

August 12, 2011

MEMORANDUM TO: Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

FROM: Christian Marsh  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Fifth Administrative Review of Certain Frozen Warmwater Shrimp  
from the People's Republic of China: Issues and Decision  
Memorandum for the Final Results

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## **SUMMARY**

We have analyzed the case briefs and rebuttal briefs submitted by Petitioner,<sup>1</sup> domestic processors (“Domestic Processors”),<sup>2</sup> and Hilltop International (“Hilltop”) in the administrative review of certain frozen warmwater shrimp (“shrimp”) from the People’s Republic of China (“PRC”). The Department of Commerce (“Department”) published the preliminary results of review on February 14, 2011.<sup>3</sup> The period of review (“POR”) is February 1, 2009, through January 31, 2010. Following the Preliminary Results and analysis of the comments received, we made changes to Hilltop’s margin calculation.<sup>4</sup> We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a complete list of issues for which we received comments and rebuttal comments by parties:

### **General Issues**

**Comment 1: Respondent Selection Methodology**

**Comment 2: Surrogate Country**

### **Surrogate Values**

**Comment 3: Shrimp Larvae**

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<sup>1</sup> Petitioner is the Ad Hoc Shrimp Trade Action Committee.

<sup>2</sup> The Domestic Processors are members of the American Shrimp Processors Association and the Louisiana Shrimp Association.

<sup>3</sup> See Certain Frozen Warmwater Shrimp From the People’s Republic of China: Preliminary Results and Preliminary Partial Rescission of Fifth Antidumping Duty Administrative Review, 76 FR 8338 (February 14, 2011) (“Preliminary Results”).

<sup>4</sup> See “Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Kabir Archuletta, Analyst, Office 9, Fifth Administrative Review of Frozen Warmwater Shrimp from the People’s Republic of China: Final Analysis Memo for Hilltop International,” dated concurrently with this memo (“Hilltop Analysis Memo”); see also “Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Kabir Archuletta, Analyst, Office 9, Fifth Administrative Review of Frozen Warmwater Shrimp from the People’s Republic of China: Surrogate Values for the Final Results,” dated concurrently with this memo (“Final SV Memo”).

- Comment 4: Shrimp Feed**
- Comment 5: Labor Surrogate Value**
- Comment 6: North Korean Import Data**

### **Surrogate Financial Ratios**

- Comment 7: Surrogate Financial Ratio Adjustments**

### **Company Specific**

- Comment 8: Identify Taiwanese Resellers on Custom's Instructions**

## **BACKGROUND:**

The merchandise covered by the Order is certain frozen warmwater shrimp as described in the “Scope of the Order” section of the Preliminary Results. The period of review (“POR”) is February 1, 2009, through January 31, 2010. In accordance with 19 CFR 351.309(c)(ii), the Department of Commerce (“Department”) invited parties to comment on our Preliminary Results.

On March 3, 2011, we extended the deadline for parties to submit the case briefs and rebuttal briefs to March 21, 2011 and March 28, 2011, respectively.<sup>5</sup> On March 21, 2011, Domestic Processors and Hilltop filed case briefs. On March 21, 2011, we received new factual information contained within Petitioner’s case brief. On March 24, 2011, we rejected Petitioner’s new factual information as being untimely filed, removed the new factual information from the record of this review and provided Petitioner until March 28, 2011, to re-file its case brief. Additionally, we extended the deadline for rebuttal briefs until March 30, 2011.<sup>6</sup> On March 28, 2011, Petitioner resubmitted its case brief. On March 30, 2011, Petitioner, Domestic Processors, and Hilltop filed rebuttal briefs. On May 24, 2011, the Department extended the deadline for the completion of the final results of this review until August 13, 2011.<sup>7</sup> On June 21, 2011, the Department placed on the record, information pertaining to the Department’s recently revised labor methodology.<sup>8</sup> On July 11, 2011, the Department placed on the record additional information pertaining to the Department’s recently revised labor methodology.<sup>9</sup> Between July 7, 2011, and July 14, 2011, interested parties submitted comments regarding the Department’s recently revised labor methodology.

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<sup>5</sup> See Letter from the Department to Interested Parties, dated March 3, 2011.

<sup>6</sup> See Letter from the Department to Petitioner dated March 24, 2011.

<sup>7</sup> See Certain Frozen Warmwater Shrimp from the People’s Republic of China: Extension of Final Results of the Fifth Antidumping Duty Administrative Review, 76 FR 30100 (May 24, 2011).

<sup>8</sup> See Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, AD/CVD Operations, from Bob Palmer, Case Analyst, Office 9, AD/CVD Operations, re: “Fifth Administrative Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from the People’s Republic of China: Industry-Specific Surrogate Labor Rate and Surrogate Financial Ratio Adjustments,” dated June 21, 2011 (“Surrogate Labor SV”).

<sup>9</sup> See Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, AD/CVD Operations, from Bob Palmer, Case Analyst, Office 9, AD/CVD Operations, re: “Fifth Administrative Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from the People’s Republic of China: Revision to Surrogate Wage Rate Methodology and Surrogate Financial Ratio Adjustments,” dated July 11, 2011 (“Revised Surrogate Labor SV”).

## DISCUSSION OF THE ISSUES

### Comment 1: Respondent Selection Methodology

#### Petitioner's Case Brief Arguments

- Record evidence submitted by Petitioner demonstrates that U.S. Customs and Border Protection (“CBP”) “Type 3” entries were an unreliable basis on which to select respondents in this review.
- The disparity between publicly available import data is not likely to be accounted for by the company excluded from the Order on shrimp suggesting that importers are misclassifying subject merchandise.
- The Department should have released Type 1 data and should have issued quantity and value questionnaires to select respondents in this review.

No other parties commented on this issue.

#### Department's Position:

The Department disagrees with Petitioner regarding our respondent selection methodology employed in this proceeding. As we stated in our respondent selection memorandum, section 777A(c)(1) of the Tariff Act of 1930, as amended (“Act”) directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies.<sup>10</sup> Because the Department initiated this administrative review with respect to 92 companies, it was not practicable or feasible to individually examine all of them. Under section 777A(c)(2)(B) of the Act, the statute allows the Department to limit examination of exporters or producers to those accounting for the largest volume of subject merchandise exported during the POR that can reasonably be examined. The statute is silent as to how the Department must determine which producers or exporters account for the largest volume of subject merchandise.<sup>11</sup> Therefore, the Department has discretion to choose which particular method to use in determining which respondents account for the largest volume of subject merchandise. The Department notes that our practice in selecting respondents in administrative reviews has been to examine CBP data of subject entries and select respondents accounting for the largest volume of exports of subject merchandise, as directed by section 777A(c)(2)(B) of the Act.<sup>12</sup> Therefore, pursuant to section 777A(c)(2)(B) of the Act, we selected the largest exporter for individual review, thereby accounting for the largest export volume under review that could be reasonably examined.

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<sup>10</sup> See, e.g., “Memorandum to James Doyle, Director, Office 9, from Kabir Archuleta, Case Analyst, Office 9, Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Selection of Respondents for Individual Review,” dated May 17, 2010 (“Respondent Selection Memo”).

<sup>11</sup> See U.S. Steel Corp. v. United States, 621 F.3d 1351, 1357 (CAFC 2010) (“The court must, as we do, defer to Commerce’s reasonable construction of its governing statute where Congress leaves a gap in the construction of the statute that the administrative agency is explicitly authorized to fill or implicitly delegates legislative authority, as evidenced by the agency’s generally conferred authority and other statutory circumstances.”) (citations and quotation marks omitted).

<sup>12</sup> See, e.g., Certain Lined Paper Products from the People’s Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review, 73 FR 58540 (October 7, 2008) unchanged in Certain Lined Paper Products from the People’s Republic of China: Notice of Final Results of the Antidumping Duty Administrative Review, 74 FR 17160 (April 14, 2009) (“Lined Paper”).

The Court of International Trade (“CIT”) recently reviewed and upheld the Department’s preference for using CBP data as a reliable data source for respondent selection purposes in Pakfood Pub. Co., Ltd. v. United States (“Pakfood”).<sup>13</sup> Agreeing with the Department’s reasoning that CBP data are reliable because they are “based on information required by and provided to the U.S. government” for “the same entries upon which the antidumping duties determined by this review will be assessed,” the Court held that it was reasonable for the Department to rely upon CBP data “{i}n the absence of evidence in the record that the CBP data – for merchandise entered during the relevant POR and subject to the AD order at issue – are in some way inaccurate or distortive.”<sup>14</sup> The Court also noted that CBP data were “collected in the regular course of business under penalty of law for fraud and/or negligence” and thus subject to the “general presumption of regularity” attaching to actions taken by customs officers “{i}n the absence of clear evidence to the contrary.”<sup>15</sup>

Further, we disagree with Petitioner that the Department should have issued quantity and value questionnaires to the respondents in this review. Selecting respondents from CBP data is normally as accurate and reliable as quantity and value data, and is much more administratively practicable. The data are readily available to the Department while relying on quantity and value responses requires significant resources to send and track the delivery of the questionnaires and responses, and to aggregate and analyze the numerous responses. Our intended respondent selection methodology was clearly stated in the Initiation.<sup>16</sup> Interested parties were invited to comment on the respondent selection methodology, and their comments were addressed in the Respondent Selection Memo and the Preliminary Results. Petitioner has not provided any compelling arguments that have not already been addressed that would make the Department abandon its practice in favor of Petitioner’s methodology.

We do not believe that “Type 1” entry data ought to be compiled and released along with “Type 3” entry data during the respondent selection process. The sole purpose of respondent selection is to select respondents for individual examination of those companies’ POR sales of subject merchandise to unaffiliated customers in the United States, which are classified as “Type 3” entries. “Type 1” entry data, which are not subject merchandise, are extraneous in our examination of subject merchandise (“Type 3” entries) entered into the United States during the POR. While the Department may examine certain specific data to determine if a given entry or sale should be included in its examination, complaints of deliberate misclassification of entries or fraudulent activity regarding entries into the United States should be properly lodged with CBP.<sup>17</sup>

We also disagree with the Petitioner’s contention that the CBP data are an unreliable proxy for determining exporters’ and producers’ export volume of subject merchandise. Here, the volume of subject entries within the CBP data were reported with consistent units of volume, allowing the Department to follow the express language of section 777A(c)(2)(B), which requires that we select respondents on the basis of volume rather than a surrogate for volume (*i.e.*, value). CBP

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<sup>13</sup> See Pakfood Pub. Co., Ltd. v. United States, 753 F. Supp. 2d 1334, 1345-46 (CIT 2011).

<sup>14</sup> See *id.*

<sup>15</sup> See *id.*

<sup>16</sup> See Notice of Initiation of Administrative Reviews and Requests for Revocation in Part of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam and the People’s Republic of China, 75 FR 18154 (April 9, 2010) (“Initiation”).

<sup>17</sup> The Court of International Trade (“CIT”) upheld the Department’s position that CBP has more expansive authority to investigate misclassification claims. See Globe Metallurgical Inc., v. United States, 722 F.Supp.2d 1372, 1381 (CIT 2010) (“Globe Metallurgical”).

data represent reliable data on entries of subject merchandise, as the data is compiled from actual entries of subject merchandise. The CBP data are based on information required by, and provided to, the U.S. government authority responsible for permitting goods to enter the United States, namely CBP. The entries compiled within the database used by the Department to select respondents are the same entries upon which the antidumping duties determined by this review will be assessed.

With respect to Petitioner's argument that certain subject entries from a prior segment in this proceeding were misclassified by U.S. importers, we note that any misclassified entries from that review period were addressed in those final results and have no bearing on the instant administrative review, as there is no evidence on the record of this administrative review period that any subject entries were misclassified.<sup>18</sup> Nevertheless, the Department has repeatedly stated that we intend to work with CBP where possible to identify and assist in the prevention of antidumping duty order evasion practices.

As stated by the CIT in Pakfood, rebutting the general reliability of CBP data would require clear evidence of inaccuracies "specific to the record for this review" and "for merchandise entered during the relevant POR and subject to the AD order at issue."<sup>19</sup> Therefore, in the absence of evidence of misclassification of subject merchandise entered during this review, we continue to find that CBP data represents a reliable source for purposes of respondent selection. Consequently, for the reasons stated above, we continue to find it inappropriate to release CBP "Type 1" entries under APO to interested parties or issue quantity and value questionnaires to any exporters or producers subject to the instant segment of the proceeding.

## **Comment 2: Surrogate Country**

### **Petitioner's Case Brief Arguments**

- Petitioner has submitted publicly available data, which demonstrates that the surrogate value ("SV") data from Thailand are as comprehensive as, and in some cases superior to, data from India.
- The financial statements of the Thai company Seafresh Industry Public Company, Ltd. ("Seafresh") meet or exceed the Department's criteria for selection of surrogate financial companies, because Seafresh's financial statements are more contemporaneous with the POR than the financial statements of Falcon Marine Exports Ltd. ("Falcon Marine") and Seafresh is an integrated company which is certified by the Aquaculture Certification Council, Inc.
- The Department should use price data as published by the Thailand Department of Fisheries as of April 26, 2006, because the data represents broad-market averages, collected and published by a government agency, and are more specific and can be matched to the age of the shrimp larvae.
- Thailand has a per capita gross national income ("GNI") that is much closer to that of the PRC than is India.
- Thailand is a more significant producer of comparable merchandise than is India.

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<sup>18</sup> See Third Administrative Review of Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 46565 (September 10, 2009) ("PRC Shrimp AR3") and accompanying Issues and Decision Memorandum ("IDM") at Comment 7; see also, Home Products International, Inc. v. United States, et al., 633 F.3d 1369 (February 4, 2011) ("Home Products").

<sup>19</sup> Pakfood, 753 F. Supp. 2d at 1345-46.

### **Hilltop's Rebuttal Comments**

- The Department found in the Preliminary Results that India and Thailand were both economically comparable countries and continued to use India as a surrogate country, as it has since the investigation, because the record established that the SV data for India was more complete and reliable than that of Thailand.
- With respect to Thai SVs for shrimp larvae and financial ratios, two of the most significant SVs in this proceeding, Petitioner has not placed useable or reliable data on the record of this review, supporting the position that the Department should continue to calculate SVs using the Indian data on the record.
- The Department should not use the Thailand Department of Fisheries prices because they are not contemporaneous, provide no quantity data, provide no information on how the prices were collected and provide no indication or the duration of time that the prices are valid.
- The Thai larvae price is specific to black tiger prawn larvae, a type of shrimp neither produced nor sold by Hilltop during the POR.
- The financial statements of Seafresh are inferior to Falcon Marine's because Seafresh's financial statements indicate that they are consolidated, do not demonstrate that the company is an integrated producer, and do not detail expenses to the degree necessary for calculating accurate surrogate financial ratios.

### **Department's Position:**

In accordance with section 773(c)(4) of the Act, the Department must value factors of production ("FOPs") using, to the extent possible, the prices or costs of the FOPs in one or more market economy countries that are (a) at a level of economic development comparable to that of the non-market economy ("NME") country; and (b) significant producers of comparable merchandise. In addition, on March 1, 2004, the Department issued a Policy Bulletin that provides guidance regarding the Department's selection of surrogate market economy countries in NME cases.<sup>20</sup>

#### Economic Comparability

The Department's regulations, at 19 CFR 351.408, indicate that the Department will consider per-capita income when determining economic comparability. However, neither the statute nor the Department's regulations define the term "economic comparability." As such, the Department does not have a set range within which a country's per-capita GNI could be considered economically comparable.

As described in the Policy Bulletin, the Department's policy is not to rank-order countries' comparability according to how close their per-capita GNI is to that of the NME country in question. The Department creates a list of possible surrogate countries that are to be treated as equally comparable in evaluating their suitability for use as a surrogate country, consistent with the statute's requirement that the Department use a surrogate country that is at a level of economic development comparable to that of the NME country. The Policy Bulletin states that the Department's "current practice reflects in large part the fact that the statute does not require

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<sup>20</sup> See Policy Bulletin No. 04/1: Non-Market Economy Surrogate Country Selection Process, dated March 1, 2004 ("Policy Bulletin").

the Department to use a surrogate country that is at a level of economic development most comparable to the NME country.”<sup>21</sup>

In this case, the Department has determined that both India and Thailand are economically comparable to the PRC.<sup>22</sup> Thus, consistent with the policy described above, the Department continues to find that these countries are equally economically comparable to the PRC for purposes of SV calculations.

#### Significant Producers

In the Preliminary Results, we found that both India and Thailand were significant producers of shrimp. The record reflects that both countries had exports of subject merchandise during the POR.<sup>23</sup> No party has argued that this determination was incorrect with respect to either country.

#### Data Considerations

In selecting a surrogate country, the Policy Bulletin states that “if more than one country has survived the selection process to this point, the country with the best factors data is selected as the primary surrogate country.”<sup>24</sup> We have found that both India and Thailand are economically comparable and significant producers of comparable merchandise. As we find that there is more than one significant producer among the list of potential surrogate countries, we have considered the quality and specificity of the available factors data in selecting a surrogate country.

There exists on the record sufficient, publicly available surrogate factor information for the majority of FOPs from both India and Thailand. We note that of the ten FOPs, for which the record contains only import statistics, three of the FOPs have a more specific Indian HTS number and seven have equally specific Indian and Thai HTS numbers. Therefore, because we find the Indian and Thai import statistics to be of roughly equal specificity, we are unable to make a distinction between India and Thailand, for the purpose of selecting a surrogate country, based on the specificity of import statistics.

Because the Indian and Thai import data did not allow us to make a distinction between the two countries, we examined the surrogate factor information for valuing shrimp larvae, because shrimp larvae is the critical input in the production of the subject merchandise.

#### Analysis of Thai Shrimp Larvae Surrogate Value

The Department’s practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available and

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<sup>21</sup> See Policy Bulletin at note 5.

<sup>22</sup> See Memorandum to Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, Import Administration, from Carole Showers, Director, Office of Policy, re: Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from the People’s Republic of China, dated July 19, 2010 (“Surrogate Country Memo”).

<sup>23</sup> See “Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Kabir Archuletta, Case Analyst, Office 9, re: Fifth Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Surrogate Factor Valuations for the Preliminary Results,” dated February 7, 2011 (“Prelim SV Memo”) at Exhibit 11b.

<sup>24</sup> See Policy Bulletin at 4.

contemporaneous with the POR, and tax/duty-exclusive.<sup>25</sup> Petitioner argues that the shrimp larvae prices from the Thailand Department of Fisheries, published in 2006,<sup>26</sup> are preferable to the shrimp larvae SV derived from the financial statements of the Indian company, Sharat Industries Limited (“Sharat”). While both sources are publicly available, we find that, based on the criteria above, the price list from the Thailand Department of Fisheries is unsuitable as a SV source for valuing shrimp larvae. We note that the Thai SV for shrimp larvae is specific to black tiger shrimp, a species that Hilltop has stated it neither produced nor sold during the POR.<sup>27</sup> Therefore, because the Thailand Department of Fisheries shrimp larvae SV is not specific to the species of shrimp produced and sold by Hilltop, we continue to find that the financial statement of Sharat is the best available information to value Hilltop’s shrimp larvae input. Although the Indian SV for shrimp larvae does not specify the species of shrimp larvae it sold, the SV source does not indicate a species that is not produced by Hilltop.

Additionally, we note that the price list placed on the record by Petitioner is unaccompanied by any supporting documentation.<sup>28</sup> As there is no detailed information on the background of this price list, we are unable to determine if the phrase “as of 26 April 2006” indicates that these prices are contemporaneous with the POR. Moreover, without supporting documentation, we are unable to determine the methodology used to calculate the shrimp larvae prices, if the prices are representative of actual market based transactions, or if the prices are tax/duty-exclusive. As we stated in previous cases, the Department does not use price data that has inadequate supporting documentation.<sup>29</sup> While both the Indian SV and Thai SV for shrimp larvae are publicly available and neither source is definitively tax/duty-exclusive or representative of a broad-market average, we find that the Indian SV is more contemporaneous, is based on actual market transactions and is not conclusively based on a species that was not produced by Hilltop. Accordingly, we will not use the Thai surrogate value for shrimp larvae because the record contains more reliable data with which to value shrimp larvae.

#### Analysis of Indian Shrimp Larvae Surrogate Value

In the Preliminary Results, we used Sharat’s 2008-2009 financial statement to calculate the SV for shrimp larvae because it was contemporaneous with the POR and was based on actual market prices.<sup>30</sup> Since the Preliminary Results, Hilltop has submitted Sharat’s 2009-2010 financial statement, which is contemporaneous with 9 months of the POR.<sup>31</sup> Sharat’s financial statements contain prices that are actual transaction prices, contemporaneous with the POR, and specific to the input. Although Sharat does not provide a price that represents a broad-market average, we find that among the available sources on the record that are reliable and fulfill our SV selection criteria, Sharat is the best available data with which to value shrimp larvae. For a further discussion of Sharat as a SV source to value shrimp larvae, see Comment 3 below.

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<sup>25</sup> See, e.g., First Administrative Review of Certain Polyester Staple Fiber From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 1336 (January 11, 2010), (“PSF AR1”) and accompanying IDM at Comment 1.

<sup>26</sup> See Petitioner’s SV Submission, dated September 10, 2010 at Attachment 1.

<sup>27</sup> See Letter to the Department from Hilltop, re: Hilltop’s Initial Section C Response in the Fifth Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China, dated July 8, 2010 at 13.

<sup>28</sup> See Petitioner’s SV Submission, dated September 10, 2010 at Attachment 1.

<sup>29</sup> See Pure Magnesium From the People’s Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order, 75 FR 80791 (December 23, 2010) and accompanying IDM at Comment 9 (stating that the Department “does not use price data that has inadequate supporting documentation” as one of its criteria in selecting the best available information to determine surrogate values.)

<sup>30</sup> See Prelim SV Memo at 4 and Exhibit 3. Sharat’s 2008-2009 financial statements covered one month of the POR.

<sup>31</sup> See Hilltop’s Post-Preliminary Surrogate Value Submission, dated March 7, 2011.

### Analysis of Surrogate Financial Statements

Additionally, Petitioner argues that the Thai surrogate financial statements meet or exceed the Department's criteria for selecting surrogate company financial statements. In selecting surrogate values for FOPs, section 773(c)(1) of the Act instructs the Department to use "the best available information" from the appropriate market economy country. The Department's criteria for choosing surrogate companies are the availability of contemporaneous financial statements, comparability to the respondent's experience, and publicly available information.<sup>32</sup> Moreover, for valuing factory overhead, selling, general & administrative expenses, and profit, the Secretary normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.<sup>33</sup> Among the surrogate producers of comparable products, the Department prefers to value financial ratios using data from those surrogate producers whose financial data will not be distorted or otherwise unreliable.<sup>34</sup> In addition, the CIT has held that in the selection of surrogate producers, the Department may consider how closely the surrogate producers approximate the non-market producer's experience.<sup>35</sup> The Department also rejects financial statements of surrogate producers whose production process is not comparable to the respondent's production process when better information is available.<sup>36</sup>

For the final results, the Department has disregarded the financial statement of Seafresh. Despite claims by Petitioner that Seafresh is an integrated company, Seafresh's financial statement provides no information regarding farming, ponds or any other indication that it farms and processes shrimp.<sup>37</sup> Further, a printout of Seafresh's website, placed on the record by Hilltop, gives no indication that Seafresh farms its own shrimp but instead states that "{o}ur factory is closely surrounded by major shrimp farms in southern area of Thailand. Shrimp from these farms can be transported into our production line shortly after it is harvested."<sup>38</sup> Online industry profiles of Seafresh, also submitted by Hilltop, describe the company as a wholesaler or a manufacturer and distributor, with no reference to farming.<sup>39</sup> In defense of the claim that Seafresh is, in fact, integrated, Petitioner responded with printouts from the website of an organization that certifies shrimp hatcheries, farms, feed mills, and processing plants for "Best Aquaculture Practices."<sup>40</sup> Although this website lists Seafresh, Tawee Farm 7, and Tripetch Hatchery under the heading "Seafresh Industry Group – Thailand," there is no information as to

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<sup>32</sup> See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China, 70 FR 24502 (May 10, 2005) and accompanying IDM at Comment 3.

<sup>33</sup> See section 773(c)(4) of the Act; 19 CFR 351.408(c)(4); see, e.g., Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006) and accompanying IDM at Comment 2.

<sup>34</sup> See Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 48612 (July 25, 2002) and accompanying IDM at Comment 5.

<sup>35</sup> The Court of International Trade has held that the Department is neither required to "duplicate the exact production experience of the PRC manufacturers," nor to use "perfectly conforming information," but rather comparable information. See Rhodia, Inc. v. United States, 240 F. Supp. 2d 1247, 1250 (CIT 2002).

<sup>36</sup> See, e.g., Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 6836 (February 9, 2005) and accompanying IDM at Comment 1.

<sup>37</sup> See Petitioner's SV Submission, dated September 10, 2010 at Attachment 6.

<sup>38</sup> See Hilltop's First Surrogate Value Rebuttal Submission dated September 20, 2010 ("Hilltop's SV Rebuttal Submission") at Exhibit 5.

<sup>39</sup> See *id.*

<sup>40</sup> See Petitioner's Post Preliminary Surrogate Value Submission dated March 7, 2011 at Attachment 3.

how these companies are related or if they are even affiliated.<sup>41</sup> Even if the Department were to assume that these facilities were somehow related, we note that whereas these facilities are listed under Seafresh Industry Group – Thailand, the financial statement on the record of this proceeding is specifically for Seafresh Industry Public Company Ltd., not Seafresh Industry Group – Thailand. Therefore, absent convincing evidence that Seafresh is an integrated producer, we continue to find it an inappropriate source on which to base surrogate financial ratios in this proceeding.

In the Preliminary Results, we preliminarily determined that the financial statement of Falcon Marine was the best information available with which to calculate surrogate financial ratios because Falcon Marine is a producer of comparable merchandise, its production process closely resembles that of Hilltop's production process (*i.e.*, it is a shrimp farmer as well as shrimp processor), the company did not suffer losses, and its 2008-2009 statement is contemporaneous with the POR.<sup>42</sup> No parties have submitted comments or information challenging Falcon Marine's suitability in calculating the surrogate financial ratios. Therefore, in accordance with section 773(c)(1) of the Act, we continue to find that the Indian financial statement for Falcon Marine is the best information available.

Therefore, because the Indian shrimp larvae SV source fulfills more of the Department's SV selection criteria, and the Indian surrogate company, Falcon Marine, is more reliable than the surrogate financial data from Thailand, we will continue to use India as the primary surrogate country for the valuation of FOPs and surrogate financial ratios.

## **Surrogate Values**

### **Comment 3: Shrimp Larvae**

#### **Domestic Processors' Case Brief Arguments**

- The 2008-2009 Sharat financial statement used by the Department in the Preliminary Results notes "Purchases of Seed & Feed" by affiliated parties and are, therefore, not arms-length, market-value prices.
- The 2009-2010 Sharat financial statement placed on the record by Hilltop also includes transactions with the same affiliated parties.
- The Sharat financial statement used to value larvae in the previous administrative review (2004-2005) listed no sales to affiliated parties.
- When the larvae value from the 2004-2005 financial statement was inflated to the 2008-2009 POR, the price of larvae was .147 Rs/pc, compared to .10 Rs/pc for both the 2008-2009 and 2009-2010 financial statement, indicating that sales to affiliates had a significant effect on larvae price.
- The Department should use the two sources submitted by Domestic Processors prior to the Preliminary Results because they are broad-market averages and are undistorted by related party transactions.

#### **Hilltop's Rebuttal Brief Arguments**

- The Sharat shrimp larvae price is derived from a financial statement which is audited and contemporaneous with the POR.

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<sup>41</sup> See *id.*

<sup>42</sup> See Preliminary Results at 8343; see also, Prelim SV Memo at 6-7 and Exhibit 8.

- While the Sharat financial statement does show a related party sale to Cee Impex-Chenat (“Ceeimpex”), there is no indication that this sale involved larvae rather than shrimp feed.
- While Domestic Processors argues that the only products sold domestically by the company were shrimp seed and feed, they do not provide any information that this transaction was domestic in nature.
- In 2009-2010, Sharat sold over eight times as much shrimp feed as shrimp larvae seed by value, suggesting the more likely conclusion that the transaction involved feed rather than larvae.
- While Domestic Processors argue that inflating the 2004-2005 larvae price shows that affiliated sales affected the price of larvae, Hilltop notes that, when adjusted for inflation, the more recent price submitted by Domestic Processors is 22% lower than the earlier price, indicating that the falling price for shrimp larvae is not attributable to related party transactions alone.
- The Department should continue to reject Domestic Processors’ larvae price because Domestic Processors have not provided any additional information to support the price quote.

### **Department’s Position:**

To value shrimp larvae in the Preliminary Results, the Department relied on the 2008-2009 financial statement of Sharat.<sup>43</sup> For these final results, the Department will rely on the 2009-2010 financial statements of Sharat.<sup>44</sup>

The Department’s practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available and contemporaneous with the POR, and tax/duty-exclusive.<sup>45</sup> The Department undertakes its analysis of valuing FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.<sup>46</sup> While there is no hierarchy for applying the SV selection criteria, “the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the ‘best’ surrogate value is for each input.”<sup>47</sup>

Since the Preliminary Results, interested parties placed additional SV data on the record with which to value shrimp larvae. In reviewing these additional sources, the Department analyzed the relative merits and limitations of all the sources available on the record and their relative suitability for use within the limits of our established criteria, noted above. On the record of this case, we have potential shrimp larvae SVs from the following sources: a 2006 presentation

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<sup>43</sup> See Prelim SV Memo at 3-4 and Exhibit 3.

<sup>44</sup> See Final SV Memo at 2 and Exhibit 2.

<sup>45</sup> See, e.g., First Administrative Review of Certain Polyester Staple Fiber From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 1336 (January 11, 2010), (“PSF AR1”) and accompanying IDM at Comment 1.

<sup>46</sup> See Glycine from the People’s Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 47176 (August 12, 2005), (“Glycine 2005”) and accompanying IDM at Comment 1.

<sup>47</sup> Polyethylene Terephthalate Film, Sheet, and Strip from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 55039 (September 24, 2008) (“PET Film”) and accompanying IDM at Comment 2.

summary by the Society of Aquaculture Professionals, a 2009 Central Chronicle article, a price list taken from a Thailand Department of Fisheries publication, and the 2008-2009 and 2009-2010 financial statements of Sharat, an Indian producer. In selecting the “best” available data with which to value shrimp larvae for the final results, we analyzed the suitability of each of these sources.

#### 2006 Presentation Summary of the Society of Aquaculture Professionals

In the Preliminary Results, the Department found that the 2006 presentation summary quoting 2005 shrimp larvae prices is unsuitable to value shrimp larvae because this source provides a broad price range of shrimp larvae prices and states that larvae found free of certain diseases fetched higher prices, but provided no price distribution of diseased and disease free shrimp larvae. Further, the presentation summary did not provide the methodology for collecting the price data and is not contemporaneous with the POR.<sup>48</sup> The Department prefers not to use sources where prices or values were not based on actualized, transaction prices.<sup>49</sup> Consequently, we find that this 2006 presentation summary does not represent sufficiently reliable actual prices and does not satisfy the SV selection criteria with respect to contemporaneity and broad-market average prices to value shrimp larvae.

#### Central Chronicle Article

In the Preliminary Results, the Department found that the Central Chronicle article is unsuitable to value shrimp larvae because this source provides only a quoted price range from the president of a regional seafood exporters association, but provided no indication as to the source of the price range.<sup>50</sup> The additional information placed on the record by the Domestic Processors does not provide any additional clarity for the price stated in this source.<sup>51</sup> The record contains no information that would indicate that the price stated in the article is anything other than an estimate of shrimp larvae prices, whether specific to a particular region or a country-wide average, and provides no information that the price is based on actual market transactions.<sup>52</sup> As stated above, the Department has, in prior cases, rejected sources where prices or values were not based on actualized, transaction prices.<sup>53</sup> Therefore, we find that the Central Chronicle does not represent reliable actual prices and does not satisfy the SV selection criteria with respect to broad-market average prices to value shrimp larvae.

#### Thailand Department of Fisheries

As noted above in Comment 2 under “Analysis of Thai Shrimp Larvae Surrogate Value,” we demonstrated that Thailand Department of Fisheries SV source was not suitable to value shrimp larvae. Therefore, we will not consider the price list sourced from the Thailand Department of Fisheries.

#### Sharat

In the Preliminary Results, we used Sharat’s 2008-2009 financial statement to calculate the SV for shrimp larvae because it was contemporaneous with the POR and was based on actual market

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<sup>48</sup> See Prelim SV Memo at 4.

<sup>49</sup> See Certain Steel Nails From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008) (“Nails LTFV”) and accompanying IDM at Comment 10.

<sup>50</sup> See Prelim SV Memo at 4.

<sup>51</sup> See Domestic Processors’ Post-Preliminary Surrogate Value Submission, dated March 7, 2011 (“Domestic Processors’ Post-Prelim SVs”) at Exhibit 11.

<sup>52</sup> See Domestic Processors Preliminary SV Submission, dated September 10, 2010 at Exhibit 2A.

<sup>53</sup> See Nails LTFV at Comment 10.

prices.<sup>54</sup> Since the Preliminary Results, Hilltop has submitted Sharat's 2009-2010 financial statement.<sup>55</sup> The Department has concluded that the shrimp larvae SV from Sharat's 2009-2010 financial statement fulfills more of the Department's SV selection criteria than the other sources on the record. Sharat's audited financial statement provides a vetted source of actualized shrimp larvae values that are specific to the input. Although the Department has historically expressed a preference to use country-wide data rather than company-specific data,<sup>56</sup> we find that Sharat's financial statement, in comparison to the other sources on the record, is the best available data with which to value shrimp larvae. While the Central Chronicle price is also specific to shrimp larvae we consider the lack of reliability of the prices to be a significant flaw undermining those elements of our criteria. Similarly, we find that the price quoted in the 2006 summary presentation is less reliable than Sharat's data. Sharat's financial statement contains prices that are actualized transaction prices, contemporaneous with the POR, and specific to the input. Although Sharat does not provide a price that represents a broad-market average, we find that among the available sources on the record that are reliable and fulfill our SV selection criteria, Sharat is the best available data with which to value shrimp larvae.

Further, we disagree with Domestic Processors that Sharat's financial statement definitively indicates sales of shrimp larvae between Sharat and a related party, Ceeimpex. Section 773(c)(1) of the Act provides that, where, as in this case, the subject merchandise is exported from an NME country, "the valuation of factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority." The statute requires the use of the "best available information," but it does not define the term, nor does it clearly delineate how the Department should determine what constitutes the best available information.<sup>57</sup> The Department has determined that, for this review, Sharat's financial statement represents the best available information for valuing shrimp larvae. As the Federal Circuit has recognized, selecting SVs is "difficult and necessarily imprecise."<sup>58</sup> Domestic Processors contend that the Department cannot rely on the shrimp larvae price derived from Sharat's financial statement because the shrimp larvae prices are tainted by related party sales between Sharat and Ceeimpex.<sup>59</sup> While Sharat's financial statement indicates that Sharat and Ceeimpex are related and indicates Ceeimpex had sales in 2009-2010, Sharat's financial statement provides no additional information regarding sales or purchases between the two parties or the type of merchandise Ceeimpex sold.<sup>60</sup> Therefore, we find there is no evidence that supports the assumption that Ceeimpex bought or sold shrimp larvae from Sharat. In NME cases, it is generally not possible for the Department to dissect the financial statements of a surrogate company as if the surrogate company were the respondent under review in the proceeding, because the Department does not seek information

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<sup>54</sup> See Prelim SV Memo at 4 and Exhibit 3.

<sup>55</sup> See Hilltop's Post-Preliminary Surrogate Value Submission, dated March 7, 2011.

<sup>56</sup> See, e.g., Prestressed Concrete Steel Wire Strand From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 28560 (May 21, 2010) ("PC Strand") and accompany IDM at Comment 1B; Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review, 73 FR 14216 (March 17, 2008) ("PRCB") and accompanying IDM at Comment 6.

<sup>57</sup> See Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States, 59 F. Supp. 2d 1354, 1357 (CIT 1999), aff'd 268 F.3d 1376 (Fed. Cir. 2001); China Nat'l Mach. Import & Export Corp. v. United States, 264 F. Supp. 2d 1229, 1236 (CIT 2003).

<sup>58</sup> See Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed.Cir. 1999) (quoting Sigma Corp. v. United States, 117 F.3d 1401, 1407 (Fed. Cir. 1997)).

<sup>59</sup> See Domestic Processors' case brief at 2-5.

<sup>60</sup> See Hilltop's Post-Prelim SV Submission at 22.

from or verify the information from the surrogate company<sup>61</sup> Because we cannot determine the type of merchandise, or even if merchandise was sold between the two companies, we find, in this review, Sharat's 2009-2010 financial statement to be the best available information by which to value shrimp larvae.

It is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs on a case-by-case basis.<sup>62</sup> Consistent with this practice, for the final results, we will value the shrimp larvae input using Sharat's 2009-2010 financial statement because it is an actualized transaction price and is more contemporaneous than the source used in the Preliminary Results.

#### **Comment 4: Shrimp Feed**

##### **Domestic Processors' Case Brief Arguments**

- The Department is required to avoid using prices which are believed to be or suspected to be dumped or subsidized.
- Taiwanese imports in Indian Global Trade Atlas ("GTA") data should be excluded from the surrogate value calculation because there is evidence on the record that the Taiwanese shrimp feed industry benefits from countervailable subsidies.

##### **Hilltop's Case Brief Arguments**

- Hilltop submitted an article from Aquaculture AsiaPacific that estimated that 144,000 MT of shrimp feed were produced in India during the year 2009. The five shrimp feed manufacturers' financial statements submitted by Hilltop indicate production of 106,329.45 MT of shrimp feed during fiscal year 2008-2009, which amounts to 73.84% of India's total production as cited by the Aquaculture AsiaPacific article.
- Hilltop also submitted a 2007 article from Fishing Chimes and a producer price quote that confirm average prices closer to those of the Indian producers than import data.
- Because India's total imports of shrimp feed during the POR amount to .93% of India's estimated production for the year 2009, these figures are not broad based and do not accurately represent the price for shrimp feed.
- In Shanghai Foreign Trade, the CIT ruled against the Department for not addressing the issue of whether import data was based on too small of a sample to be reliable.<sup>63</sup>
- GTA data used by the Department in the Preliminary Results show widely divergent average unit values ("AUVs") and both the Department and the courts have concluded that wide variations in AUVs may demonstrate unreliability.
- The CIT has ruled against the Department where the Department has used import data rather than a lower priced domestic value on the record, stating that it would be unreasonable to assume that a market economy producer would choose a higher priced import for no apparent reason.

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<sup>61</sup> See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) ("Tires LTFV") and accompanying IDM at Comment 18A.

<sup>62</sup> See Certain Preserved Mushrooms from the People's Republic of China: Notice of Final Results and Final Partial Rescission of the Sixth Administrative Review, 71 FR 40477 (July 17, 2006) and accompanying IDM at Comment 1.

<sup>63</sup> See Hilltop's Case Brief at 10 (citing to Shanghai Foreign Trade Enters. Co. v. United States, 28 CIT 480, 495, 318 F. Supp. 2d 1339, 1352 (2004) ("Shanghai Foreign Trade").

- Should the Department continue to rely upon import data, it should exclude imports from Belgium, Japan, Malaysia and the Netherlands because Infodrive data submitted by Hilltop demonstrates that the widely divergent AUVs may be due to entries of feed other than commercial shrimp feed.

### **Petitioner’s Rebuttal Brief Arguments**

- As the Department found in the previous review, shrimp feed data derived from the five financial statements submitted by Hilltop are inferior to import data because they do not represent a broad-market average and cannot be presumed to be tax- and duty-exclusive.
- If the Department agrees with Hilltop that import data may be unreliable, the Department should choose Thailand as the appropriate surrogate country in this review because no party has questioned the validity of the Thai import statistics on the record for shrimp feed.

### **Domestic Processors’ Rebuttal Brief Arguments**

- The Department has consistently found that import statistics are superior to financial statements for purposes of surrogate values and the courts have upheld the Department’s finding that financial statement price data is not exclusive of domestic taxes while import statistics are tax exclusive.
- Hilltop’s financial statements are not contemporaneous, as they only overlap the POR by two months, and are the exact statements rejected by the Department in the previous review.
- The Department has found in prior reviews that quantity comparisons among data sources are unpersuasive provided both sources measure substantial quantities.
- The Infodrive data submitted by Hilltop alone cannot support the claim that import data is aberrational because there are no additional reference points, such as historical unit value data.
- Hilltop submitted a Fishing Chimes article that explains that lower priced feed has lower nutritional value and increases pond pollution thereby explaining why producers might pay more for higher priced imported feed.
- The circumstances of cases cited by Hilltop do not reflect the issues here; in Jinan Yipin, the court did not find that variations in import data AUVs justified rejecting import data; rather, the issue was the specificity of the import data, which has not been called into question here. In Tapered Roller Bearings, the Department was only able to reject one set of import data because it had an alternative set from another country to rely upon.
- The Department’s practice is to avoid using Infodrive data unless it accounts for a significant portion of overall imports under the relevant HTS category. Hilltop’s Infodrive data does not allow for such a comparison as the data is reported in inconsistent units of measure.

### **Hilltop’s Rebuttal Brief Arguments**

- Petitioner has not provided the level of evidence the courts have found necessary to demonstrate that the Taiwanese shrimp feed industry benefits from subsidies.
- The Department rejected Petitioner’s opinion on this exact issue in the previous review and Petitioner has failed to provide additional information that should cause the Department to reconsider its position.
- Petitioner attempts to broadly define “biotech” as anything derived from living organisms which could logically encompass an excessively broad range of products.

- The CVD findings against Taiwan Petitioner cites to as evidence were not in effect during the POR.
- With respect to Taiwan’s notification to the WTO of subsidy programs, Petitioner has provided no evidence that these programs currently provide benefits to warrant a CVD finding and the Department has found such notification to be insufficient evidence of a countervailable subsidy program.
- All of the programs Petitioner alleges benefit the Taiwanese shrimp feed industry are domestic subsidies, rather than export subsidies and the Department has stated that domestic subsidies do not necessarily affect export prices.
- Should the Department reject Taiwanese import data, it would bolster Hilltop’s claim that the domestic sales quantities of 104,250 MT submitted by Hilltop are a superior source to value shrimp feed than the 1,333 MT of useable import data.
- Disregarding Taiwan would further reduce the amount of useable import data by 89%, amounting to 0.1% of the established domestic sales quantity, and would further magnify the distortions caused by widely divergent AUVs, ranging between 61 Rs/kg and 1,389 Rs/kg, over a much smaller pool of data and an unreasonably small sample.

### **Department’s Position:**

As stated above, the Department undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.<sup>64</sup> While there is no hierarchy for applying the surrogate value selection criteria, “the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the ‘best’ surrogate value is for each input.”<sup>65</sup> In the Preliminary Results, the Department relied on contemporaneous Indian GTA data to value shrimp feed.<sup>66</sup> On the record of this case, we have potential shrimp feed surrogate values from the following sources: Indian GTA data, Thai GTA data, and the financial statements of five Indian shrimp feed producers. Upon a full analysis of these sources, the Department has chosen to continue to use Indian GTA data, including Taiwanese imports, for the shrimp feed surrogate value.

Hilltop urges the Department to discontinue using the Indian GTA data in favor of using an average of the prices obtained from the financial statements of five Indian shrimp feed producers and one online price quote.<sup>67</sup> The Department disagrees with Hilltop that the financial statements of five Indian shrimp feed producers are superior to the GTA Indian import statistics. With respect to the surrogate value selection criteria, we find that the GTA import data is superior to the surrogate value from five individual financial statements. Although we find that the GTA data and the financial statements provide data for prawn and shrimp feed, both specific to the input, the specificity criteria alone is insufficient in selecting the best available data to value shrimp feed. GTA import data is superior in terms of contemporaneity because it is exactly contemporaneous to the POR. Furthermore, the GTA import data excludes taxes and duties, which we cannot determine conclusively for the five financial statements. The GTA Indian import data for shrimp feed was compiled from nine countries totaling a quantity of 1,333,368

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<sup>64</sup> See Glycine 2005 at Comment 1.

<sup>65</sup> See PET Film at Comment 2.

<sup>66</sup> See Prelim Surrogate Value Memo at Exhibit 4.

<sup>67</sup> See Hilltop’s SV Submission at Exhibit 4B – 4G.

kilograms, which we determine to be a broad-market average with an adequate commercial quantity.

Furthermore, although Hilltop provided five financial statements of shrimp feed producers in India, which may account for a significant quantity of shrimp feed produced during that period by these companies, the Department's long-standing preference has been GTA data, when available, over individual companies' financial statements.<sup>68</sup> First, the Department avoids using single-source information and prefers country-wide information such as government import statistics.<sup>69</sup> It is the Department's preference to use industry-wide values, rather than values of a single producer, whenever possible, because industry-wide values are more representative of prices and costs of all producers in the surrogate country.<sup>70</sup> Second, the Department does not use price data without adequate supporting documentation and prefers to use tax-exclusive sources, instead of tax-inclusive domestic prices.<sup>71</sup> On the basis of the Department's longstanding preference, along with the availability of the GTA Indian import statistics on the record that fulfill all of the surrogate value selection criteria, we find Hilltop's arguments do not support a change in an established practice and preference.

With respect to Hilltop's argument that the five Indian shrimp feed producers produced more MT of shrimp feed than the GTA import quantity reported, we find that relative quantity comparisons among the data sources do not influence the Department's determinations, especially when the quantities are substantial from both sources.<sup>72</sup> While Hilltop cites to Shanghai Foreign Trade in support of the claim that the Department should reject import data that do not reflect sufficiently significant amounts, we note that Hilltop supports the use of GTA data to value other FOPs that are considerably smaller in quantity than the import quantity for shrimp feed, suggesting that these amounts are statistically and commercially significant. Further, in Shanghai Foreign Trade the record contained an alternative dataset that was representative of broad-market prices and was tax exclusive. Here, we find that the alternative source placed on the record by Hilltop continues to be inferior to the GTA data for the reasons noted above. Lastly, while Hilltop cites to the Aquaculture AsiaPacific article to corroborate the share of domestic production accounted for by these five Indian producers,<sup>73</sup> Hilltop provided no details regarding India's domestic consumption of shrimp feed to use as a benchmark to gauge the market share accounted for by the GTA data. Although the five Indian companies may have produced more feed than is reflected in GTA import data, we are unable to determine how much of that production was

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<sup>68</sup> See, e.g., First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 57995 (November 10, 2009) and accompanying Issues and Decision Memorandum at Comment 3F (stating the Department's "general preference for WTA data over company financial statements is because WTA data are contemporaneous, publicly available, and representative of a broad-market average."); Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 72 FR 44827 (August 9, 2007) and accompanying Issues and Decision Memorandum at Comment 2 (stating "where product-specificity is not a critical factor in the Department's surrogate value determination, the Department has shown a general preference for WTA data over company financial statements because WTA data are contemporaneous, publicly available, and representative of a broad-market average).

<sup>69</sup> See, e.g., Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 33406 (July 13, 2009) ("Pencils 2009") and accompanying IDM at Comment 4.

<sup>70</sup> See, e.g., id.; see also, Notice of Final Determination of Sales at Less Than Fair Value: Honey From the People's Republic of China, 66 FR 50608 (October 4, 2001) and accompanying IDM at Comment 4.

<sup>71</sup> See Pencils 2009 at Comment 4.

<sup>72</sup> See PRC Shrimp AR4 at Comment 4; see also, Tires LTFV at Comment 9.

<sup>73</sup> See Hilltop's SV Submission at Exhibit 4A.

intended for and sold in the domestic market while imports of shrimp feed reflected in the GTA data were intended specifically for the domestic market. Therefore, we find that Hilltop's argument that the GTA Indian import data show relatively lower quantities of shrimp feed, compared with the five individual shrimp feed producers, is an insufficient basis on which to abandon our selection of GTA data to value shrimp feed.

Further, Hilltop's argument that the GTA data is unreliable because of widely divergent AUV's has not been substantiated on the record. For instance, comparing one high value with a lower value, even significantly lower, is insufficient evidence that one or the other is aberrational.<sup>74</sup> As we have stated before, without any additional reference points, a party can just as easily make the claim that either value is aberrational in comparison to the other, without sufficient evidence to draw a conclusion either way.<sup>75</sup> When import data is obtained from a wide range of countries--as is the case here with Indian imports totaling 1,333,368 kilograms from nine countries--with a wide range of quantity and value, it is not normally deemed unusual to find a wide range of AUV's. However, Hilltop has not placed any historical data or benchmarking data on the record to support its allegation that the divergent AUV's necessarily mean that data is unreliable. In past cases, the Department has stated that it would consider benchmarking data to further evaluate import data, provided: 1) there is direct and substantial evidence reflecting the imports from a particular country; 2) a significant portion of the overall imports under the relevant HTS category is represented; and 3) distortions of the AUV in question can be demonstrated by the data.<sup>76</sup> For example, in a recent case, the Department was able to determine that certain AUV's for the reviewed period were abnormal when compared with the historical AUV's from previous years, based on benchmarking data placed on the record.<sup>77</sup> However, Hilltop has not provided any such "corroborative" data to substantiate its claims that the GTA data is unreliable or inappropriate because of divergent AUV's. While Hilltop has cited to a CIT ruling in Jinan Yipin in support of its claim that wide variations in AUVs demonstrate unreliability,<sup>78</sup> we note that, as properly pointed out by Domestic Processors, the CIT's finding in this case was that the WTA surrogate value relied upon by the Department did not bear a reasonable relationship to the input being valued.<sup>79</sup> Furthermore, Hilltop's claim that the Department rejected Indian WTA data in TRBs because of wide variations in AUVs neglects the fact that there was an alternate set of WTA data for Thailand in that review that did not demonstrate such a variance in AUVs.<sup>80</sup> Here, the Thai GTA data on the record varies from a low of \$1.69 from Malaysia to a high more than 100 times larger of \$181.06 from the Netherlands, demonstrating considerably broader variance than the Indian GTA data. This may suggest that such variance in price may be a characteristic of the market rather than a statistical outlier. Accordingly, we continue to prefer the Indian GTA data because it is contemporaneous, publicly available, represents a broad-market average, is tax and duty-exclusive, and product specific. In contrast, the shrimp feed data

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<sup>74</sup> See, e.g., PRC Shrimp AR3 at Comment 3C; Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, 74 FR 16838 (April 13, 2009) ("Citric Acid") and accompanying IDM at Comment 5B.

<sup>75</sup> See Citric Acid at Comment 5B.

<sup>76</sup> See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order, 75 FR 844 (January 6, 2010) ("TRBs") and accompanying IDM at Comment 2.

<sup>77</sup> See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47191, 47194 (September 15, 2009) ("Vietnam Shrimp AR3") and accompanying IDM at Comment 7B.

<sup>78</sup> See Hilltop's Case Brief dated March 21, 2011, at 8.

<sup>79</sup> See Jinan Yipin Corporation Ltd. v. United States, 526 F. Supp. 2d 1347 (Ct. Int'l Trade 2007).

<sup>80</sup> See TRBs at Comment 3.

from the five Indian financial statements, while contemporaneous, publicly available and product-specific, do not represent as broad a market average, and are not tax- and duty-exclusive. Consequently, we will continue to value shrimp feed using the Indian GTA data because it satisfies all the Department's surrogate value selection criteria and represents the best available data on the record.

With regard to Hilltop's argument that it would be unreasonable to assume that Indian producers would pay much higher prices for imported feed than the lower priced domestic feed, we note that the 2007 Fishing Chimes article submitted by Hilltop explains that low cost feed has a lower nutritional profile, requires more feed to provide nutritional requirements, may yield poor growth performance, contributes substantially to pond pollution and, in some cases, is less economical than higher priced feed.<sup>81</sup> Although the high cost feed cited in the Fishing Chimes article was valued at a mean of 25.0 Rs.,<sup>82</sup> there is no indication as to the range of prices used to determine the mean and nothing to indicate that higher cost feed would not result in concomitant returns on investment. Therefore, we find Hilltop's assertion that Indian producers would be unlikely to purchase high cost imported feed unpersuasive in light of the evidence on the record. Further, we note that the CIT cases cited by Hilltop to support its claim that the courts have found the Department's use of an import value unreasonable when the record contains a lower priced domestically available product are specific to instances where the Department did not state a reason why a producer might choose a higher priced import.<sup>83</sup> Here, the record contains convincing evidence as to why an Indian producer may choose higher priced imports over lower priced domestic products.

With respect to Hilltop's claim that imports from certain countries included in the GTA data are not intended for commercial production but instead consist of a variety of other products,<sup>84</sup> as demonstrated by Infodrive India data, we continue to find that the Infodrive dataset submitted by Hilltop serves as an inadequate basis by which to impeach the reliability of the Indian import data. The Department considers Infodrive data as confirmation of alleged misclassifications when: (1) there is direct and complete evidence from Infodrive showing that imports from a particular country do not contain the product in question; (2) a significant portion of the overall imports under the relevant HTS category is represented by the Infodrive data; and (3) distortions of the AUV in question can be demonstrated.<sup>85</sup> In this case, the Department has already taken a position on whether a significant portion of the overall imports are represented by the Infodrive data. Specifically, in the Prelim SV Memo, we stated that the Infodrive data "does not conform to a single unit of measure and we are therefore unable to determine what percentage of GTA data may be accounted for in Infodrive data."<sup>86</sup> Although Hilltop argues that a comparison between the total value from certain countries in the Infodrive data and those countries in the GTA data indicate significant coverage,<sup>87</sup> the Department has two reservations with this

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<sup>81</sup> See Hilltop's SV Submission at Exhibit 4H.

<sup>82</sup> See *id.*

<sup>83</sup> See Yantai Oriental Juice Co. v. United States, 26 CIT 605, 617 (2002) ("Commerce nowhere explains how the use of seemingly more expensive imported coal data is the best available information establishing the actual costs incurred by Indian AJC producers."); Hebei Metals and Mineral Import and Export Corp. v. United States, 29 CIT 288, 300 (2005) ("Here, Commerce fails to establish the relative merits of the import value in terms of the actual costs incurred by a producer."); Dorbest v. United States, 462 F. Supp. 2d 1262, 1278 (CIT 2006) (stating "in order for import data to be used, there must be reason to believe that the industry in question would use imported inputs").

<sup>84</sup> See Hilltop's Case Brief at 13-18.

<sup>85</sup> See TRBs at Comment 2.

<sup>86</sup> See Prelim SV Memo at 5.

<sup>87</sup> See Hilltop's Case Brief, at 15.

comparison. First, total value of imports from the Netherlands amounts to 126.57% of GTA total value from that country. This raises questions as to the comparability of the Infodrive data to the GTA data. Second, although Hilltop claims that the Department performed the same exclusion Hilltop is requesting in this review in Magnesia Bricks, in that review the Infodrive data represented 100% coverage of both quantity and value,<sup>88</sup> and the Department was able to conclude that the two data sources were reasonably comparable. Here, we are unable to make any quantity comparisons and comparisons between values only raise further questions as to the reporting and data collection methodologies of the Infodrive data. Furthermore, the CIT has stated that in light of the Department's concerns regarding the reliability of Infodrive data and specifically in cases where the Department is unable to determine the percentage of total import data coverage by the Infodrive data, the "court cannot say Commerce must use the Infodrive data for any purpose."<sup>89</sup> Therefore, we do not find the Infodrive data as a reliable source for any other corroboration of the GTA data.

Notwithstanding the reservations noted above, we find the details of the Infodrive line items and the online advertising submitted by Hilltop to be insufficient grounds to discount imports from certain countries reported in the GTA data. With respect to Hilltop's argument that Hikari brand products, which comprise a majority of the entries from Japan reflected in the Infodrive data, are sold as retail fish food,<sup>90</sup> we do not find that the online advertising submitted by Hilltop precludes the possibility that some of these products are not sold in commercial quantities and marketed to commercial producers, or used as shrimp feed as well as fish feed.<sup>91</sup> While Hilltop argues that the prawn feed entries from Belgium consist of can sizes smaller than would normally be used in commercial shrimp farming applications,<sup>92</sup> a review of the online advertising submitted by Hilltop shows that the Golden Pearls brand prawn feed is in fact advertised as a "revolutionary new larval diet used with great success by marine aquacultures worldwide."<sup>93</sup> With respect to Hilltop's claim that the product described in the Infodrive entries from the Netherlands of "Topsy Farmed Frozen Marine Polychaetes (Nereis Virens)" are not commonly used in shrimp production,<sup>94</sup> online advertising submitted by Hilltop indicates that at least one Dutch producer has been selling farmed polychaetes to the shrimp aquaculture industry for ten years.<sup>95</sup> Lastly, Hilltop's claim that Infodrive entries from Malaysia consisting of "Mysis Feed" and "Zoeal Feed" are shrimp and fish fry supplements rather than feed products is not sufficiently supported by the record.<sup>96</sup> As properly noted by Domestic Processors,<sup>97</sup> while the online advertising material submitted by Hilltop demonstrates some supplement products, a number of the products listed are clearly advertised as feed.<sup>98</sup> Further, the Mysis Feed marketed as GAP Genchem Artificial Plankton states that the product can be "easily ingested from zoea to post larva stage."<sup>99</sup> Therefore, in light of the Department's aforementioned reservations with

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<sup>88</sup> See Certain Magnesia Carbon Bricks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances, 75 FR 45468 (August 2, 2010) ("Magnesia Bricks"), and accompanying IDM at Comment 1A.

<sup>89</sup> Globe Metallurgical, Inc. v. United States, 2009 WL 1272102 \*3 (CIT 2009).

<sup>90</sup> See Hilltop's Case Brief at 15.

<sup>91</sup> See Hilltop's SV Rebuttal Submission at Exhibit 9.

<sup>92</sup> See Hilltop's Case Brief at 16.

<sup>93</sup> See Hilltop's SV Rebuttal Submission at Exhibit 8.

<sup>94</sup> See Hilltop's Case Brief at 16.

<sup>95</sup> See Hilltop's SV Rebuttal Submission at Exhibit 10.

<sup>96</sup> See Hilltop's Case Brief at 17.

<sup>97</sup> See Domestic Processors' Case Brief at 10.

<sup>98</sup> See Hilltop's SV Rebuttal Submission at Exhibit 11.

<sup>99</sup> See id.

Infodrive data in general, and this data set in particular, we continue to find that the Indian GTA data, including imports from certain countries contested by Hilltop, represents the most reliable and appropriate source by which to value shrimp feed in this review.

Domestic Processors urge the Department to exclude Taiwan from the Indian GTA data because the Taiwanese shrimp feed industry allegedly benefits from countervailable subsidies.<sup>100</sup> In reviewing the Domestic Processors' arguments, the Department did not note any subsidies specific to the shrimp feed industry, as was also determined in PRC Shrimp AR4.<sup>101</sup> In the instant administrative review, Domestic Processors have submitted the identical set of supporting documents that were rejected by the Department in the previous review.<sup>102</sup> The only new evidence submitted by Domestic Processors since the Preliminary Results is limited to definitions of the biotechnology and shrimp feed industries, descriptions of the components of shrimp feed and the shrimp feed production process, information on research being conducted by the Taiwan Fisheries Research Institute, and two company profiles of Taiwanese feed producers,<sup>103</sup> none of which appear to support the claim that the Taiwanese shrimp feed industry benefits from countervailable subsidies. With respect to evidence placed on the record by Domestic Processors regarding the Government of Taiwan's investment in and development of the domestic biotechnology industry through incentive programs and preferential policies,<sup>104</sup> we note that it has not been demonstrated that Taiwan's shrimp feed industry has taken advantage of or benefitted from any of these programs. A decision to disregard prices from a particular country in determining a surrogate value for factor inputs has in the past been based on a reason to believe or suspect that exporters in that country may be subsidized.<sup>105</sup> In such cases, we have relied on information generally available to the Department at the time.<sup>106</sup> That information has typically been the result of final countervailing duty determinations,<sup>107</sup> which do not exist with regard to Taiwan's shrimp feed industry. Therefore, as there is insufficient record evidence to determine that Taiwan's shrimp feed industry benefits from countervailable subsidies, we find it inappropriate to exclude Taiwanese data from the Indian GTA import data based on Domestic Processors' arguments.

As we stated above, the Department has historically expressed a preference to use country-wide data rather than company-specific data.<sup>108</sup> Although in this review, we are using one company's financial statements, representing the "best" available information, to value shrimp larvae, that determination was made given the pool of shrimp larvae pricing sources available on the record. In the case of shrimp feed, the record contains Indian GTA import data, which the Department has used in the majority of antidumping duty cases and which fulfills all of the surrogate value

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<sup>100</sup> See Domestic Processors' Case Brief dated March 21, 2011 at 7-14.

<sup>101</sup> See Fourth Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 49460 (August 13, 2010) ("PRC Shrimp AR4") and accompanying IDM at Comment 4.

<sup>102</sup> See Domestic Processors' SV Submission at Exhibits 14A, 14B, 14D, and 15A-15I.

<sup>103</sup> See Domestic Processors' Post-Prelim SV Submission at Exhibits 1-10.

<sup>104</sup> See Domestic Processors' SV Submission at Exhibit 14B and 14C.

<sup>105</sup> See Certain Activated Carbon From the People's Republic of China: Notice of Preliminary Results of the Second Antidumping Duty Administrative Review, and Preliminary Rescission in Part, 75 FR 26927 (May 13, 2010); unchanged in Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review, 75 FR 70208 (November 17, 2010) ("Activated Carbon AR2").

<sup>106</sup> Notice of Final Determination of Sales at Less Than Fair Value: Barium Carbonate From the People's Republic of China, 68 FR 46577 (August 6, 2003), and accompanying IDM at Comment 1a.

<sup>107</sup> See *id.*

<sup>108</sup> See, e.g., PC Strand at Comment 1B; PRCB at Comment 6.

selection criteria. The GTA Indian import value is publicly available, contemporaneous with the POR, product specific, tax exclusive, and is an average non-export value in line with prices available from the potential surrogate countries. Therefore, we find that the GTA Indian import value, including imports from Taiwan, represents a reliable and appropriate surrogate value. Consequently, for the reasons stated above, we will continue to value shrimp feed using Indian GTA data, including Taiwan, for the final results.

## **Comment 5: Labor Surrogate Value**

### **Petitioner’s Case Brief Arguments**

- The Department should calculate labor rates using data reported in “Chapter 6A: Labor Cost in Manufacturing” of the International Labor Organization’s (“ILO”) Yearbook of Labor Statistics (“Chapter 6A”), because Chapter 6A data includes indirect labor costs such as social benefits, pensions and training, whereas “Chapter 5B: Wages in Manufacturing” (“Chapter 5B”) labor data does not.
- The Department inconsistently prefers data from multiple countries to calculate labor rates but relies upon data from a small number of producers in one country to value a significant component of labor costs, indirect labor costs, not captured in Chapter 5B data.
- While the Department has previously discounted the use of Chapter 6A labor data due to limited reporting from market countries, there is data on the record here for seven countries using Chapter 6A, for Sub-Classification 15 “manufacturing of food products and beverages” under the United Nations’ International Standard Classification of All Economic Activities (“ISIC”) Revision 3.

### **Hilltop’s Rebuttal Brief Arguments**

- While the Department is considering comments on the use of Chapter 6A data in its wage rate calculation, its current policy is to use Chapter 5B data.
- Labor rates are used in all antidumping proceedings and the Department cannot change its methodology in some, but not all, cases, nor can it change this methodology before the proper comment period concludes.
- Chapter 6A includes categories that were treated as selling, general and administrative (“SG&A”) in the Preliminary Results and using this data to calculate wage rates in the final results would result in double counting that would distort the resulting dumping margins.

### **Petitioner’s Comments on New Labor Surrogate Value Methodology<sup>109</sup>**

- The Department should revert to its prior longstanding multiple-country methodology to derive labor rates in this review, because the multiple-country approach has been recognized by the Department as the “best available information” and has been upheld by the CIT.<sup>110</sup>

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<sup>109</sup> Following the publication of Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) (“Labor Methodologies”), the Department placed data on the record of the review and invited comment from the interested parties. See Memoranda to the File, re: Labor Data, dated June 21, and July 11, 2011. Interested parties submitted comments on July 7 and July 14.

<sup>110</sup> Petitioners cite Shandong Rongxin Import & Export Co., Ltd. v. United States, Slip Op. 11-45 (CIT April 21, 2011) (“Shandong Rongxin”).

- If the Department continues to use wage data from the primary surrogate country, the appropriate surrogate country is Thailand, not India.

### **Domestic Processor’s Comments on New Labor Surrogate Value Methodology**

- The Department should choose Thailand as the primary surrogate country and value labor using Thai labor data, because Thailand is more economically comparable to the PRC than India.
- If the Department continues to use India as the primary surrogate country, the Department should reject the Indian labor data as inappropriate and rely on a second surrogate country, whose GNI is more comparable to the PRC, for labor data in this review.
- The Department has repeatedly stated that wage rate data is closely correlated with GNI and it is particularly important that the Department take the income level of the surrogate country from which labor data is sourced into account.
- The Department’s regulations note that the preference for using a single country to value the factors of production does not apply to labor and that the CIT and Federal Circuit have upheld the Department’s authority to rely on countries other than the primary surrogate country particularly in case of labor values.<sup>111</sup>

### **Hilltop’s Rebuttal Comments on New Labor Surrogate Value Methodology**

- The Department’s surrogate country memo clearly states that all countries should be considered economically comparable. In the Preliminary Results, the Department selected India as the primary surrogate country.
- The Department should reject Domestic Processor’s arguments that Thailand should be used as the primary surrogate country because Domestic Processors have not previously contested this determination.
- The Department should reject Domestic Processor’s argument that, even if India is selected as the primary surrogate country, the labor rate from Thailand should be used because its GNI is more comparable to the PRC than India’s GNI.
- It is the Department’s long standing practice to use surrogate value data from the primary surrogate country unless there is some specific problem with it. No parties have provided credible criticism of India’s labor rate.

### **Department’s Position:**

We disagree with Petitioner and Domestic Processors, and determine that using industry-specific labor data from Chapter 6A of the International Labor Organization’s (“ILO”) Yearbook of Labor Statistics reported for the primary surrogate country represents the best available information for valuing the labor input in these final results. Our selected surrogate value for labor is fully consistent with section 773(c) of the Act, and how the Department values all other FOPs.

Further, we disagree with Petitioner and Domestic Processors that the Department should revert to the multiple-country methodology to derive labor rates in this review, because of the variability that exists across wages from countries with similar GNI. We note that until recently, the Department has relied on wage data from multiple countries to help minimize the effects of

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<sup>111</sup> Domestic Processors cite Shandong Rongxin at 15, citing Dorbest Ltd. v. United States, 604 F.3d 1363, 1372 (Fed.Cir. 2010) (“Dorbest IV”).

the variability that exists between wage data of comparable countries. However, the Department recently determined that relying on labor data from the primary surrogate country would be the preferable approach.<sup>112</sup> The Department reached this conclusion, following the Federal Circuit’s decision in Dorbest IV, which invalidated the Department’s regression methodology, because the regression method required reliance on data from countries that were not economically comparable or significant producers. Following Dorbest IV, the Department initially continued the multi-country approach, but indicated that it would continue to evaluate whether other alternatives were more appropriate.<sup>113</sup> Specifically, the Department questioned the benefits of the multiple country approach since the amount of available data was more limited than it was under the regression method.<sup>114</sup> Additionally, the Department questioned the administrative feasibility of adopting the multiple country approach for the long-term given that even with a restricted basket, it required screening hundreds of data points in each case to arrive at industry-specific data.<sup>115</sup> Subsequently, the Court of International Trade in Shandong Rongxin, further restricted how the Department could define what countries are significant producers. When deciding on a permanent wage methodology, the Department concluded that to be compliant with the statute, and these two court decisions, the base for an average wage calculation would be so limited that there would be little, if any, benefit to relying on an average of wages from multiple countries for purposes of minimizing the variability that occurs in wages across countries. Therefore, in light of these two court decisions, and after having gained experience in applying a multi-country averaging method, the Department decided that valuing labor with data from the primary surrogate value would be the preferable approach.<sup>116</sup>

Relying on wage data from a single surrogate country is further beneficial because, as with all factor data, sourcing data from a single country better reflects the trade-off between labor costs and other factors’ costs, including capital, based on their relative prices. Additionally, the Department has determined to value labor using data from Chapter 6A of the ILO labor cost data which reflects all costs related to labor including wages, benefits, housing, training, etc. Chapter 5B data is less inclusive, reflecting only direct compensation and bonuses.<sup>117</sup>

We disagree with Domestic Processors that the Department should rely on labor data from outside the primary surrogate country, India. It is the Department’s preference to value all FOPs utilizing data from the primary surrogate country and to consider alternative sources only when a suitable value from the primary surrogate country does not exist on the record.<sup>118</sup> In this review, the record contains a suitable value for labor from the primary surrogate country. Domestic Processors have provided no evidence that impugns the Indian labor data derived from Chapter 6A of the ILO’s Yearbook of Labor Statistics.

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<sup>112</sup> See Labor Methodologies at 36093.

<sup>113</sup> See Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, 75 FR 64259 (October 19, 2010); see also, Activated Carbon AR2 at Comment 4f.

<sup>114</sup> See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor; Request for Comment, 76 FR 9544, 9546 (February 18, 2011).

<sup>115</sup> Id.

<sup>116</sup> Id.

<sup>117</sup> See Labor Methodologies at 36093.

<sup>118</sup> See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review, 76 FR 15941 (March 22, 2011) (“Fish Fillets AR6”) and accompanying IDM at Comment IV.I.i; see also, Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People’s Republic of China, 69 FR 67313 (November 17, 2004) (“Bedroom Furniture LTFV”) and accompanying IDM at Comment 3.

Petitioner and Domestic Processors argue that the Department should select Thailand as the primary surrogate country because it is more economically comparable to China, and thus, should rely on labor data from Thailand to value labor. We disagree. As noted in Comment 2 above, the Department has determined that both India and Thailand are economically comparable to the PRC.<sup>119</sup> Thus, as detailed in Comment 2 above, the Department continues to find that these countries are equally economically comparable to the PRC for purposes of SV calculations. We further do not agree that section 351.408(c)(2) of the Department’s regulation provides a basis to depart from the primary surrogate, as the exception for labor was made in reference to the Department’s labor regulation and the regression method, which has since been invalidated by the Federal Circuit in Dorbest IV.

Hilltop further argues that using Chapter 6A labor data, which captures some labor expenses that are already captured in Falcon Marine’s financial statements, would result in over-counting of the cost of labor.<sup>120</sup> However, we disagree with Hilltop that Chapter 6A labor data results in over-counting of labor cost, as the Department has adjusted Falcon Marine’s financial ratios to remove identifiable expenses included in Falcon Marine’s overhead (“OH”) and SG&A items that would also be covered by the labor data in Chapter 6A of the ILO.<sup>121</sup> These expenses have been moved to “direct labor,” as appropriate, in Falcon Marine’s surrogate financial ratio calculations. A detailed description of these adjustments are set forth below.

*Adjustments to Surrogate Financial Ratios:*

In the Preliminary Results, the Department used ILO Chapter 5B data to calculate the surrogate value for labor and the individually identifiable labor costs in Falcon Marine’s financial statement, which were not included in wages or earnings in direct labor, were categorized as OH or SG&A expenses for purposes of calculating surrogate financial ratios.<sup>122</sup> When financial statements identify and classify labor costs as either manufacturing related labor costs or administrative and selling related labor costs, we rely on those classifications unless there is reason to believe the classifications are not accurate.

Falcon Marine’s financial statements segregate all costs incurred by the companies between product and period costs. Product costs (also known as manufacturing costs) are those costs that, typically include direct materials, direct labor, and manufacturing or factory overhead costs. In accordance with the matching principal of accounting, the product costs should be expensed only when the products are sold to ensure an accurate matching of costs to the sales revenue that occurs in any given period. It is therefore expected that the manufacturing costs that are allocated to each product would include all factory related labor costs, including employee benefits.

Period costs (typically classified as administrative and selling expenses) are expensed in full in the period in which these costs are incurred. Period costs do not relate to the production of any specific product and are not capitalized, nor do they go through inventory. Accordingly, we find

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<sup>119</sup> See Surrogate Country Memo.

<sup>120</sup> Hilltop’s argument regarding over-counting was submitted before the Department published Labor Methodologies.

<sup>121</sup> See Surrogate Labor SV at 2; see also, Revised Labor SV at 3-6 and Final SV Memo at 3.

<sup>122</sup> See Tires LTFV at Comment 18.G; see also, Vietnam Shrimp AR3 at Comment 10. See also, Prelim SV Memo at 7 and Exhibit 8.

it reasonable to assume that the direct labor cost included in the cost of manufacturing, inventory, and ultimately in the cost of goods sold, includes all components of labor compensation related to the factory workers, including any bonuses paid, payroll taxes, welfare and other benefits, etc. Specifically, these direct labor costs associated with manufacturing, inventory and the cost of goods sold reflect all labor costs associated with the factory workers that produced the products that were sold. Likewise, it is reasonable to assume that the labor cost elements included as period costs (*i.e.*, in the selling or administrative cost section of the income statement) have nothing to do with the factory workers, but rather relate to the selling and administrative staff of the company.

Accordingly, we categorized all individually identifiable direct labor costs included in the ILO's definition Chapter 6A "Labor cost" and "Compensation of employees" as direct labor in the surrogate financial ratio calculations where the financial statements separately identify and classify manufacturing related labor costs. Such adjustments to the surrogate financial ratios are fact-specific in nature and subject to available information on the record.<sup>123</sup> Specifically, where warranted, individually identifiable labor costs, which are separately identified and classified as manufacturing related labor costs in the surrogate financial statements, and are included in Chapter 6A "Labor cost" and "Compensation of employees" are now categorized as direct labor expenses for purposes of the Department's calculation of surrogate financial ratios. Accordingly, we removed the following items from our preliminary OH calculation and moved them to direct labor, as Falcon Marine's financial statements make clear that these expenses are direct labor expenses:<sup>124</sup>

**Falcon Marine:**

- 1) Employer's Contribution to ESI (reported under Schedule 13: Employees' Remuneration & Benefits);<sup>125</sup>
- 2) Employer's Contribution to P.F. (reported under Schedule 13: Employees' Remuneration & Benefits);<sup>126</sup>
- 3) Contribution to Gratuity Fund (reported under Schedule 13: Employees' Remuneration & Benefits); and,
- 4) Staff Welfare Expenses (reported under Schedule 13: Employees' Remuneration & Benefits).<sup>127</sup>

Additionally, we find that there is good reason to believe that the inclusion of the line-item "Salary & wages (Procurement)" in the "direct labor" column of the ratio calculation worksheet would not be accurate. This line-item, listed under the heading "Schedule 12: Raw Materials, Processing & Packing," appears to be the wages related to the procurement of materials rather than labor related to actual manufacturing.<sup>128</sup> Consequently, we have moved "Salary & wages (Procurement)" from the "direct labor" column to the "SG&A" column. Additionally, we have

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<sup>123</sup> See Tires LTFV at Comment 18.G.

<sup>124</sup> See Letter from ASPA and LSA, re: Submission of Publicly Available Information to Value Factors, dated September 10, 2010 at Exhibit 11C.

<sup>125</sup> It is generally known that E.S.I is an acronym for Employee State Insurance scheme in Indian financial statements.

<sup>126</sup> It is generally known that P.F. is an acronym for Provident Fund in Indian financial statements.

<sup>127</sup> See Letter from ASPA and LSA, re: Submission of Publicly Available Information to Value Factors, dated September 10, 2010 at Exhibit 11C.

<sup>128</sup> Id.

moved “Service Charges Received,” located in “Schedule 10: Other Income,” from the “direct labor” column to the “excluded” column because this is an income rather than a labor item.<sup>129</sup>

## **Comment 6: North Korean Import Data**

### **Petitioner’s Case Brief Arguments**

- It is the Department’s practice to exclude imports from NME countries when calculating SVs.
- Federal legislation recognizes North Korea as a communist country and the United States has a policy of curtailing trade with North Korea based, in part, on its status as an NME country.
- The Department should exclude imports from North Korea in the calculation of any SVs.

### **Hilltop’s Rebuttal Brief Arguments**

- The Department should follow its standard practice of including North Korea in its import price calculations as it did in the previous review.
- As this would only affect one HTS category, and not enough to change its calculated SV, the issue is essentially moot.

### **Department’s Position:**

The Department disagrees with Petitioner regarding the exclusion of North Korean import data for SV purposes because the Department has never designated North Korea as an NME country and, in the absence of such a determination, treats North Korea as a market economy country. For the Department to make a determination that a country is an NME country, an interested party must allege that the country has a non-market economy and document its allegations with respect to each of the six factors listed in section 771(18)(B) of the Act.<sup>130</sup> Section 771(18)(C)(ii) gives the Department discretion to make a determination “at any time,” so the Department’s practice is to analyze a country’s non-market economy status in a formal proceeding that addresses the six factors listed in section 771(18)(B) of the Act. The Department does not undertake these analyses within the context of a surrogate value calculation and no party to this review sought a formal review of North Korea’s non-market economy status with respect to the six factors listed in section 771(18)(B) of the Act.<sup>131</sup> The Department thus applies the same market economy treatment to North Korea that it does to other countries it has not formally reviewed, such as Myanmar.<sup>132</sup>

Since July 2008, the Department’s practice has been to include data from all countries that it has not determined to have non-market economies.<sup>133</sup> Although we subsequently excluded data from

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<sup>129</sup> See *id.*; see also, Final SV Memo at 3.

<sup>130</sup> See U.S. Department of Commerce, Antidumping Manual, Ch. 10 at 3; see, e.g., Investigation of Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Opportunity To Comment on Petitioner’s Allegation That Vietnam Has a Non-Market Economy, 67 FR 52942 (August 14, 2002).

<sup>131</sup> See Import Administration Policy Bulletin 3.1 (“{a} mere allegation is not sufficient”).

<sup>132</sup> See Bedroom Furniture LTFV, at 67313.

<sup>133</sup> See Shrimp AR4, and accompanying IDM at Comment 2; see also, Tires at Comment 9. (“{W}e do not include North Korea in the list of NME countries and, thus, its exclusion as and NME country is unwarranted. The Department has not made any determination designating North Korea as an NME country for {antidumping duty} purposes.”); Certain Cased Pencils from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 33406 (July 13, 2009), and accompanying IDM at Comment 6

North Korea in another case, the Department explained that this exclusion was a “methodological error” that could not be corrected under section 351.224(f) of the Department’s regulations, which provides for the correction of ministerial errors.<sup>134</sup> Similarly, although the Department listed North Korea among NME countries in a footnote in the preliminary results of a new shipper review of fresh cut garlic from China, the footnote was clearly erroneous and not ultimately applied.<sup>135</sup> Accordingly, we have determined it appropriate to apply the Department’s current practice to include GTA data from North Korea in the calculation of SVs, as the Department has not determined that North Korea is an NME and because its practice is to include data from all countries it has not formally designated as having non-market economies.

## **Surrogate Financial Ratios**

### **Comment 7: Surrogate Financial Ratio Adjustments**

#### **Hilltop’s Case Brief Arguments**

- The Department incorrectly subtracted Falcon Marine’s opening inventory of raw material usage from closing inventory. The Department should correct this calculation for the final results.
- In calculating the SG&A surrogate financial ratio, the Department should offset Falcon Marine’s financial charges with income earned in the “Interest on deposit & SBI bonds” category.

#### **Petitioner’s and Domestic Processors’ Rebuttal Brief Arguments**

- Consistent with the third administrative review of this proceeding, the Department should not offset financial charges with “Interest on deposit & SBI bonds” because there is no evidence that this is short-term interest.

#### **Domestic Processors’ Rebuttal Brief Arguments**

- Consistent with the Department’s practice, the Department correctly reduced Falcon Marine’s raw material costs by the net change in raw materials inventories and should maintain this methodology in the final results.

#### **Department’s Position:**

We agree with Petitioner and Domestic Processors that we correctly excluded “Interest on deposit & SBI bond” and correctly calculated Falcon Marine’s change in stock in the Preliminary Results.<sup>136</sup>

The Department’s longstanding practice is to: (a) include all interest expense from financial statements in financial ratio calculations; (b) disaggregate interest income between short-term and long-term income; and, (c) offset interest expense with only the short-term interest revenue

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(“As the Department does not include North Korea on its list of NME or excludable export subsidy countries...we have included North Korean data in our surrogate value calculations”).

<sup>134</sup> See Nails, at 73 FR 44962.

<sup>135</sup> See Fresh Garlic From the People's Republic of China: Preliminary Results of New Shipper Reviews and Preliminary Rescission, in Part, 75 FR 69414, 69421 (November 12, 2010), changed in Fresh Garlic from the People’s Republic of China: Rescission of Antidumping Duty New Shipper Reviews, 76 FR 19322 (April 7, 2011).

<sup>136</sup> See Prelim SV Memo at Exhibit 8.

earned on working capital.<sup>137</sup> Further, the Department does not go behind the financial statement of the surrogate company to determine the appropriateness of including these items in the financial ratio calculations.<sup>138</sup> Because we cannot go behind the financial statement, the Department will reduce interest and financial expenses by amounts for interest income only to the extent it can determine from the statement that the interest income was short-term in nature.<sup>139</sup>

Regarding “interest on deposit and SBI bonds,” there is no evidence in Falcon Marine’s financial statement to indicate whether the interest income on “deposit and SBI bonds” is long-term or short-term in nature. Accordingly, for the final results we have made no interest income offset for “interest on deposit and SBI bonds” to SG&A.<sup>140</sup>

Regarding the calculation of Falcon Marine’s inventory, our review of Falcon Marine’s financial statement indicates that the information included in Schedule 6 of the balance sheet is sufficiently detailed to clearly identify changes in inventories and that the net change of these inventories is recorded in the profit and loss account. Specifically, we note that Schedule 6 contains the closing stock of finished products, feeds, and packing materials. The closing stock of finished products in Schedule 6 is derived from the change in stock calculated in Schedule 11. Further, the net change in Schedule 11 is then reflected in the company’s income statement. Falcon Marine’s financial statement contains a clear link between the changes in stock, which are recorded in the profit and loss account, and the ending balance of the inventories of finished products, feed and packing materials, which are reflected in the balance sheet. Therefore, for the final results, and consistent with our standard methodology,<sup>141</sup> we reported the closing stock, 27,005,007 rupees, less the opening stock, 217,520,485 rupees, which, as reflected in Falcon Marine’s financial statement, results in -190,515,478 rupees, an amount representing the net change in stock.<sup>142</sup>

Therefore, for the above reasons, we will not make any changes to the surrogate financial ratio calculations in this review.

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<sup>137</sup> See PRC Shrimp AR3 at Comment 4a; see also, PRCB at Comment 1.

<sup>138</sup> See Tires LTFV at Comment 18B.

<sup>139</sup> See Bulk Aspirin from the People’s Republic of China: Final Results of Antidumping Duty Review, 68 FR 6710 (February 10, 2003) and accompanying IDM at Comment 5 (stating that we offset interest expense with short-term interest revenue where we could discern the short-term nature of the interest revenue from the financial statements); see also, Notice of Final Determination of Sales at Less Than Fair Value: Honey from the People’s Republic of China, 66 FR 50608 (October 4, 2001) and accompanying IDM at Comment 3 (stating that we did not offset interest expense because the financial statements did not provide sufficient data for us to identify short-term interest revenue).

<sup>140</sup> See PRC Shrimp AR3 at Comment 4.

<sup>141</sup> See PRCB at Comment 3.

<sup>142</sup> See Domestic Processor’s Prelim SV Submission at Exhibit 11C and Falcon Marine’s Financial Statements at Schedule 6 and 11.

**Company Specific Issue**

**Comment 8: Identify Taiwanese Resellers on Customs Instructions**

**Hilltop's Case Brief**

- The Department should include the three Taiwanese companies the Department found to be a single entity with Hilltop on the cash deposit and liquidation instructions sent to CBP.

No other parties commented on this issue.

**Department's Position:**

The Department agrees with Hilltop. The Department will include the three Taiwanese companies, which the Department determined to be as a single entity with Hilltop, in its cash deposit and liquidation instructions sent to CBP.

**RECOMMENDATION**

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation program accordingly. If accepted, we will publish the final results of review and the final dumping margins in the Federal Register.

AGREE \_\_\_\_\_ DISAGREE \_\_\_\_\_

\_\_\_\_\_  
Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date