

December 17, 2007

MEMORANDUM TO: David Spooner
Assistant Secretary
for Import Administration

FROM: Stephen Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Rescission in the
Antidumping Duty New Shipper Review of Certain Frozen
Warmwater Shrimp from the People's Republic of China

SUMMARY:

We have analyzed the briefs and rebuttal briefs of interested parties in the antidumping duty new shipper review of certain frozen warmwater shrimp from the People's Republic of China ("PRC"). The period of review ("POR") is February 1, 2006, through July 31, 2006. On July 26, 2007, the Department of Commerce ("the Department") published the preliminary results of the new shipper review for Maoming Changxing Foods Co., Ltd. ("Maoming Changxing"). See *Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Notice of Intent to Rescind Antidumping Duty New Shipper Review*, 72 FR 41058 (July 26, 2007) ("*Preliminary Rescission*"). See also Memorandum to James C. Doyle: Intent to Rescind the New Shipper Review of Maoming Changxing Foods Co., Ltd. in the Antidumping New Shipper Review of Certain Frozen Warmwater Shrimp from the People's Republic of China, dated July 19, 2007 ("*Preliminary Rescission Memo*"). We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this new shipper review:

Comments:

Comment 1: Whether to Rescind the New Shipper Review
Comment 2: The Margin Assigned to Maoming Changxing

Discussion of Issues:

Comment 1: Whether to Rescind the New Shipper Review

Maoming Changxing argues that the Department's conclusions in the *Preliminary Rescission* are not supported by evidence on the record of this review. Maoming Changxing claims that the Department ignored mitigating facts and explanations provided at verification, which demonstrated the ownership of the company. Maoming Chanxing also argues that, at

verification, it provided detailed information regarding stock ownership, identity of shareholders, and corporate affiliations of shareholders and the board of directors, as well as previous employment of employees.¹ Maoming Changxing further argues that it cooperated fully in this review by responding to the original and supplemental questionnaires, and the Department's preliminary determination that Maoming Changxing withheld information is not supported by the record. Maoming Changxing in particular takes issue with the Department's presumption of affiliation between itself and a Hong Kong company.² Maoming Changxing contends that the Hong Kong company from which significant funds were invested in Maoming Changxing does not hold any shares in Maoming Changxing, nor are there any other indicia that the Hong Kong company and Maoming Changxing are affiliated. In addition, Maoming Changxing argues that the ownership of the Hong Kong company by Maoming Changxing's General Manager's cousin does not automatically evidence affiliation, and all funds transferred by this company into Maoming Changxing's accounts were the General Manager's personal money. *See* Maoming Verification Report at 6.

With respect to the Hong Kong company, Maoming Changxing claims that the evidence does not support the conclusion that Maoming Changxing withheld information with respect to it, nor that Maoming Changxing is affiliated with it. Maoming Changxing argues that documents submitted on the record prior to verification mention the existence of this company (*i.e.*, capital verification report and bank documents). Citing to the bank wire receipts, Maoming Changxing alleges that it did not withhold information with respect to the Hong Kong company. *See* Attachment 1 of Maoming Changxing's September 4, 2007, submission.

In addition, Maoming Changxing argues that the Department has skewed the evidence and reached arbitrary conclusions, especially with respect to the transfer of funds by one of its original investors. Citing the Maoming Verification Report at 6, Maoming Changxing alleges that it would not necessarily have known why one of its investors transferred funds from an account in a different country than the investor's location, and that this fact pattern is not contradictory. Further, Maoming Changxing argues that its inability to provide a complete Capital Verification Report for its majority owner that included all auditors notes and bank documentation was because it was not required due to its small amount of invested capital. Maoming Changxing further argues that there is no evidence on the record contradicting that assertion. Maoming Changxing also alleges that the Department was incorrect in stating that a Capital Verification Report is required to obtain a business license and establish a company in the PRC, and argues the Department did not cite any provision of PRC law to support its conclusion. Maoming Changxing contends that an objective review of the evidence on the record demonstrates that it is entitled to a separate rate.

¹ *See* Memorandum to the File: Verification of the Questionnaire Responses of Maoming Changxing Foods Co., Ltd. in the Antidumping New Shipper Review of Certain Frozen Warmwater Shrimp from the People's Republic of China, dated July 19, 2007 ("Maoming Verification Report"), at 3-5.

² The identity of this company is proprietary. Thus, the Department will refer to this company throughout this memorandum as the "Hong Kong company."

The Ad Hoc Shrimp Trade Action Committee (“Domestic Producers”) argues that the Department should rescind the new shipper review for Maoming Changxing. Quoting the Department’s *Preliminary Rescission*, Domestic Producers assert that, because the Department found that the ownership of Maoming Changxing was unverifiable and the company was not granted a separate rate (*see Preliminary Rescission*, 72 FR at 41060), the Department was correct to preliminarily rescind the new shipper review, and should rescind this new shipper review in the final stage.

Further, Domestic Producers argue that because Maoming Changxing’s affiliations could not be verified, Maoming Changxing is part of an entity that shipped during the original period of investigation (“POI”). Domestic Producers maintain that Maoming Changxing’s assertion that it cooperated fully and the Department “skewed” the evidence is not supported by the record. They point out that the Department found that Maoming Changxing failed to disclose critical information at verification, and found numerous discrepancies and inconsistencies with Maoming Changxing’s U.S. sale, including fabricated sales documentation. Accordingly, Domestic Producers contend that the totality of the inconsistencies and irregularities in Maoming Changxing’s responses leads to the conclusion that Maoming Changxing does not qualify as a new shipper, nor to a separate rate, and the Department should rescind the new shipper review.

Department’s Position:

As the Department noted in the *Preliminary Rescission*, and the accompanying Preliminary Rescission Memo, the Department found numerous discrepancies at verification and determined that Maoming Changxing does not qualify as a new shipper and is not eligible for a separate rate. The Department continues to find that the new shipper review for Maoming Changxing should be rescinded.

A. Maoming Changxing’s Affiliations and Its New Shipper Status

Section 751(a)(2)(B)(i)(I) of the Tariff Act of 1930, as amended (“the Act”), requires of a new shipper, that “such exporter or producer did not export the merchandise that was the subject of the antidumping duty or countervailing duty order to the United States . . . during the period of investigation.” Section 751(a)(2)(B)(i)(II) of the Act further requires that “such exporter or producer is not affiliated (within the meaning of section 771(33)) with any exporter or producer who exported the subject merchandise to the United States . . . during that period.”

Section 771(33) of the Act, provides that:

The following persons shall be considered to be ‘affiliated’ or ‘affiliated persons’:

- (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.
- (B) Any officer or director of an organization and such organization.
- (C) Partners.
- (4) Employer and employee.
- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any

- organization and such organization.
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
 - (G) Any person who controls any other person and such other person³.

Thus, in this new shipper review, Maoming Changxing must demonstrate that it “is not affiliated (within the meaning of section 771(33)) with any exporter or producer who exported the subject merchandise to the United States” during the POI, pursuant to section 751(a)(2)(B)(i)(II) of the Act. As discussed in detail in the Department’s *Preliminary Rescission* and in the Preliminary Rescission Memo, the Department could not verify the information submitted by Maoming Changxing regarding its ownership and affiliation, and its relation with a Hong Kong company which transferred a significant amount of investment capital to Maoming Changxing on behalf of Maoming Changxing’s two other “owners.”

In this proceeding, the Department issued five supplemental questionnaires, requesting that Maoming Changxing clarify its affiliations, and identify both its corporate owners and their individual shareholders. For example, in the first section A supplemental questionnaire (“SAQ1”) at question 26, dated December 5, 2006, the Department requested that Maoming Changxing identify all affiliates of: (1) Maoming Changxing; (2) Maoming Changxing’s corporate owners during its formation and during the POR; and (3) the individual shareholders of Maoming Changxing’s corporate owners. In its response,⁴ Maoming Changxing stated that “it has identified all affiliates of each of the companies listed” by the Department, POR and post-POR. Maoming Changxing did not identify Hong Kong company’s name which provided the funds for its reported owners. Although the name of the Hong Kong company at issue first appeared in a lengthy exhibit provided in Maoming Changxing’s third supplemental response,⁵ Maoming Changxing did not provide any narrative explanation regarding this company. See the Separate Rate section below for further details.

At verification the Department discovered the significance of the Hong Kong company at issue with regard to Maoming Changxing’s financial backing. During the Department’s verification, Department officials reviewed Maoming Changxing’s ownership and affiliation based on three capital verification reports.⁶ However, Maoming Changxing could not demonstrate that one of

³ Section 351.102(b) of the Department’s regulations also defines affiliated persons and affiliated parties as having the same meaning as in section 771(33) of the Act.

⁴ See Maoming Changxing’s December 5, 2006, response to the Department’s SAQ1 at page 9.

⁵ See Maoming Changxing’s April 24, 2007, response to the Department’s third supplemental questionnaire (“SAQ3”) in Exhibit 3S-1 at pages 27 and 28. See the Separate Rate section below for further details.

⁶ These reports were first placed on the record by Maoming Changxing in its Section A response at Exhibit 15, but complete, legible translations were not placed on the record until Maoming Changxing’s 4th Supplemental at Exhibit 4S-1. The reports included are the original capital verification report, dated May 26, 2005 (“Capital Verification Report 1”), Maoming Changxing’s second capital verification report dated August 17, 2005 (“Capital Verification Report 2”), and Maoming Changxing’s third capital verification report, dated March 23, 2006 (“Capital Verification Report 3”).

its original owners prior to the POR remitted the funds to establish Maoming Changxing as reported in Maoming Changxing's questionnaire responses.⁷ Because the Department found that the funds were not remitted by the named investor, rather they were remitted by the Hong Kong company, the Department could not verify the ownership of Maoming Changxing's claimed parent companies or ultimate owners. *See* Maoming Verification Report at 7 and Exhibit MC5 at 9. The same Hong Kong company also remitted the entire investment on behalf of another owner of Maoming Changxing during the POR. Moreover, the Department found that there is a familial affiliation between the owner of this Hong Kong company and the majority shareholder and the General Manager of Maoming Changxing. *See* Preliminary Rescission Memo at 5.

Because Maoming Changxing failed to disclose the significant role of the Hong Kong company (*i.e.*, providing the initial funding capital and the owner's affiliation with Maoming Changxing's majority individual shareholder and General Manager) and the Department did not discover these facts until verification, the Department no longer had time to issue additional questionnaires, and analyze additional information. Because the Department did not have an opportunity to follow up with additional questionnaires to determine whether and how the Hong Kong company is affiliated to Maoming Changxing in accordance with section 771(33) of the Act, the Department was unable to verify the true owners of Maoming Changxing. In addition, the Department was precluded from conducting a complete analysis of whether Maoming Changxing or its affiliated companies had exported or produced subject merchandise for export to the United States during the POI, pursuant to section 751(a)(2)(B)(i)(II) of the Act. Thus, the Department was unable to conduct a complete and accurate analysis of whether Maoming Changxing was eligible for a new shipper review. *See* Preliminary Rescission Memo.

Moreover, as discussed further below, by not providing the Department with complete, accurate, reliable, and verifiable information regarding its ownership and affiliation, Maoming Changxing was unable to demonstrate that it is not affiliated with any entity, or not part of the PRC-wide entity covered in the original investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China*, 69 FR 70997 (December 8, 2004). Consistent with the Department's practice, we have therefore determined that Maoming Changxing does not qualify as a new shipper under section 351.214(a) of the Department's regulations. *See Freshwater Crawfish Tail Meat From the People's Republic's of China: Rescission of New Shipper Reviews*, 72 FR 26782 (May 11, 2007) ("*Crawfish Rescission*"); *see also Brake Rotors from the People's Republic of China: Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 64 FR 61581 (November 12, 1999) ("*Brake Rotors*

⁷ Of the three capital verification reports, the Department found that on Capital Verification Report 1, the registered capital was not submitted at the establishment of Maoming Changxing. *See* Maoming Verification Report at 6. Although Maoming Changxing stated that one of its investors completed its capital contribution prior to its withdrawal, the Department found at verification, using Capital Verification Report 2, that the bank wire transfer receipt for this completion of transfer of capital shows that the funds were not remitted by the named investor, but were in fact remitted by the Hong Kong company. *See* Maoming Verification Report at 7 and Exhibit MC5 at 9.

Rescission”); see also, *Freshwater Crawfish Tail Meat From the People’s Republic of China: Initiation of Antidumping Duty New Shipper Reviews*, 71 FR 26453 (May 5, 2006).

B. Separate Rate

In proceedings involving non-market-economy (“NME”) countries, the Department begins with a presumption that all companies within the country are subject to government control and thus should be assigned a single antidumping rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*)⁸ and in fact (*de facto*),⁹ with respect to its exports.

To establish whether a company is sufficiently independent in its export activities from government control to be eligible for a separate, company-specific rate, the Department analyzes the exporting entity in an NME country under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People’s Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (“*Sparklers*”), and amplified by the *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*”). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *Silicon Carbide* at 22586-87. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

In this new shipper review, although Maoming Changxing provided information in its questionnaire responses regarding its corporate structure, ownership, affiliations with certain entities, and its export sales negotiation process, we found that certain critical information submitted on the record of this proceeding by Maoming Changxing could not be verified. We disagree with Maoming Changxing that the Department ignored mitigating facts and explanations provided at verification, with respect to the ownership of the company. As

⁸ The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter’s business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. See *Sparklers* 56 FR at 20589.

⁹ The Department typically considers four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide* 59 FR at 22587.

discussed in detail in the Department's *Preliminary Rescission* and in the Preliminary Rescission Memo, the Department could not verify the information submitted by Maoming Changxing regarding: 1) Maoming Changxing's ownership and affiliation; 2) the relation between Maoming Changxing and a Hong Kong company which transferred a significant amount of investment capital to Maoming Changxing on behalf of Maoming Changxing's two other "owners;" 3) the capital verification report of one of its claimed owners; 4) Maoming Changxing's email account used for sales negotiation during the POR; and 5) Maoming Changxing's sales contract and sales invoices.

As discussed above in the Maoming Changxing's Affiliations and Its New Shipper Status section, the Department found at verification that the Hong Kong company transmitted investment capital to Maoming Changxing on behalf of one of its initial owners and one of its POR owners. With respect to the name and roles of the Hong Kong company, we disagree with Maoming Changxing that it did not withhold this information. As stated above, during this proceeding, the Department issued five supplemental questionnaires requesting that Maoming Changxing clarify its affiliations, and identify both its corporate owners and their individual shareholders. For example, in SAQ1 at question 12, the Department requested that Maoming Changxing identify the source of each individual owner's capital contribution and provide supporting documentation with its response. In its response,¹⁰ Maoming Changxing stated that one of its POR owners merely registered the company but did not contribute any capital into Maoming Changxing as is permitted under the law in Hong Kong. As stated above, at question 26 of SAQ1, the Department requested that Maoming Changxing identify all affiliates of: (1) Maoming Changxing; (2) Maoming Changxing's corporate owners during its formation and during the POR; and (3) the individual shareholders of Maoming Changxing's corporate owners. Maoming did not mention the Hong Kong Company's name in its response. In the second supplemental questionnaire ("SAQ2") at question 2, dated March 6, 2007, the Department requested that Maoming Changxing provide a table that lists each of the shareholders. In its response,¹¹ Maoming Changxing provided a list without mentioning the Hong Kong company which provided the funds for its reported owners. In its third supplemental questionnaire ("SAQ3") at question 3, dated April 5, 2007, the Department requested that Maoming Changxing clarify certain discrepancies between its three provided capital verification reports and its narrative explanation of Maoming Changxing's corporate history. Further, the Department asked Maoming Changxing to provide the business license and documentation regarding the establishment, role, and investment of one of its POR owners. In its response,¹² Maoming Changxing explained that the discrepancies were due to inaccurate English translations of the name of an initial company owner. Although Maoming Changxing also provided a 28-page exhibit showing its Capital Verification Report, paid-in registered capital, and correspondence from a bank demonstrating transfers of investment capital from its owners,

¹⁰ See Maoming Changxing's December 29, 2006, response to the Department's SAQ1 at page 5.

¹¹ See Maoming Changxing's March 27, 2007, response to the Department's SAQ2 at page 1.

¹² See Maoming Changxing's April 24, 2007, response to the Department's SAQ3 at page 1 and Exhibit 3S-1 at pages 27 and 28.

Maoming did not provide any explanation for this exhibit (*see* Exhibit 3S-1).

On pages 27 and 28 of Exhibit 3S-1, one of the 17 exhibits in its third supplemental response, the name of the Hong Kong company appeared for the first time as a fund transmitter in a letter from a Chinese bank to Maoming Changxing's accountants regarding the contributions of foreign shareholders. However, Maoming Changxing did not provide any narrative explanation in its response to SAQ3, nor did it provide any further information regarding this Hong Kong company in its fourth and fifth supplemental responses¹³ prior to the Department's verification. It was only during the verification that the Department discovered that the involvement of this Hong Kong company was significant, including: (1) transmitting capital funds, reportedly on behalf of one of Maoming Changxing's initial owners; (2) transmitting capital funds, reportedly on behalf of one of Maoming Changxing's POR owners; (3) familial affiliation between the owner of this Hong Kong company and the major individual shareholder and the General Manager of Maoming Changxing. Although Maoming Changxing claimed during the Department's verification that this Hong Kong company is not an owner and is not affiliated with Maoming Changxing, and that the money transferred was that of the General Manager of Maoming Changxing, the company provided no documentation to support its assertions. Furthermore, by not disclosing this information prior to verification, the Department was unable to follow up with additional supplemental questionnaires to clarify whether the Hong Kong company is an actual owner or whether it is affiliated with Maoming Changxing pursuant to sections 771(33)(A) and (E) of the Act. Thus, the Department could not conduct an analysis of Maoming Changxing's affiliations, and could therefore not conduct a meaningful analysis of whether Maoming Changxing was entitled to a separate rate.

Maoming Changxing also failed to provide the Department with a complete and official version of the capital verification report of one of its claimed parent companies. Maoming Changxing's assertion in its case brief that this parent company is a small company for which a capital verification report is not required by the law of the PRC, is unsupported by any facts on the record. At verification, Maoming Changxing first claimed that this parent company did not have a capital verification report due to its small size. However, Maoming Changxing did provide this parent company's original Capital Verification Report (albeit without the required auditors notes and bank verification documents) at the end of the verification. *See* Maoming's Verification Exhibit MC2 at 52-59, and Maoming Verification Report. Although Maoming Changxing claims that the Department was incorrect in stating that a Capital Verification Report is required to obtain a business license and establish a company in the PRC, it has provided no PRC laws or regulations to support this assertion made at verification. Moreover, whether or not the Capital Verification Report is required is of secondary concern as the report existed in this case and Maoming Changxing's initial statement was no report for that company. Later, Maoming provided the verification team with a partial copy of this report, but omitted certain information critical to this new shipper review.

Further, the Department found at verification information contrary to Maoming Changxing's description of the sales negotiation and sales execution process, which, if a separate rates test were conducted, calls into question the *de facto* absence of government control over Maoming

¹³ *See* Maoming Changxing's May 9, 2007, and May 10, 2007, responses, respectively.

Changxing's export activities. At verification, Department officials were unable to verify whether Maoming Changxing conducted its sales negotiations independently of PRC government interference. Specifically, Maoming Changxing was unable to provide access to the email address used in negotiating the sale at issue and its description of its sales process was inconsistent with verification findings. In addition, the Department was unable to verify which of the invoices on the record of this review is the actual invoice for the single sale during the POR. *See* Maoming Verification Report at 17-19 and Exhibit MC6. *See also* Maoming Changxing's response to SAQ2. The email address is relevant, as the Department has found in previous reviews that information contained on a company's email account may contain price information, information regarding affiliates, and information regarding the size and structure of the company. Each of these factors may bear upon the *de facto* analysis of a company's eligibility for a separate rate, especially if the information conflicts with other record evidence. Without having access to the email address used in negotiating the sale at issue, the Department was unable to verify that Maoming Changxing's sales negotiations during the POR were conducted without PRC government interference.

Moreover, the Department found at verification that Maoming Changxing generated a second sales contract signed by Maoming Changxing and its U.S. customer which differed in content from the contract submitted to the Department. *See* Maoming Verification Report at 16-17 and Exhibit MC6 at pages 17-50. According to Maoming Changxing, the sales contract found by the Department was signed by Maoming Changxing officials, who forged the sales contract and created an invoice and packing list for an amount larger than the sale at issue in order to obtain early copy of various PRC export documentation (*e.g.*, PRC border inspection, health certificate, export documentation). *Id.* Further, the Department found other invoices in the same file to the U.S. customer, each with different sales terms and several with additional shipping documents that did not tie to the documentation provided to the Department. *Id.* Thus, the Department was unable to verify which of the invoices on the record of this review was the actual invoice for the single sale during the POR. *See* Maoming Verification Report at 17-19 and Exhibit MC6.

With respect to the Department's conclusions regarding the origin of certain investment capital by one of the original owners, we disagree with Maoming Changxing that the Department's conclusions were "arbitrary and capricious." At verification, Maoming Changxing was asked to demonstrate the source of certain original founding investment capital from one of its owners, reportedly located in country A.¹⁴ This information is crucial to establishing that the company is unaffiliated with a company that shipped during the POI, and is therefore eligible for a new shipper review. *See* Maoming Verification Report at page 6. In response, Maoming Changxing provided two wire transfers: one wire transfer was remitted from a bank account in country A, and the other wire transfer was remitted from a bank account in country B.¹⁵ The Department officials requested that Maoming Changxing officials explain why certain investment funds were remitted from a bank account in country B. Ultimately, Maoming Changxing was unable to explain why this was so at verification, and has stated, after the fact, in its case brief, that the company could possibly have an account in both countries. There are no facts or documentation

¹⁴ The identity of this country is proprietary. Thus, the Department refers to it in this memorandum as "country A."

¹⁵ The identity of this country is proprietary. Thus, the Department refers to it in this memorandum as "country B."

on the record however, to support such a conclusion, as Maoming Changxing was unable to resolve the discrepancy at verification. Although Maoming Changxing disputes the significance of the Department's finding that Maoming Changxing was unable to explain why certain investment funds were transferred from a bank in country B, the finding is important within the context of the overall findings regarding Maoming Changxing's ownership and affiliation. As noted above, the Department found at verification that the identity of the party supplying the initial founding capital was not one of the parties identified to the Department as an owner. Given the significance of this finding, it is particularly important that Maoming Changxing be able to demonstrate the true source of the funds used to form the new shipper.

Because the Department was unable to determine the actual owners of Maoming Changxing, the Department was unable to determine: (1) whether the export prices are set by, or are subject to, the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22587; *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 (May 8, 1995). *See also Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Notice of Intent to Rescind Antidumping Duty New Shipper Review*, 72 FR 41058 (July 26, 2007) ("*Preliminary Rescission*"). Because Maoming Changxing chose not to disclose the significance of the Hong Kong company which provided a significant amount of the initial investment, and because discrepancies regarding Maoming Changxing's reported corporate structure were not discovered until verification, the Department was not able to ask supplemental questions or consider this undisclosed entity's potential relationship with the PRC government. As the Department noted in the *POS Cookware*, "it is fundamental that the Department be presented with all of the details of a respondent's corporate structure to adequately determine whether the entity qualifies for a separate rate." *See Porcelain-on-Steel Cooking Ware from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 24641 (April 26, 2006), and accompanying Issues and Decision Memorandum ("*POS Cookware*") at Comment 1. In addition, as summarized above, the Department found at verification information contrary to Maoming Changxing's description of the sales negotiation and sales execution process, which, if a separate rates test were conducted, calls into question the *de facto* absence of government control over Maoming Changxing's export activities. As a result, Maoming Changxing has not affirmatively proven that it is free from *de facto* government control, which precludes the Department from conducting an accurate separate rates analysis. *See Preliminary Rescission Memo* for a further discussion.

As discussed above, the Department has determined that Maoming Changxing has not met the requirements of a new shipper under section 351.214(a) of the Department's regulations, and that Maoming Changxing does not qualify for a separate rate. As a result, Maoming Changxing is properly considered part of the PRC-wide entity, which did export subject merchandise during the original POI. Accordingly, we are rescinding the new shipper review. *See Crawfish Rescission. See also Brake Rotors Rescission.*

Comment 2: The Margin Assigned to Maoming Changxing

Domestic Producers argue that the Department's stated intention to assess a cash deposit on any entries produced and exported by Maoming Changxing at the PRC-wide rate from the original investigation (*see Preliminary Rescission*, 72 FR at 71061) is not sufficiently adverse a finding in this review and therefore, is inappropriate. Domestic Producers further argue that Maoming Changxing requested the new shipper review, certified that it met the regulatory requirements for a new shipper review, and caused the Department to expend significant resources over the course of the review, including five supplemental questionnaires and verification. Domestic Producers contend that at the verification of Maoming Changxing, the Department found numerous discrepancies, fabrications of documents, and that Maoming Changxing failed to disclose critical information. *See Preliminary Rescission Memo*.

Domestic Producers further argue that Maoming Changxing's conduct prevented the Department from selecting a larger pool of respondents for verification in the first administrative review of certain frozen warmwater shrimp from the PRC. *See Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2006 Administrative Review and Preliminary Intent to Rescind 2004/2006 New Shipper Review*, 72 FR 10645, 10649-50 (May 9, 2007). Domestic Producers submit that the Department should severely sanction Maoming Changxing and assign it a margin more adverse than the PRC-wide rate upon rescission of this review, which, Domestic Producers assert, will serve as a disincentive to such behavior for Maoming Changxing and other producers or exporters of subject merchandise.

Maoming Changxing argues that the Domestic Producers' request is without legal basis or precedent. Maoming Changxing argues that it has cooperated fully in this proceeding. Further, Maoming Changxing alleges that the antidumping law establishes the assessment rate for entries during the POR and the deposit rate for future entries. *See Union Camp v. United States*, 22 CIT 267, 8 F. Supp. 2d 842 (1998). Maoming Changxing contends that the dumping law is not intended to impose penalties, but equalize conditions between the exporter and the U.S. industries affected. *Id.* With respect to Domestic Producers' allegation that Maoming Changxing wastefully utilized the Department's resources, Maoming Changxing argues that the Department devoted more resources to the Domestic Producers' review requests of a significant number of respondents than to the review of Maoming Changxing. Maoming Changxing argues that the Department should calculate an antidumping rate based on its sales price and factors of production, but if the Department rescinds this review, it should instruct U.S. Customs and Border Protection ("CBP") to liquidate Maoming Changxing's single entry at the PRC-wide rate, consistent with the Department policy.

Department's Position:

We disagree with Domestic Producers that the Department should assign a margin to Maoming Changxing that is more adverse than the rate assigned to the PRC-wide entity. In the *Preliminary Rescission*, the Department found that Maoming Changxing does not qualify for a separate rate and thus cannot be considered a new shipper. *See* sections 351.107(d) and

351.214(a) of the Department’s regulations. While Maoming Changxing withheld crucial information from the Department, we find that no legal basis exists for the Department to apply a higher margin to Maoming Changxing. *See cf. Timken Co. v. United States*, 354 F.3d 1334, 1335 (Fed. Cir. 2004) (stating that “Commerce must balance the statutory objectives of finding an accurate dumping margin and inducing compliance rather than creating an overly punitive result”). Consistent with the Department’s practice, as a result of its failure to demonstrate its qualification for a separate rate, Maoming Changxing is properly considered as part of the PRC-wide entity, which shipped during the original period of investigation. The antidumping duty rate for Maoming Changxing will therefore be the rate assigned to the PRC-wide entity. *See Crawfish Rescission. See also Brake Rotors Rescission.*

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above positions, and rescinding this new shipper review. If accepted, we will publish the final rescission of the new shipper review in the *Federal Register*.

AGREE _____ DISAGREE _____

David Spooner
Assistant Secretary
for Import Administration

Date