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Administrative Review

POR: 2/1/2018 – 1/31/2019

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**MEMORANDUM TO:** Shawn Thompson  
Director, Office V  
Antidumping and Countervailing Duty Operations

**THROUGH:** Emily Halle  
Program Manager, Office V  
Antidumping and Countervailing Duty Operations

**FROM:** Jasun Moy  
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Antidumping and Countervailing Duty Operations

**SUBJECT:** Administrative Review of the Antidumping Duty Order of Certain  
Frozen Warmwater Shrimp from the People's Republic of China:  
Preliminary Successor-In-Interest Determination

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting a successor in interest analysis in the context of the administrative review of the antidumping duty (AD) order of certain frozen warmwater shrimp from the People's Republic of China (China). As a result of our analysis, we recommend preliminarily finding that Shantou Red Garden Food Processing Co., Ltd. (Shantou RGFP) is not the successor-in-interest to Red Garden Food Processing Co., Ltd. (Red Garden), a company partially revoked from the antidumping duty (AD) order issued in this proceeding.<sup>1</sup> We base this recommendation on the fact that Red Garden's ownership, management, production, suppliers, and customers changed significantly since the time of its revocation, making its operations materially dissimilar to those of Shantou RGFP.

## II. BACKGROUND

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<sup>1</sup> The revocation with respect to Red Garden is limited to shrimp exported by this company and produced by specific companies in the People's Republic of China (China). For further discussion, *see* below.



In February 2005, Commerce published in the *Federal Register* the *Order* on frozen warmwater shrimp (shrimp) from China.<sup>2</sup> Subsequently, on March 28, 2013, pursuant to a section 129 proceeding, Commerce revoked the *Order* with respect to U.S. entries of shrimp related to the following exporter/producer combinations:

Revocation for Red Garden is specific to: merchandise manufactured by Red Garden Food Processing Co., Ltd....and exported by Shantou Red Garden Foodstuff Co., Ltd. or Red Garden Food Processing Co., Ltd.<sup>3</sup>

On May 2, 2019, Commerce initiated an administrative review of the aforementioned order with respect to 102 companies, including Shantou RGFP and all entries not excluded from Shantou Red Garden Foodstuff Co., Ltd. (Shantou RGFS).<sup>4</sup>

On May 17, 2019, Shantou RGFP and Shantou RGFS certified that they had no shipments or sales of merchandise subject to the instant review.<sup>5</sup> Thereafter, to confirm the “no shipment” claims of these companies, we sent an inquiry to U.S. Customs and Border Protection (CBP).<sup>6</sup> Although CBP initially responded that it found no shipments for either company,<sup>7</sup> on July 23, 2019, CBP revised its response to say that it had discovered [ ] “Type 1” entries of shrimp exported by Shantou RGFP during the period of review (POR);<sup>8</sup> as a result, it had reclassified these entries as “Type 3” entries.<sup>9</sup>

On September 6, 2019, Ad Hoc Shrimp Trade Action Committee (the petitioner) alleged that, prior to the partial revocation of the *Order*, Shantou RGFP operated under a different name, Shantou Jin Cheng Food Co., Ltd. (Shantou JCF).<sup>10</sup> The petitioner further alleged that, shortly before the revocation occurred, Shantou JCF changed its name to Shantou RGFP in order to take advantage of the revocation. The petitioner noted that Shantou RGFP had not disclosed its

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<sup>2</sup> See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the People’s Republic of China*, 70 FR 5149 (February 1, 2005) (*Order*).

<sup>3</sup> See *Certain Frozen Warmwater Shrimp from the People’s Republic of China and Diamond Sawblades and Parts Thereof from the People’s Republic of China: Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders*, 78 FR 18958-59 (March 28, 2013) (*Exclusion Notice*).

<sup>4</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 18777 (May 2, 2019).

<sup>5</sup> See Shantou RGFP and Shantou RGFS’s Letter, “Frozen Warmwater Shrimp from the People’s Republic of China; Certification of No Sales,” dated May 17, 2019.

<sup>6</sup> See Memorandum, “No Shipment Inquiry with Respect to the Companies Below During the Period 02/02/2018 through 01/31/2019,” dated July 15, 2019.

<sup>7</sup> *Id.*

<sup>8</sup> Type 1 entries are entries for normal consumption (*i.e.*, not subject to AD or countervailing (CVD) duties.

<sup>9</sup> See Memorandum, “No Shipment Inquiry with Respect to the Companies Below During the Period 02/02/2018 through 01/31/2019,” dated July 23, 2019. Type 3 entries are entries subject to AD/CVD duties.

<sup>10</sup> See Petitioner’s Letter, “Certain Frozen Warmwater Shrimp from the People’s Republic of China: Request for Leave to Place New Factual Information on the Record of Proceeding and for Issuance of Questionnaire,” dated September 6, 2019.

affiliation with Shantou JCF to Commerce. Therefore, the petitioner requested that Commerce issue a questionnaire regarding information on operations of Shantou RGFP and Shantou JCF following the end of the less-than-fair-value (LTFV) investigation.<sup>11</sup>

On July 30, 2019, Shantou RGFP provided timely comments in response to the new factual information placed on the record by the petitioner. In these comments, Shantou RGFP claimed that it was excluded from the *Order*, and that, as a result, CBP had incorrectly reclassified its entries of shrimp as Type 3.<sup>12</sup> On August 13, 2019, Shantou RGFP, at our request, provided information clarifying its name.<sup>13</sup> As part of this submission, Shantou RGFP acknowledged that it has changed its company name twice since it was established in 2003.<sup>14</sup> Thereafter, the American Shrimp Processors Association, part of the U.S. domestic shrimp industry, argued that, because Commerce has not made a determination on whether the current iteration of Shantou RGFP is the successor-in-interest to Red Garden, it is not eligible to receive the same treatment under the *Order*.<sup>15</sup> Accordingly, to resolve this question, and in light of potentially relevant changes to Shantou RGFP's corporate structure, Commerce is conducting a successor-in-interest analysis.

### III. BASIS FOR SUCCESSOR-IN-INTEREST ANALYSIS

As noted in the Preliminary Decision Memorandum,<sup>16</sup> in July 2019, CBP informed Commerce that Shantou RGFP made shipments of subject merchandise during the POR. Shantou RGFP subsequently responded to this finding, arguing that, in fact, its exports of shrimp to the United States are not covered by the *Order*, and that CBP had classified these exports as subject merchandise in error. As support for its position, Shantou RGFP cited the *Exclusion Notice*.<sup>17</sup> Given Shantou RGFP's statements on this issue, in August 2019, we requested that Shantou RGFP clarify the relationship between itself and Red Garden and that it provide source

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<sup>11</sup> *Id.* at 6-7.

<sup>12</sup> See Shantou RGFP's Letter, "Frozen Warmwater Shrimp from the People's Republic of China; Comments on New Factual Information Regarding Shipments by Red Garden Food Processing Co., Ltd.," dated July 30, 2019 ((Shantou RGFP Response to CBP)).

<sup>13</sup> See Shantou RGFP's Letter, "Frozen Warmwater Shrimp from the People's Republic of China; Response to the Department's Request for Clarification of Shantou Red Garden Food Processing Co., Ltd.'s name," dated August 13, 2019 (Shantou RGFP First Name Change).

<sup>14</sup> *Id.* We note that Commerce revoked the *Order* with respect to Red Garden, which Shantou RGFP claims is the same company as Shantou RGFP.

<sup>15</sup> See ASPA's Letter, "Administrative Review of the Antidumping Duty Order Covering Frozen Warmwater Shrimp from the People's Republic of China: ASPA's Response to Red Garden," dated October 24, 2019.

<sup>16</sup> See Memorandum, "Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China; 2018-2019," dated February 28, 2020 (Preliminary Decision Memorandum).

<sup>17</sup> See Shantou RGFP Response to CBP; see also *Certain Frozen Warmwater Shrimp from the People's Republic of China and Diamond Sawblades and Parts Thereof from the People's Republic of China: Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders*, 78 FR 18958-59 (March 28, 2013) (*Exclusion Notice*).

documentation supporting its explanation.<sup>18</sup> In response, Shantou RGFP claimed that the two companies are the same, and that any confusion over the difference in their names stemmed from a simple clerical error made in the *Exclusion Notice*.<sup>19</sup> Specifically, Shantou RGFP stated:

The cause of this confusion is readily apparent. The Department simply made a clerical error when it excluded “Red Garden Food Processing Co., Ltd.” (without “Shantou” preceding the name), rather than excluding “Shantou Red Garden Food Processing Co., Ltd.”

The error is readily apparent from the Section A response filed by the mandatory respondent, Shantou Red Garden Foodstuff Co., Ltd. March 31, **2004** (in the original investigation). In that original response – filed in the investigation – Shantou Red Garden Foodstuff Co., Ltd., included the business licenses of both it and its sister company, Shantou Red Garden Food Processing Co., Ltd. The enclosed Exhibit contains the relevant pages from the narrative of that response (page A-2) and Exhibit 3 of that response, which contains the business licenses of both Red Garden companies. In each place, “Shantou” Red Garden Food Processing Co., Ltd., is noted. The business license is the official, legal document of Shantou Red Garden Food Processing Co., Ltd.’s name. As such, Commerce in its exclusion order and instructions to U.S. Customs clearly made a clerical error by not using that name.<sup>20</sup>

Based on the information provided by Shantou RGFP, we do not dispute that the company’s business license included the word “Shantou” in the company’s name. However, in the investigation, the company itself referred to its name inconsistently, calling itself “Shantou RGFP” in some places and “RGFP” in others.<sup>21</sup> For this reason, in the final determination of the LTFV investigation, we identified the company “Red Garden Food Processing Co., Ltd.”<sup>22</sup> and in multiple custom instructions to CBP we referred to the company as RGFP.<sup>23</sup> Following the publication of the final determination, no one filed comments with Commerce, in accordance with section 735(e) of the Act and 19 CFR 351.224(e), claiming that Commerce had made a ministerial error in identifying the party that was excluded from the Order. Indeed, we note that, prior to this point, Shantou RGFP has never objected to the use of “Red Garden Food Processing Co., Ltd.” and thus, Commerce had no reason to consider this issue. Therefore, we preliminarily find that Shantou RGFP’s argument is without merit.

<sup>18</sup> See Commerce’s Letter, “Administrative Review of the Antidumping Duty Order on Frozen Warmwater Shrimp from the People’s Republic of China: Clarification of Company’s Name,” dated August 8, 2019.

<sup>19</sup> See Shantou RGFP Name Change Response at 2;

<sup>20</sup> *Id.*

<sup>21</sup> See Shantou RGFP December 23, 2019 SQR at Exhibit SA-28 (at A-2 and A-4).

<sup>22</sup> 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), and accompanying Issues and Decision Memorandum (IDM) at 19.

<sup>23</sup> See, e.g., CBP Message Number 4198205, dated July 16, 2004; CBP Message Number 4306202, dated November 1, 2004; CBP Message Number 4350201, dated December 15, 2004; and CBP Message Number 5041209, dated February 10, 2005.

Nonetheless, and as explained in further detail below, because Shantou RGFP was previously known as Red Garden, we have conducted an analysis to determine whether Shantou RGFP is the successor in interest to Red Garden and, thus, whether it is entitled to rely on Commerce's revocation finding made with respect to exporter/producer combinations involving Red Garden.

#### IV. FRAMEWORK FOR ANALYSIS

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216(d), whenever Commerce receives information concerning, or a request from an interested party for a review of, an order which shows changed circumstances sufficient to warrant a review of such order after publishing notice of the review in the *Federal Register*, Commerce shall conduct a review of the determination based on those changed circumstances. In the past, Commerce has used changed circumstance reviews (CCRs) to consider the applicability of cash deposit rates after there have been changes in the name or structure of a respondent, such as a merger or spinoff (successor-in-interest, or successorship, determinations). While successor-in-interest determinations are often made in the context of changed circumstances reviews in accordance with 19 CFR 351.216, Commerce has also made successor-in-interest determinations in the context of administrative reviews and investigations.<sup>24</sup> Thus, for this instant review, and consistent with Commerce's practice, we have considered the information submitted by Shantou RGFP to evaluate whether it is the successor-in-interest to Red Garden.

#### V. SUCCESSOR-IN-INTEREST DETERMINATION

In evaluating successorship issues, we generally consider a company to be the successor to another company for AD cash deposit purposes if the operations of the successor are not materially dissimilar from those of its predecessor. In making this determination for purposes of applying the AD law, Commerce examines a number of factors including, but not limited to, changes in: (1) management, (2) production facilities, (3) supplier relationships, and (4) customer base.<sup>25</sup> Although no single, or even several, of these factors will necessarily provide a dispositive indication of succession, generally, Commerce will consider a company to be a successor if its resulting operation is not materially dissimilar to that of its predecessor.<sup>26</sup> Thus,

<sup>24</sup> See e.g., *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018) and accompanying IDM at 1-2; see also *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893 (June 18, 2015) and accompanying IDM at Comment 24; *Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 34335 (June 7, 2013) and accompanying Preliminary Decision Memorandum at 1-2, unchanged in *Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 71563 (November 29, 2013).

<sup>25</sup> See, e.g., *Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review*, 75 FR 34688 (June 18, 2010), and accompanying IDM at Comment 1.

<sup>26</sup> See, e.g., *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999).

if the “totality of circumstances” demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, Commerce will assign the new company the cash deposit rate of its predecessor.<sup>27</sup>

In its questionnaire responses, Shantou RGFP provided the following information regarding the company’s operations.

## A. Ownership / Management / Corporate Structure

### 1. Corporate Structure During the LTFV Investigation<sup>28</sup>

Red Garden was established on June 25, 2003 as a Sino-foreign joint venture (JV), with the following owners:<sup>29</sup>

- Red Chamber Co. (Red Chamber), a U.S. company, owned [ ] percent through its affiliate Aqua Star Imports, Inc. (Aqua Star).<sup>30</sup>
- Shantou RGFS owned the remaining [ ] percent.<sup>31</sup> Shantou RGFS in turn had two individual owners (*i.e.*, Zheng Chu Ci and Lin Zhi Quan), who owned [ ] percent and [ ] percent of the company, respectively.<sup>32</sup>

Red Garden’s constitution states that [

].<sup>33</sup> During the LTFV investigation, Red Garden’s board of directors had three members,<sup>34</sup> two of whom (*i.e.*, Min Bing Kou and Min Shin Kou) were appointed by the foreign owner and one by

<sup>27</sup> See, *e.g.*, *id.*, 64 FR at 9980; and *Brass Sheet and Strip from Canada: Final Result of Administrative Review*, 57 FR 20461 (May 13, 1992), and accompanying IDM at Comment 1.

<sup>28</sup> Commerce revoked Red Garden’s exports of shrimp from the *Order* based on its selling practices during the LTFV investigation. Therefore, Red Garden’s corporate structure during this time period is the starting point of Commerce’s successor-in-interest analysis.

<sup>29</sup> See Shantou RGFP December 23, 2019 SQR at exhibit SA-28 (at exhibit A-3).

<sup>30</sup> *Id.* at exhibit SA-28 (at A-2 and exhibit A-6). We note that, while the respondent has claimed that Red Chamber’s and Aqua Star’s ownership of Shantou RGFP as business propriety information (BPI) throughout its narrative responses (*see* Shantou RGFP December 23, 2019 SQR), it has treated the same information as public throughout the exhibits of the same submission, which include questionnaire responses from the underlying investigation (*see e.g.*, exhibit SA-28 at A-2 and exhibit 3). Thus, Commerce is not treating Red Chamber’s and Aqua Star’s ownership of Red Garden as BPI.

<sup>31</sup> *Id.*

<sup>32</sup> See Shantou RGFP January 22, 2020 SQR at 1 and Shantou RGFP December 23, 2019 SQR at exhibit SA-28 (at A-2 and exhibit A-6).

<sup>33</sup> *Id.* at exhibit SA-5a. Despite this statement, Shantou RGFP claims that the board was not involved in the daily operations or management of the JV, and, instead, was only involved in “big decisions (such as loan (*sic*) from bank).” See Shantou RGFP January 22, 2020 SQR at 16.

<sup>34</sup> See Shantou RGFP December 23, 2019 SQR at exhibit SA-28 (at A-4).



Shantou RGFS.<sup>35</sup> Min Bing Kou also served as the legal representative and the Board Chairman, and he was solely responsible for authorizing the withdrawal of funds from the bank accounts owned by Red Garden.<sup>36</sup>

Red Garden also had a general manager and a vice general manager.<sup>37</sup> The general manager was Zheng Chu Ci; as noted above, this individual was a part owner of Shantou RGFS and, thus, was an indirect shareholder of Red Garden. The general manager executed the decisions of the board and asked the board to make important decisions,<sup>38</sup> including those involving company name changes (such as the ones discussed below).<sup>39</sup>

## 2. Corporate Structure in 2007 and Thereafter

On December 26, 2007, Red Garden changed its name to Shantou JCF,<sup>40</sup> and on January 20, 2013, Shantou JCF changed its name (back) to Shantou RGFP.<sup>41</sup> For further discussion of these facts, *see* the “Other Factors” section of this memorandum, below.

In 2013, Red Chamber withdrew from the JV and was no longer a shareholder after July of that year.<sup>42</sup> Thereafter, [ ] was no longer obligated to commit sufficient business to Shantou RGFP to permit it to meet its lease agreement obligations (which had been a condition of participation in the JV).<sup>43</sup>

With respect to the ownership of Shantou RGFP, the company is now organized as a limited liability company.<sup>44</sup> While Shantou RGFS continued to own [ ] percent of Shantou RGFP,<sup>45</sup> the remaining [ ] percent is now held by [ ] and his wife, [ ]; these individuals own [ ] percent and [ ] percent, respectively.<sup>46</sup>

Shantou RGFP has no board of directors. Shantou RGFP claimed that because it is “a small privately-owned corporation...the company believes that there is no need for an independent board of directors. For the same reason, [ ] controls all decisions made by the

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at exhibit SA-28 (at A-9 and exhibit SA-3); *see also* Shantou RGFP January 22, 2020 SQR at 7.

<sup>37</sup> *Id.* (at exhibit SA-5); *see also* Shantou RGFP November 12, 2019 AQR at 2.

<sup>38</sup> *See* Shantou RGFP December 23, 2019 SQR at exhibit SA-5a.

<sup>39</sup> *See* Shantou RGFP January 22, 2020 SQR at 16.

<sup>40</sup> *See* Shantou RGFP November 12, 2019 AQR at 12.

<sup>41</sup> *Id.* at 14.

<sup>42</sup> *See* Shantou RGFP December 23, 2019 SQR at 12.

<sup>43</sup> *Id.* at 24 and exhibit SA-19.

<sup>44</sup> *See* Shantou RGFP November 12, 2019 AQR at exhibit 4. We note that Shantou RGFS shared the same address and would also be affected by the lease agreement obligations.

<sup>45</sup> *Id.* at exhibit 2.

<sup>46</sup> *Id.* at 2 and exhibit 2.

company.”<sup>47</sup> Shantou RGFP confirmed that it “did not establish a board of directors after the change of ownership.”<sup>48</sup> [ ] also now serves as the legal representative and has control of the bank accounts owned by Shantou RGFP.<sup>49</sup>

In summary, there was significant change in ownership, control, and management between Red Garden (as it existed at the time of the LTFV investigation) and Shantou RGFP (now). Red Garden was a Sino-foreign JV where the foreign party was the [ ] owner and controlled the board of directors (which in turn controlled the company). Shantou RGFP is fully owned by Chinese entities/individuals and [ ] maintains complete control over the company. These changes weigh in favor of finding that Shantou RGFP (now) is materially dissimilar to Red Garden (2003), and thus, is not the successor-in-interest to that company.

## **B. Products and Production Facilities**

Shantou RGFP claimed, and the record supports, that Red Garden (2003 – 2007), Shantou JCF (2007 – 2013), and Shantou RGFP (2013 – the POR) used the same production facilities. Further, there is no evidence on the record that these production facilities changed since Red Garden’s establishment. The addresses in the business licenses for all three companies had the same address.<sup>50</sup>

With respect to products, Red Garden processed and sold subject merchandise to the United States.<sup>51</sup> According to Shantou RGFP, during the time period it was called Shantou JCF, it did not ship subject merchandise to the United States.<sup>52</sup> Instead, Shantou JCF shipped only non-subject merchandise to the United States (*i.e.*, shrimp that was excluded from the order: breaded shrimp and, before 2011 when it was added to the order, dusted shrimp).<sup>53</sup> Shantou RGFP processed and sold subject merchandise to the United States.

Accordingly, we find that the products and production facility, when viewed together with the totality of the circumstances over this time period and other information on the record, indicate and weighs in favor of finding that Shantou RGFP is not the successor-in-interest to Red Garden.

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<sup>47</sup> See Shantou RGFP December 23, 2019 SQR at 5.

<sup>48</sup> See Shantou RGFP January 22, 2020 SQR at 15.

<sup>49</sup> See Shantou RGFP November 12, 2019 AQR at 8 and exhibit 4.

<sup>50</sup> See Shantou RGFP November 12, 2019 AQR at exhibit 7; *see also* Shantou RGFP December 23, 2019 SQR at exhibit SA-28 (at exhibit SA-3).

<sup>51</sup> See Shantou RGFP December 23, 2019 SQR at exhibit SA-28 (at A-4).

<sup>52</sup> *Id.* at 20.

<sup>53</sup> *Id.*



### C. Supplier Relationships

Shantou RGFP stated that its suppliers changed many times over the past 15 years.<sup>54</sup> Although we requested more specific information regarding its suppliers, Shantou RGFP claimed that it does not keep records for its suppliers prior to the POR because it has no business reason to maintain this information.<sup>55</sup>

Thus, based on the limited information on the record and based on Shantou RGFP's characterization that its suppliers have changed many times in the past 15 years, we find no evidence on the record with respect to this factor which supports Shantou RGFP's claim that it continues to operate as Red Garden, the company revoked from the *Order*.

### D. Customer Base

Red Garden sold to two customers located in the United States, both of whom are affiliated with Red Chamber, as well as to one customer in Canada. Because Red Chamber owned [ ] percent of Red Garden, none of Red Garden's sales were made to an unaffiliated customer.<sup>56</sup>

Shantou JCF sold shrimp to at least [ ] customers in the United States, Canada, Chile, Mexico, and Malaysia.<sup>57</sup> Shantou RGFP could not recall the name(s) of some of its customers and stated that the documentation was lost in a computer crash.<sup>58</sup> However, Shantou RGFP also stated that it only maintained sales documentation for five years and, thus, there was no available documentation for this reason as well.<sup>59</sup> Of the [ ] customers identified, [ ] of the customers were not [ ].<sup>60</sup>

Shantou RGFP sold to [ ] customers located in [ ]. Of these customers, only one of the customers was affiliated with [ ].<sup>61</sup>

In short, the only overlap in customers among Red Garden, Shantou JCF, and Shantou RGFP is that they all sold to companies affiliated with [ ]. With the exception of [ ], a common customer of Shantou JCF and Shantou RGFP, Red Garden, Shantou JCF, and Shantou RGFP never sold to the same [ ] affiliated

<sup>54</sup> See Shantou RGFP January 22, 2020 SQR at 8.

<sup>55</sup> *Id.* at 10, 17-18.

<sup>56</sup> *Id.* at exhibit SA-25.

<sup>57</sup> See Shantou RGFP November 22, 2019 CDQR at exhibit SA-25.

<sup>58</sup> *Id.*

<sup>59</sup> See Shantou RGFP December 23, 2019 SQR at 20.

<sup>60</sup> See Shantou RGFP November 22, 2019 CDQR at exhibit SA-25.

<sup>61</sup> *Id.*

company.<sup>62</sup> Further, Shantou RGFP has significantly increased its customer base, such that it now sells to a number of new companies, which is a marked contrast to the situation during the period examined in the LTFV investigation.<sup>63</sup>

Thus, based on the above, we find that this factor weighs in favor of finding that Shantou RGFP's operations are materially dissimilar to Red Garden's.

### E. Other Factors

Shantou RGFP claimed it changed its name to Shantou JCF in 2007 in response to harassment from its prior landlord's creditors because their names were similar.<sup>64</sup> Shantou RGFP's prior landlord was a company named Shantou Longhu Hong Yuan Quick Frozen Factory (Quick Frozen). Hong Yuan, in Mandarin Chinese, means Red Garden.<sup>65</sup> The name change to Shantou JCF became official on December 26, 2007.<sup>66</sup> Additionally, Shantou RGFP claimed:

{s}ubsequently, a separate third party bought the master lease from the prior leaseholder. This removed any continuing exposure for {Shantou RGFP}, as the formerly similarly-named entity no longer had any affiliation with the property. Accordingly, the name was changed back to {Shantou RGFP}, January 20, 2013.<sup>67</sup>

In other words, Shantou RGFP's position is that it changed its name to avoid harassment from its landlord's creditors and changed its name back once the threat of harassment was gone (*i.e.*, once Shantou RGFP's former landlord had no affiliation with the property). The record, however, does not support this explanation.

Shantou RGFP provided a sales contract that transferred ownership of the property from Quick Frozen to Shen Rui Jie.<sup>68</sup> The property that was transferred was for two buildings located at "No. 51 North Taishan Road."<sup>69</sup> This is the same address in the business licenses for Red Garden, Shantou JCF, and Shantou RGFP.<sup>70</sup> This sales contract is dated [ ] and was confirmed by the [ ] on [ ]

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<sup>62</sup> *Id.*

<sup>63</sup> Specifically, we note that Shantou RGFP's sales to a [ ] has shifted from [ ] percent of sales to approximately [ ] percent of sales. *See* Shantou RGFP January 8, 2020 SQR at exhibit SSR-9.

<sup>64</sup> *See* Shantou RGFP November 12, 2019 SAQR at 12-13.

<sup>65</sup> *Id.* at 13.

<sup>66</sup> *Id.* at 12-13.

<sup>67</sup> *Id.* at 14.

<sup>68</sup> As noted above, Shen Rui Jie is the wife of [ ]; she is one of Shantou RGFP's current owners.

<sup>69</sup> *See* Shantou RGFP December 23, 2019 SQR at exhibit SA-22.

<sup>70</sup> *See* Shantou RGFP November 12, 2019 SAQR at exhibit 7; *see also* Shantou RGFP December 23, 2019 SQR at exhibit SA-28 (at exhibit SA-3).

[ ].<sup>71</sup> The Real Estate Certificate for this property shows that the [ ].<sup>72</sup> Additionally, an agreement was reached between Quick Frozen and what appears to be its creditor.<sup>73</sup> This agreement was recognized by the Shantou Intermediate People's Court of Guangdong Province on October 12, 2007. This ruling also dismissed the seizure of the property at the request of the creditor.<sup>74</sup> Thus, based on record evidence, by the date that Red Garden changed its name to Shantou JCF (*i.e.*, December 26, 2007), the creditors had already reached an agreement, that agreement had been recognized by the Shantou Intermediate People's Court of Guangdong Province, and Quick Frozen had sold the property to Shen Rui Jie (a part owner of the current Shantou RGFP and wife of the majority owner).

Given that the record indicates that Quick Frozen's debts were resolved in 2007, Shantou RGFP's claimed reasons for its name change to Shantou JCF and then to Shantou RGFP appear to be suspect. Additionally, Shantou RGFP's claim that it changed its name again after "a separate third party bought the master lease from the prior leaseholder," does not explain why it waited until 2013 to make this change, when the master lease was bought in 2007.<sup>75</sup> When asked about this discrepancy, Shantou RGFP responded that, even after the real estate transfer, the company was still bothered by debt collectors, and, therefore, it changed its name to address this issue.<sup>76</sup> We note that Shantou RGFP submitted no documentation to support this explanation, despite our request for such evidence.

Shantou RGFP also offered an additional explanation for its final name change:

Since the name Shantou Red Garden Food Processing had well known {sic} reputation in the seafood industry and also had separate {sic} anti-dumping rate case in USA...they changed the name from Shantou JCF back to Shantou RGFP.<sup>77</sup>

In other words, Shantou JCF changed its name to Shantou RGFP because Red Garden had its own separate antidumping duty rate (albeit via an exclusion), whereas Shantou JCF is considered part of the China-wide entity.<sup>78</sup>

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<sup>71</sup> See Shantou RGFP December 23, 2019 SQR at exhibit SA-22.

<sup>72</sup> *Id.* at exhibit SA-23.

<sup>73</sup> *Id.* at exhibit SA-21.

<sup>74</sup> *Id.*

<sup>75</sup> See Shantou RGFP November 12, 2019 SAQR at 14.

<sup>76</sup> See Shantou RGFP January 22, 2020 SQR at 17.

<sup>77</sup> See Shantou RGFP December 23, 2019 SQR at 23.

<sup>78</sup> We note that Commerce had on multiple occasions found that Shantou JCF was subject to the order as part of the China-wide. See *e.g.*, *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 79 FR 75787 (December 19, 2014); *see also Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57872 (September 26, 2014); *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 56209 (September 12, 2013); *Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of*

Rather than unilaterally attempting to claim the cash deposit rate of (or in this case, an exclusion for) a predecessor company, Shantou JCF should have requested a changed circumstance review (CCR) to prove that it was entitled to that rate. Further, we find it significant that the timeline of the name changes appears to correspond to changes in the cash deposit rates:

- June 25, 2003: Red Garden was established.<sup>79</sup>
- September 12, 2007: Red Garden was assigned a cash deposit rate of 112.81 percent.<sup>80</sup>
- December 26, 2007: Red Garden changed its name to Shantou JCF.<sup>81</sup>
- December 7, 2012: Commerce announced the preliminary results of its Section 129 determination and preliminarily calculated a cash deposit rate of 0.00 percent for Red Garden.<sup>82</sup> Commerce used the same identifying exclusion language in the Section 129 determination that it used in the *Order*, identifying the excluded merchandise as that produced and exported by “Red Garden Food Processing Co., Ltd.,” and no party suggested to Commerce that there was any problem with that identifier.
- January 20, 2013: Shantou JCF changed its name to Shantou RGFP.<sup>83</sup>
- March 4, 2013: Commerce announced the final results of its Section 129 determination which found that, because the weight-average margin for Red Garden was 0.00 percent and the determination related to the LTFV investigation, it should be revoked from the order (when it exported goods produced by itself or other specific producers).<sup>84</sup>
- March 28, 2013: The revocation notice is published in the *Federal Register*.<sup>85</sup>

In summary, we find these additional factors when viewed together with the totality of the circumstances weigh in favor of finding that Shantou RGFP is not the same company as Red Garden, and thus, it is not the successor-in-interest to that company.

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*China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 77 FR 53856 (September 4, 2012); and *Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 51940 (August 19, 2011). In each of these cases, Shantou JCF failed to participate in the review.

<sup>79</sup> See Shantou RGFP December 23, 2019 SQR at exhibit SA-28 (at exhibit A-3).

<sup>80</sup> See *Certain Frozen Warmwater Shrimp from the People’s Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 52049 (September 12, 2007).

<sup>81</sup> See Shantou RGFP November 12, 2019 SAQR at 12.

<sup>82</sup> See Memorandum, “Preliminary Results Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Frozen and Canned Warmwater Shrimp from the People’s Republic of China,” dated December 7, 2019.

<sup>83</sup> See Shantou RGFP November 12, 2019 SAQR at 14.

<sup>84</sup> See Memorandum, “Final Results of the Proceeding Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Frozen and Canned Warmwater Shrimp from the People’s Republic of China,” dated March 4, 2013.

<sup>85</sup> See *Exclusion Notice*, 78 FR at 18958.

## VI. RECOMMENDATION

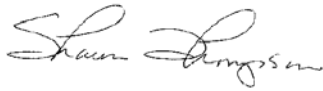
Considering our analysis of the factors and the totality of circumstances regarding the successor in interest claim discussed above, we recommend finding that Shantou RGFP is not the successor-in-interest to Red Garden. Thus, we recommend finding that Shantou RGFP in its current iteration should not be excluded from the *Order* and Commerce should calculate an AD rate for it for the preliminary results.



\_\_\_\_\_  
Agree



\_\_\_\_\_  
Disagree



\_\_\_\_\_  
Shawn Thompson  
Director, Office V  
Antidumping and Countervailing Duty Operations