

government regarding the selection of management.

#### *De Jure Control*

In its questionnaire responses, Shanghai Taoen stated that it is an independent legal entity. Evidence on the record indicates that the government does not have *de jure* control over Shanghai Taoen's export activities. Shanghai Taoen submitted evidence of its legal right to set prices independent of all government oversight. Furthermore, the business license of Shanghai Taoen indicates that it is permitted to engage in the exportation of crawfish. We also found no evidence of *de jure* government control restricting Shanghai Taoen's exportation of crawfish.

In its responses, Shanghai Taoen stated that no export quotas apply to crawfish. Prior verifications have confirmed that there are no commodity-specific export licenses required and no quotas for the seafood category "Other," which includes crawfish, in *China's Tariff and Non-Tariff Handbook* for 1996. In addition, we have previously confirmed that crawfish is not on the list of commodities with planned quotas in the 1992 PRC Ministry of Foreign Trade and Economic Cooperation document entitled *Temporary Provisions for Administration of Export Commodities*. See *Freshwater Crawfish Tail Meat From the People's Republic of China; Preliminary Results of New Shipper Review*, 64 FR 8543 (February 22, 1999) and *Freshwater Crawfish Tail Meat From the People's Republic of China; Final Results of New Shipper Review*, 64 FR 27961 (May 24, 1999) (*Ningbo New Shipper Review*).

The following laws, which have been placed on the record of this review, indicate a lack of *de jure* government control. The *Company Law of the People's Republic of China*, effective as of July 1, 1994 states that a company is an enterprise legal person, that shareholders shall assume liability towards the company to the extent of their shareholdings, and that the company shall be liable for its debts to the extent of all its assets. Shanghai Taoen also provided copies of the *Foreign Trade Law of the PRC*, which identifies the rights and responsibilities of organizations engaged in foreign trade dealings, grants autonomy to foreign trade operators in management decisions, and establishes the foreign trade operator's accountability for profits and losses. Shanghai Taoen also provided a copy of its business license. We therefore preliminarily determine that there is an absence of *de jure*

control over the export activities of Shanghai Taoen.

#### *De Facto Control*

With respect to the absence of *de facto* control over export activities, information on the record indicates that, for Shanghai Taoen, company management is responsible for all decisions concerning export strategies, export prices, profit distribution, and contract negotiations, and that there are no governmental policy directives that affect management's decisions. Furthermore, Shanghai Taoen's pricing and export strategy decisions are not subject to any outside entity's review or approval. Information on the record also indicates that there is no government involvement in the daily operations or the selection of management for Shanghai Taoen.

There are no restrictions on the use of Shanghai Taoen's export earnings. Shanghai Taoen's general manager has the right to negotiate and enter into contracts, and may delegate this authority to employees within the company. There is no evidence that this authority is subject any level of governmental approval. Shanghai Taoen has stated that its management is selected by its board of directors and/or its employees, and that there is no government involvement in the management selection process. Lastly, decisions made by Shanghai Taoen concerning purchases of subject merchandise from other suppliers are not subject to government approval. We therefore preliminarily determine that there is an absence of *de facto* control over the export activities of Shanghai Taoen.

Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over its export activities, we preliminarily determine that Shanghai Taoen is eligible for a separate rate.

#### **Normal Value Comparisons**

To determine whether Shanghai Taoen's sales of the subject merchandise to the United States were made at prices below NV, we compared its United States prices to NV, as described in the *United States Price* and *Normal Value* sections of this notice.

#### **United States Price**

For Shanghai Taoen, we based United States price on EP in accordance with section 772(a) of the Act, because the first sales to unaffiliated purchasers were made prior to importation, and CEP was not otherwise warranted by the facts on the record. We calculated EP based on packed prices from the

exporter to the first unaffiliated purchaser in the United States. Where applicable, we deducted foreign inland freight, brokerage and handling expenses in the home market, and ocean freight, from the starting price (gross unit price) in accordance with Section 772(c) of the Act.

#### **Normal Value**

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the respondents contested such treatment in this review. Accordingly, we have applied surrogate values to the factors of production to determine NV. See *Factor Values Memo for the Preliminary Results of the Antidumping Duty Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China*, dated September 30, 2003 (Factor Values Memo).

We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and 19 CFR 351.408(c). Consistent with the original investigation and subsequent administrative reviews of this order, we determined that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. With the exceptions of the whole live crawfish input and the crawfish scrap by-product, for which Indian data were not available, we valued the factors of production using publicly available information from India. We adjusted the Indian import prices by adding foreign inland freight expenses to make them delivered prices.

We valued the factors of production as follows:

To value the input of whole crawfish we used publicly available data for Spanish imports of whole live crawfish from Portugal. As noted above, Indian data were not available and this data was all that was available on the record of this review. We adjusted the values of whole live crawfish to include freight costs incurred between the supplier and the factory. For transportation distances