finding that a “Significant Potential for Manipulation” of Pricing and Export Decisions Existed.**

In determining that a “significant potential for manipulation” of pricing and export decisions existed, the Department considered the list of factors enumerated in section 351.401(f)(2) of the Department’s regulations, as discussed above in sections 1 and 2. However, in the NME context, the Department further considered the extent to which managerial employees or board members were involved in the “export operations” of both entities, as well as significant transactions between the exporters and their owners.

In the instant case, sections 351.401(f)(2)(ii) and (iii) apply. Mr. Wei was a high level managerial employee for both Ningbo Nanlian and HFTC5, who was regularly involved, as the record evidence demonstrates, in the selling and exporting functions of both companies during the same period. Section 351.401(f)(2)(iii) considers the very factual situation at issue in this case as one that would lead to a significant potential for manipulation of pricing and export decisions. It is Mr. Wei’s actual or potential influence over both companies that is at issue in this case. Over the course of the POR, the Department discovered evidence of both potential and actual influence over the sales and export decisions of both companies during the POR. The record evidence alone demonstrates that the high level managerial positions held by Mr. Wei with both companies allowed for the *potential* for manipulation. Mr. Wei’s positions at both

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companies as a high level manager would naturally result in Mr. Wei having access to the business plans for both companies, and the business contacts for both companies, as well as having the ability to communicate information between the two companies that would normally be kept confidential between two businesses that consider themselves competitors. Such access to both companies' confidential business information and sales plans by a high level manager like Mr. Wei would alone allow for the *potential* for manipulation.

However, as the list of Mr. Wei's actions on behalf of both companies during the same time periods provided in response to part 3 above clearly demonstrates, we also have ample documentary evidence of Mr. Wei's *actual* involvement and coordination of the U.S. exports of subject merchandise. Further, we have documentary evidence containing Mr. Wei's own admission of his involvement in HFTC5's crawfish exports to the United States during the POR. Mr. Wei himself stated that he was "in charge of crawfish business to U.S." See Customs Memo, at page 1. Ningbo Nanlian has further admitted to Mr. Wei's actual involvement, and payment by Mr. Lee for his involvement, in Ningbo Nanlian's export operations. See Ningbo Verification Memo, at pages 10-11. Despite Ningbo Nanlian's characterization of Mr. Wei's involvement, the fact remains that in addition to setting up the company and creating its legal existence in China, and identifying himself as the company's vice chairman and vice general manager, Mr. Wei was directly involved in the company's business of exporting subject merchandise. See Ningbo Section A Questionnaire Response, at Exhibit 4. See also Ningbo Verification Memo, at pages 10-11.

Mr. Wei's influence at both companies, and potential ability to manipulate prices and

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export decisions as a high level manager for both companies, should also be viewed in the proper context. Ningbo Nanlian and HFTC5 are both very small companies with very small managerial staffs. See Ningbo Section A Questionnaire Response, at Exhibit 6. See also Ningbo Nanlian Supplemental Response, dated February 5, 1999 at Exhibit 1. As the organizational charts provided to the Department for both HFTC5 and Ningbo Nanlian reflect, the managerial staffs consisted of no more than [ \* \* \* ] individuals. Id. Therefore, Mr. Wei's position as a high level manager at both companies allowed for an even greater potential to manipulate prices when viewed in terms of the small size of both companies' managerial staffs.

Section 351.401(f)(2)(iii) further considers significant transactions between the companies as additional factors to consider in determining whether a significant potential for manipulation existed. In this case, [ \* \* \* ], had regularly sold its crawfish to [ \* \* \* ]. See Relationship Memo, at pages 1-2. [ \* \* \* ], in turn, sold its crawfish to Louisiana Packing, Ningbo Nanlian's other owner. Id. However, in the year after the antidumping duty order was issued, [ \* \* \* ], where Mr. Wei was a high-level manager, to Ningbo Nanlian, a joint venture between YFF and Louisiana Packing, which was set up by Mr. Wei. Id. At that precise time, Louisiana Packing switched its imports from [ \* \* \* ] and became Ningbo Nanlian's exclusive importer. Id.

**RESULTS**

The Department released its Draft Results of Determination Pursuant to Court Remand (Draft Results) on August 4, 2003, along with a cover letter soliciting comments from the parties.

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The parties did not file comments on the Draft Results.

In accordance with the CIT's February 13, 2003 order, the Department has: (1) clearly set out the collapsing methodology used in the Final Results, and clearly articulated why such methodology is a permissible interpretation of the antidumping statute; (2) detailed the manner in which such methodology departs from existing regulations dealing with collapsing in market economy countries and the justifications and authority for doing so; (3) explained how the temporal aspect of the relationship between the companies affected its determination; (4) stated with specificity the numerous factors used to reach its finding that a "significant potential for manipulation" of pricing and export decisions existed; and (5) stated with specificity the factors used in its determination that Ningbo Nanlian and HFTC5 were "intertwined." The Department has further identified substantial evidence on the record supporting its findings.

In accordance with the Court's February 13, 2003 order, we have demonstrated to this Court that the Department's record for the 97/98 administrative review period supports a finding that HFTC5 and Ningbo Nanlian's relationship was such that, for the POR at issue, they should be treated as a single entity and assigned a single margin.

These final results pursuant to remand are being issued in accordance with the order of the CIT in Hontex Enterprises, Inc., d/b/a/ Louisiana Packing Co. v. United States, Slip Op. 03-17, Court No. 00-00223 (CIT February 13, 2003).

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James J. Jochum

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Assistant Secretary  
for Import Administration

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Date