

August 9, 2010

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

FROM: Edward C. Yang
Acting Deputy Assistant Secretary
for Import Administration

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

SUMMARY

We have analyzed the case briefs and rebuttal briefs submitted by Petitioner¹, domestic processors (“Domestic Processors”)², Zhanjiang Regal Integrated Marine Resources Co., Ltd. (“Regal”), and Hilltop International (“Hilltop”) in the administrative review of frozen warmwater shrimp (“shrimp”) from the People’s Republic of China (“PRC”). The Department of Commerce (“Department”) published the preliminary results of review on March 12, 2010.³ The period of review (“POR”) is February 1, 2008, through January 31, 2009. Following the Preliminary Results and analysis of the comments received, we made changes to Hilltop’s and Regal’s margin calculations.⁴ 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:

¹ Petitioner is the Ad Hoc Shrimp Trade Action Committee.

² The Domestic Processors are members of the American Shrimp Processors Association and the Louisiana Shrimp Association.

³ See Fourth Administrative Review of Certain Frozen Warmwater Shrimp From the People’s Republic of China: Preliminary Results, Preliminary Partial Rescission of Antidumping Duty Administrative Review and Intent Not To Revoke, In Part, 75 FR 11855 (March 12, 2010) (“Preliminary Results”).

⁴ See “Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Robert Palmer, Analyst, Office 9, Fourth Administrative Review of Frozen Warmwater Shrimp from the People’s Republic of China: Final Analysis Memo for Zhanjiang Regal Integrated Marine Resources Co., Ltd.,” dated concurrently with this memo (“Regal Final Analysis Memo”); see also “Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Robert Palmer, Analyst, Office 9, Fourth 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”).

General Issues

Comment 1: Respondent Selection Methodology

Surrogate Values

Comment 2: North Korean Import Data

Comment 3: Shrimp Larvae

Comment 4: Shrimp Feed

Comment 5: Electricity

Comment 6: Diesel Fuel

Comment 7: Byproducts

Comment 8: Wage Rate Methodology

Surrogate Financial Ratios

Comment 9: Use of Uniroyal's and Waterbase's Financial Statements

Comment 10: Classification of Expenses from Falcon's Financial Statements

DISCUSSION OF THE ISSUES

Comment 1: Respondent Selection Methodology

I. Petitioner's Case Brief Arguments

- a. The respondent selection methodology implemented in this review fails to meet statutory obligations.
- b. Quantity and Value Questionnaires should be issued along with the APO release of U.S. Customs and Border Protection's ("CBP") "Type 1" entry data before the final results.
- c. The CBP data upon which the Department relied to select respondents based on largest exports by volume are unreliable.
- d. The Department has dismissed evidence of circumvention of the Order placed on the record by Petitioner.

II. Regal's Rebuttal Brief Arguments

- a. Respondent selection was the Department's normal practice and conducted in accordance with the statute.
- b. The Department correctly relied on CBP data to determine the largest exporters by volume and the CBP data reasonably reflects imports of subject merchandise.

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.⁵ Because the Department initiated this administrative review with respect to 483 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. Therefore, pursuant to section 777A(c)(2)(B) of the Act, we selected the two largest exporters for individual review, thereby accounting for the largest export volume under review that could be reasonably examined. 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.⁶

Selecting respondents from CBP data is 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. Further, we disagree with Petitioner's request for the Department to issue quantity and value questionnaires to the respondents at this stage of the proceeding. Our intended respondent selection methodology was clearly stated in the Initiation.⁷ 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.

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

⁵ See, e.g., "Memorandum to James Doyle, Director, Office IX, from Irene Gorelik, Senior International Trade Analyst, Office IX, Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Selection of Respondents for Individual Review," dated May 29, 2009 ("Respondent Selection Memo").

⁶ 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").

⁷ 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, 74 FR 13178 (March 26, 2009) ("Initiation").

data represent reliable data on entries of subject merchandise, as the data are compiled from actual entries of merchandise subject. 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 the preceding administrative review 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.⁸

Lastly, we find Petitioner's argument regarding alleged circumvention of the antidumping duty order inappropriate in the context of the final results of this administrative review. The statute provides for remedies from alleged circumvention of antidumping duty orders in section 781 of the Act. In addition, the Department's regulations provide for circumvention inquiries to be conducted as separate segments of the proceeding. See 19 CFR 351.225. Because the Department has neither received a request to initiate an anti-circumvention inquiry nor self-initiated a separate anti-circumvention inquiry for the antidumping duty order on shrimp from the PRC, Petitioner's comments are misplaced here and will not be addressed further.

Therefore, for the reasons stated above, we will neither release CBP "Type 1" entries under APO to interested parties, nor issue quantity and value questionnaires to any exporters or producers subject to the instant proceeding.

Surrogate Values

Comment 2: North Korean Import Data

I. Petitioner's Case Brief Arguments

- a. The Department's treatment of North Korean import data in the World Trade Atlas ("WTA") has been inconsistent for surrogate value calculations.
- b. The Department should resolve its inconsistent treatment of North Korean import data by excluding it from the surrogate value calculations.
- c. Exclusion of North Korean import data would eliminate the impact of distortive values, which the agency has the discretion to exclude.

II. Hilltop and Regal's Rebuttal Brief Arguments

- a. The Department should not exclude North Korea from the valuation of tape using Indian HTS number: 3919.10.00.
- b. The Department has an established practice and rule of law when designating a country as a non-market economy ("NME") and the Department has not found North Korea to be a NME country.

⁸ 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 at Comment 7.

- c. Petitioner has not made compelling reasons for the Department to diverge from its practices and policies in this case.

Department's Position:

The Department disagrees with Petitioner regarding the exclusion of North Korean import data for surrogate value purposes. While the Department has excluded imports from North Korea in the past,⁹ our current practice is to include import data from countries the Department has not determined are NMEs, such as North Korea.¹⁰ Although we subsequently excluded data from 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.¹¹ The Department seeks to avoid a similar error here. Accordingly, we have determined it appropriate to apply the Department’s current practice to include WTA data from North Korea in the calculation of the surrogate value for tape, as the Department has not determined that North Korea is a NME.

Comment 3: Shrimp Larvae

I. Domestic Processors’ Case Brief Arguments

- a. The shrimp larvae prices from the National Bank of Agriculture and Rural Development (“NABARD”) source, placed on the record after the Preliminary Results, satisfy more of the surrogate value selection criteria than the prices from the Fishing Chimes publication used in the Preliminary Results.¹²

II. Regal Case Brief Arguments

- a. The Department should only use the Nekkanti Sea Foods Ltd.’s (“Nekkanti”) 2002-2003 financial statements to derive the surrogate value for shrimp larvae.
- b. The surrogate value from the Fishing Chimes publication, quoting a 2003 larvae price, is not representative of commercial purchases and is based on a single transaction.
- c. If the Department uses both sources, they should be weight-averaged for the final results.

III. Hilltop Case Brief Arguments

- a. The Department should value shrimp larvae using the average of shrimp larvae sales prices found in the 2004-2005 financial statements of Sharat Industries Limited (“Sharat”), an Indian producer, and the price reported in the

⁹ See Helical Spring Lock Washers From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 4175 (January 24, 2008) and accompanying Issues and Decision Memorandum at Comment 1 (“Helical Spring Lock Washers”); see also Notice of Antidumping Duty Order: Certain Steel Nails From the People’s Republic of China, 73 FR 44961, 44962 (August 1, 2008) (“Nails”).

¹⁰ 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”) and accompanying Issues and Decision Memorandum at Comment 9 (where we stated that “we do not include North Korea in the list of NME countries and, thus, its exclusion as an NME country is unwarranted. The Department has not made any determination designating North Korea as an NME country for AD purposes.”)

¹¹ See Nails, at 73 FR 44962.

¹² See Domestic Processors’ Post-Preliminary Surrogate Value Submission, dated April 1, 2010 at 2 and Exhibit 2.

November/December 2007 issue of Aqua Culture Asia Pacific (“ACAP”) publication.¹³

- b. These sources are more contemporaneous than the values derived from the 2002-2003 Nekkanti financial statement and the 2003 Fishing Chimes article.
- c. The surrogate value derived from the Sharat financial statements and the ACAP article is corroborated by the price of larvae reported in certain United Nations Food and Agriculture (“UN FAO”) reports.¹⁴

IV. Petitioner Rebuttal Brief Arguments

- a. The ACAP article does not cite the source of the stated price of the shrimp larvae.
- b. The ACAP article is an opinion piece intended to spur the Indian government to address disease in shrimp and the low larvae prices bolster the article’s argument.
- c. The Department should continue to use the simple average of the Nekkanti and Fishing Chimes prices.
- d. Using only Nekkanti’s financial statements to value shrimp larvae will not provide a broad market average which the Department prefers.

V. Domestic Processor’s Rebuttal Brief Arguments

- a. The surrogate value sources for shrimp larvae suggested by Hilltop are inferior to the NABARD data, because the NABARD data is more contemporaneous, provides a broad market average and is from a reliable government source.
- b. The financial statements of Sharat Industries is not as contemporaneous as the NABARD data and provides only a snap shot for one company rather than a broad market average.
- c. The ACAP article is not as reliable as the NABARD data and does provide the methodology of how it prices were gathered or how representative of the market they are.

VI. Hilltop’s Rebuttal Brief Arguments

- a. The Department should not use NABARD to value shrimp larvae.
- b. The NABARD data are illustrative costs for establishing a shrimp farm rather than a reflection of actual market pricing data.
 - i. The Department has rejected prices from NABARD and “Project Profile(s)” in other cases and the Department prefers to use actual market prices.¹⁵
- c. The NABARD data are from a website dated from 2007, which does not demonstrate the time period of the actual study or the time period from which the data was compiled.
- d. The giant fresh water prawns discussed in the NABARD study are not comparable merchandise produced by Hilltop.

¹³ See Hilltop’s Post-Preliminary Surrogate Value Submission, dated April 1, 2010 at Exhibit 3B and 3C.

¹⁴ See Id. at Exhibit 3D.

¹⁵ See 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) (“PRC Honey 2001”) and accompanying Issues and Decision Memorandum at Comment 5; see also Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 75 FR 12726 (March 17, 2010) (“Fish Fillets 2010”) and accompany Issues and Decision Memorandum at Comment 2C.

Department's Position:

To value shrimp larvae in the Preliminary Results, the Department relied on an average of prices derived from the Nekkanti's financial statement for 04/2002 - 03/2003, and the price quoted in Fishing Chimes, an Indian seafood industry publication. See "Memorandum to the File from Robert Palmer, Analyst, through Catherine Bertrand, Program Manager, Office 9, re; Fourth Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Surrogate Factor Valuations for the Preliminary Results," at 3 and Exhibit 3 ("Prelim Surrogate Value Memo").

The Department's practice when selecting the best available information for valuing factors of production ("FOPs"), in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, surrogate values which are product-specific, representative of a broad market average, publicly available and contemporaneous with the POR, and tax/duty exclusive.¹⁶ 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.¹⁷ 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."¹⁸

Since the Preliminary Results, interested parties placed additional surrogate value 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 surrogate values from the following sources: Fishing Chimes, an industry journal; Indian producer Nekkanti's 2002-2003 financial statements; NABARD, an alleged national bank of India; ACAP, another industry journal; and Indian producer Sharat's 2004-2005 financial statements. 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.

Fishing Chimes and Nekkanti Financial Statements

The Department valued shrimp larvae with an average of prices from Fishing Chimes and Nekkanti from the underlying investigation to the Preliminary Results of this administrative review. The Fishing Chimes price is from 2003 and was inflated for contemporaneity. See Prelim Surrogate Value Memo at Exhibit 3. The larvae price in Nekkanti's financial statements is from April 2002 through March 2003 and was also inflated for contemporaneity. Id. Although we determined that these sources were the best available information in prior

¹⁶ 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 Issues and Decision Memorandum at Comment 1.

¹⁷ 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 Issues and Decision Memorandum at Comment 1.

¹⁸ See e.g., 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 Issues and Decision Memorandum at Comment 2; Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002) ("Crawfish 2002") and accompanying Issues and Decision Memorandum at Comment 2.

segments, we find that for these final results, there are other data that is equally reliable but more contemporaneous with the POR. Consequently, the Department determines that, for the final results, we will discontinue using the average of the prices in Fishing Chimes and Nekkanti's financial statements to value shrimp larvae.

NABARD

The Department finds that the NABARD data is unsuitable because the prices are estimates, illustrative, and not specific to the input. The Department has, in prior cases, rejected sources where prices or values were not based on actualized, transaction prices.¹⁹ Although in a recent case, the Department determined that prices in a "study" were reliable,²⁰ despite arguments that those prices were estimates, the Department cannot determine, from record evidence, that the estimated, illustrative NABARD prices are based on any actualized, vetted transaction prices representing a broad range of the market or specific to the input. The NABARD data seem to be illustrative costs for establishing a shrimp farm and not actualized transaction prices. Therefore, although the NABARD data is more contemporaneous than the sources used in the Preliminary Results, we find that the NABARD data do not represent sufficiently reliable actual prices, and do not satisfy the surrogate value selection criteria with respect to product specificity and broad market average prices to value shrimp larvae.

ACAP

Hilltop has urged the Department to use the ACAP article prices averaged with the prices in Sharat's 2004-2005 financial statements to derive the shrimp larvae surrogate value. In measuring the viability of the prices in the ACAP article against our surrogate value selection criteria, we find that the ACAP article is unsuitable because it does not cite any sources for the prices. Although the Department has used Fishing Chimes, which is also an article, to value shrimp larvae in past reviews, we note a distinct difference between Fishing Chimes and the ACAP articles: the ACAP article²¹ is an opinion piece while the Fishing Chimes article²² appears to have been written as a scholarly piece. Specifically, the record shows that the Fishing Chimes article was authored by individuals designated as affiliated with an education institution, while the ACAP article was an opinion piece authored by an individual apparently affiliated with a company. As there is no detailed information on the background of the author of the ACAP article and the purpose of the article, other than providing an opinion, the Department does not find that the ACAP article is superior to the Fishing Chimes article with respect to the viability of the shrimp larvae pricing. As we stated in previous cases, the Department prefers to use data that represents actual prices and broad ranges of data, supported by information showing the conditions under which prices were gathered or researched.²³ Accordingly, we will not rely on

¹⁹ See Crawfish 2002 at Comment 2.

²⁰ See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Third New Shipper Reviews, 74 FR 29473 (June 22, 2009) ("Fish Fillets NSR3") and accompanying Issues and Decision Memorandum at Comment 2 (where the case supported a determination that the estimated prices were vetted by the conductor of the study).

²¹ See Hilltop's Post-Prelim Surrogate Value Submission, dated April 1, 2010, at Exhibit 3C (where the author of the article is identified as: S. Chandrasekar, INVE (Thailand) Limited).

²² See Domestic Interested Parties Post-Prelim Surrogate Value Submission, dated April 1, 2010, at Exhibit 1 (where the authors of the article are identified as: K. Ranindranath and K. Madhavi, College of Fishery Science, Acharya N G Ranga Agricultural University).

²³ See, e.g., Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47191 (September 15, 2009) ("Vietnam Shrimp AR3") and accompanying Issues and Decision Memorandum at Comment 7A; Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from the People's Republic of China, 68 FR 47538 (August 11, 2003) ("PVA 2003") and accompanying Issues and Decision Memorandum at Comment 1.

the ACAP article because the record contains more reliable data with which to value shrimp larvae.

Sharat

The Department has concluded that larvae surrogate value from Sharat's 2004-2005 financial statements fulfill more of the Department's surrogate value selection criteria than the other sources on the record. In this case, we find that Sharat's financial statements are more contemporaneous than that of Nekkanti or Fishing Chimes. Further, Sharat's audited financial statements provide 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,²⁴ we find that Sharat's financial statements, in comparison to the other sources on the record, are the best available data with which to value shrimp larvae. While the NABARD data is also specific to the input, and represents a broader market average, 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 methodology used to gather the ACAP data renders the ACAP prices less reliable than Sharat's data. Sharat's financial statements contain prices that are actualized transaction prices, relatively more contemporaneous with the POR than either Fishing Chimes or Nekkanti, 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 surrogate value selection criteria, Sharat is the best available data with 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.²⁵ Consistent with this practice, for the final results, we have selected to value shrimp larvae input using Sharat's financial statements because it is an actualized transaction price that is more specific to the input used in the production of subject merchandise and is more contemporaneous than the sources used in the Preliminary Results.

Comment 4: Shrimp Feed

I. Domestic Processors' Case Brief Arguments

- a. The Department is required to avoid using prices which are believed to be or suspected to be dumped or subsidized.
- b. Taiwanese import data in WTA 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.

²⁴ 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 accompanying Issues and Decision Memorandum 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 Issues and Decision Memorandum at Comment 6.

²⁵ See Notice of Final Results and Final Partial Rescission of the Sixth Administrative Review: Certain Preserved Mushrooms from the People's Republic of China, 71 FR 40477 (July 17, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

II. Hilltop's Case Brief Arguments

- a. The Department is directed to obtain the most accurate margin possible and the value for shrimp feed derived from Indian producers is the most accurate and appropriate surrogate value for the shrimp feed input.
- b. The five financial statement of Indian shrimp feed producers on the record, indicate a total of 104,250.955 metric tons ("MT") of domestically produced shrimp feed was sold by these companies.²⁶
 - i. A January/February 2010 ACAP article reports India produced 144,000 MT of shrimp feed in 2009. The five sources on the record account for 73.84 percent of all shrimp feed produced in India.
- c. A March 2007 Fishing Chimes article and pricing information from the website of another Indian feed producer, Amit Biotech, corroborate the price derived from the five financial statements.
 - i. It is appropriate to use the information from Amit Biotech's website in conjunction with the five financial statements to derive the surrogate value for shrimp feed.
- d. The WTA data on the record for shrimp feed is unreliable because of the widely divergent average unit values ("AUV") for shrimp feed from the different exporting countries.
- e. The Indian WTA data used by the Department totaled 1,496 MT or 1.44 percent of the total quantity of shrimp feed sold by the five Indian shrimp feed producers on the record and is too small to be statistically reliable.
- f. The WTA import data should be rejected because it is unreasonable to assume that a shrimp producer would use higher priced imports rather than more widely available and lower cost domestic feed.

III. Petitioner's Rebuttal Brief Arguments

- a. The Department should reject a shrimp feed surrogate value derived from the five financial statements because: they are company-specific rather than representative of a broad-market average, they are not as contemporaneous as the WTA data, and there is no evidence the prices of shrimp feed are tax exclusive.
- b. Hilltop has not demonstrated that the WTA data is unreliable.

IV. Domestic Processors' Rebuttal Brief Arguments

- a. None of the financial statements indicate the prices are tax-exclusive.
- b. The financial statements and website of Amit Biotech are not as contemporaneous as the Indian import data from WTA.
- c. The financial statements do not represent a broad market average. The UNFAO submitted by Domestic Processors indicate there were 28 shrimp feed mills in 2007;²⁷ Hilltop submitted financial statements for five shrimp feed mills.
- d. Financial statements appear not to include larval shrimp feed. Moreover, the FAO reports that India lacks the capacity to produce the specialty diets for shrimp larvae.²⁸
- e. Hilltop did not support its argument that the Department should reject import statistics. There is no contention that the import data is not specific to the shrimp

²⁶ See Hilltop's Post-Preliminary Surrogate Value Submission, dated April 1, 2010 at Exhibit 2C through 2G.

²⁷ See Domestic Processors' Post-Prelim SV Rebuttal Submission, dated April 6, 2010 at Exhibit 2.

²⁸ Id.

feed input. Additionally, there is no good alternative to the WTA import data that meet all the Department's criteria for surrogate value data.

V. Hilltop's Rebuttal Brief Arguments

- a. If the Department continues to use WTA data for shrimp feed rather than domestic prices, the Department should not exclude Taiwan from the WTA Indian import data.
- b. The evidence provided by Petitioner does not indicate that Taiwanese exports are subsidized, particularly that Taiwanese shrimp feed is subsidized.

VI. Regal's Rebuttal Brief Arguments

- a. The Department should continue to include Taiwan in the WTA Indian import data used to calculate the surrogate value for shrimp feed.
- b. Regal argues the Department has not found that Taiwanese shrimp feed production benefits from any domestic subsidy programs.

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.²⁹ 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."³⁰ In the Preliminary Results, the Department relied on contemporaneous Indian WTA data to value shrimp feed. See Prelim Surrogate Value Memo at Exhibit 4. Since the Preliminary Results, interested parties placed additional surrogate value data on the record with which to value shrimp feed. In reviewing these additional sources of shrimp feed surrogate values, 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 feed surrogate values from the following sources: Indian WTA 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 WTA data, including Taiwanese imports, for the shrimp feed surrogate value.

Hilltop urges the Department to discontinue using the allegedly unreliable Indian WTA data for the final results in favor of using an average of the prices obtained from the financial statements of five Indian shrimp feed producers. However, the Department disagrees with Hilltop with respect to its argument that the financial statements of five Indian shrimp feed producers are superior to the WTA Indian import statistics. With respect to the surrogate value selection criteria, we find that the WTA import data is superior to Hilltop's suggested surrogate value from five individual financial statements. Although we find that the WTA 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. We note that the WTA data is exactly contemporaneous to the POR. Furthermore, the WTA import data excludes taxes and duties, which we cannot determine conclusively for the five financial statements. The WTA Indian import data for shrimp feed was compiled from eight countries

²⁹ See Glycine 2005 at Comment 1.

³⁰ See PET Film at Comment 2; Crawfish 2002 at Comment 2.

totaling a quantity of 1,496,115 kilograms, which we determine to be a broad-market average with a more than 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 WTA data, when available, over individual companies' financial statements.³¹ First, the Department avoids using single-source information and prefers country-wide information such as government import statistics.³² 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.³³ 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.³⁴ On the basis of the Department's longstanding preference, along with the availability of the WTA 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.

Specifically, with respect to Hilltop's argument that the five Indian shrimp feed producers produced more MT of shrimp feed than the WTA import quantity shown, 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.³⁵ In fact, we find Hilltop's import quantity argument dubious, in that Hilltop itself suggested using WTA data to value salt, which had an import quantity of 153,000 kilograms—significantly less than the shrimp feed import quantity of 1,496,115 kilograms. Therefore, we find that Hilltop's argument that WTA's 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 WTA data to value shrimp feed. Further, Hilltop's argument that the WTA value 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

³¹ 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 (where the Department stated that its "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 (where we stated that "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).

³² 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 Issues and Decision Memorandum at Comment 4.

³³ See, e.g., Pencils 2009; 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 Issues and Decision Memorandum at Comment 4.

³⁴ See, e.g., Pencils 2009; Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From the People's Republic of China, 69 FR 34125 (June 18, 2004), and accompanying Issues and Decision Memorandum at 48.

³⁵ See Tires at Comment 9; see also Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 76336 (December 16, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

that one or the other is aberrational.³⁶ 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.³⁷ When import data is obtained from a wide range of countries--as is the case here with Indian imports totaling 1,496,115 kilograms from eight 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.³⁸ 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.³⁹ However, Hilltop has not provided any such "corroborative" data to substantiate its claims that the WTA data is unreliable or inappropriate because of divergent AUV's. Accordingly, we continue to prefer the WTA 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 from the five Indian financial statements, while contemporaneous, publicly available and product-specific, does not represent as broad a market average, and is tax and duty exclusive. Consequently, we will continue to value shrimp feed using the WTA data because it satisfies all the Department's surrogate value selection criteria and represents the best available data on the record.

The Domestic Processors urge the Department to exclude Taiwan from the Indian WTA data because the Taiwanese shrimp feed industry allegedly benefits from countervailable subsidies. In reviewing the Domestic Processors' arguments, the Department did not note any subsidies specific to the shrimp feed industry.⁴⁰ The Department has not made a determination as to whether Taiwan's shrimp feed industry benefits from subsidies. The Department further notes that the Domestic Processors have not provided evidence on the record that shrimp feed is a part of the biotechnology industry, in support of their statement that "the Department has also disregarded input prices where there has been a CVD finding regarding domestic subsidy programs which benefit a group of industries that includes the industry producing the input at issue."⁴¹ Although this statement may be true in other cases where the Department may have found an industry benefitting from subsidies, the Department has not made a similar determination regarding the shrimp feed industry, whether on its own or part of a larger industry. Thus, we find it inappropriate to exclude Taiwan data from the Indian WTA import data based on Petitioner's and Domestic Processors' arguments.

³⁶ 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 Issues and Decision Memorandum at Comment 5B.

³⁷ See Citric Acid at Comment 5B.

³⁸ 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) and accompanying Issues and Decision Memorandum at Comment 2.

³⁹ See Vietnam Shrimp AR3 at Comment 7B.

⁴⁰ See Domestic Processors Case Brief dated April 12, 2010 at 5-9.

⁴¹ See Domestic Processors Case Brief dated April 12, 2010 at 6, 8, and footnote 14.

As we stated above, the Department has historically expressed a preference to use country-wide data rather than company-specific data.⁴² 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 WTA import data, which the Department has used in the majority of antidumping duty cases and which fulfills all of the surrogate value selection criteria. The WTA 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 WTA 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 WTA data, including Taiwan, for the final results.

Comment 5: Electricity

I. Petitioner's Case Brief Arguments

- a. The Department should update the electricity surrogate value using more contemporaneous data from the same source used in the Preliminary Results.

II. Hilltop's Rebuttal Brief Arguments

- a. The Department should continue to use the same source used in the Preliminary Results.

Department's Position:

The Department disagrees with Petitioner regarding its proposed electricity surrogate value and will continue to value electricity using the electricity rates from the March 2008 publication of the Indian Central Electricity Authority ("CEA"), as in the Preliminary Results.⁴³

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, surrogate values which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and tax and duty exclusive.⁴⁴ 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.⁴⁵ There is no hierarchy for applying the above-stated principles. Thus, 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.⁴⁶

⁴² See, e.g., PC Strand 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 Issues and Decision Memorandum at Comment 6.

⁴³ See Prelim Surrogate Value Memo at 4 and Exhibit 15.

⁴⁴ See, e.g., Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 12th Administrative Review, 73 FR 34251 (June 17, 2008) and accompanying Issues and Decision Memorandum at Comment 2 ("Garlic AR12").

⁴⁵ See Glycine 2005 at Comment 1.

⁴⁶ See Crawfish 2002 at Comment 2.

Petitioner contends that CEA's March 2009 electricity rates are more contemporaneous with the POR and should be used in the final results.⁴⁷ The Department notes that CEA's March 2008 publication is contemporaneous with the POR. The CEA's March 2008 figures cover February and March, 2008, while the POR for this administrative review is February 1, 2008, through January 31, 2009. Although the March 2009 publication overlaps the POR by ten months compared with the 2008 publication, which overlaps the POR by two months, the Department still considers the 2008 publication contemporaneous with the POR.⁴⁸ Moreover, the Department notes that the March 2009 CEA electricity rates are not tax and duty exclusive whereas the electricity rates in CEA's March 2008 publication provide tax and duty exclusive electricity rates. Therefore, because CEA's March 2008 electricity rates are representative of a broad market average, publicly available, contemporaneous with the POR, and tax and duty exclusive, we will continue to value electricity in this administrative review using CEA's March 2008 electricity rates as in the Preliminary Results.

Comment 6: Diesel Fuel

I. Petitioner's Case Brief Arguments

- a. The Department should update the diesel surrogate value using more contemporaneous data available from the International Energy Agency's ("IEA"), which is the same source used in the Preliminary Results.⁴⁹

II. Hilltop's Rebuttal Brief Arguments

- a. The Department should use the IEA's ex-tax diesel fuel value.

Department's Position:

In the Preliminary Results, the Department used the IEA publication, Key World Energy Statistics (2007) to value diesel fuel. 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, surrogate values which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and tax and duty exclusive.⁵⁰

Petitioner placed on the record of the instant review, the IEA publication, Energy Prices & Taxes, Quarterly Statistics (Fourth Quarter 2009), and requested the Department use the 2008 diesel total price as the surrogate value for diesel. However, the Department noted that the same source also provides a 2008 ex-tax price for diesel fuel.⁵¹ The Department selects, to the extent practicable, surrogate values which are tax and duty exclusive, making the ex-tax prices preferable as a surrogate value to those which may include taxes and duties.⁵² Moreover, the Department selects the best available information based on contemporaneity with the POR.

⁴⁷ See Petitioner's Post-Preliminary Surrogate Value Submission, dated April 1, 2010 at Attachment 2.

⁴⁸ See, e.g., Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 36630 (June 28, 2010) ("PRC CVP 23"), unchanged from Carbazole Violet Pigment 23 From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 74 FR 68780, 68784 (December 29, 2009) (where we stated that "because the average coal price was for December 2007, which is the first month of the POR, we treated the value for steam coal as contemporaneous with the POR.").

⁴⁹ See Petitioner's Post-Preliminary Surrogate Value Submission, dated April 1, 2010 at 2 and Attachment 3.

⁵⁰ See Garlic AR12 at Comment 2.

⁵¹ See Petitioner's Post-Preliminary Surrogate Value Submission, dated April 1, 2010 at Attachment 3.

⁵² See Garlic AR12 at Comment 2.

Since, the IEA's Energy Prices & Taxes, Quarterly Statistics (Fourth Quarter 2009) is more contemporaneous with the POR than the source used by the Department in the Preliminary Results, we have determined that the IEA publication meets more of the Department's surrogate value selection criteria, which we will rely on for the final results of this review.

Comment 7: Byproducts

I. Hilltop's Case Brief Arguments

- a. The Department should use the shrimp shell waste price quote from Shivani Network in conjunction with the 2007 UN FAO surrogate value used in the Preliminary Results.
- b. The Department should inflate the 2007 UN FAO surrogate value from 2004 instead of 2007.

II. Petitioner and Domestic Processor's Rebuttal Brief Arguments

- a. The Department should not use the price quote from Shivani Network because it is not publicly available and price quotes are only used by the Department if no other surrogate value source is available.

Department's Position:

In the Preliminary Results, we valued shrimp waste by-products using an Indian surrogate value for shrimp waste indicated in a 2007 UN FAO report, inflated from the 2007 publication date of the report. The Department will continue to rely on this source for the final results and will inflate the surrogate value from the year 2004.

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, surrogate values which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and tax and duty exclusive.⁵³ 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.⁵⁴ There is no hierarchy for applying the above-stated principles. Thus, 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.⁵⁵

Hilltop suggests the Department use a price quote from the Shivani Network in conjunction with the 2007 UN FAO report used in the Preliminary Results. The Department agrees with the concerns that the Petitioner and Domestic Processors raised concerning the price quote provided by Hilltop. The Department has stated that it prefers to use surrogate values that are not price quotes where other more reliable data are available.⁵⁶ Furthermore, the price quote from the Shivani Network appears to be a single, post-POR price quote to a single individual,⁵⁷ which

⁵³ See Garlic AR12 at Comment 2.

⁵⁴ See Glycine 2005 at Comment 1.

⁵⁵ See Crawfish 2002 at Comment 2.

⁵⁶ See 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) ("Wire Strand") and accompanying Issues and Decision Memorandum at Comment 1B.

⁵⁷ See Hilltop's Post-Preliminary Surrogate Value Submission, dated April 1, 2010 at Exhibit 4.

does not appear to be publicly available or represent a broad market average.⁵⁸ Price quotes may not reflect actual transaction values, because they are merely price quotes and do not represent actual transaction prices.⁵⁹ Because the Shivani Network by-product surrogate value submitted by Hilltop is a price quote that does not appear to be publicly available, representative of a broad market average, or representative of an actual market transaction, the Department finds that the 2007 UN FAO report is the best source available on the record to value shrimp waste by-products that is specific to the input, represents a broad market average and is publicly available.

Additionally, Hilltop has suggested the Department inflate the UN FAO shrimp waste by-product surrogate value from the year 2004 instead of the publication year 2007, the year used in the Preliminary Results, because the most recent cited source for the chart is dated 2004.⁶⁰ We agree with Hilltop, the Department inadvertently inflated the by-product surrogate value by the 2007 publication date of the UN FAO report. It is the Department's practice to inflate surrogate values which are not contemporaneous with the POR.⁶¹ The latest source used to create the chart in the UN FAO report from which the shrimp waste surrogate value was derived is dated 2004.⁶² Therefore, because the latest date of the shrimp waste surrogate value source is 2004, the Department will inflate the shrimp by-product surrogate value from the year 2004 rather than the 2007 publication date the UN FAO report.

Comment 8: Wage Rate Methodology

I. Hilltop's Case Brief Arguments

- a. The Department should refrain from using its invalidated regulation regarding labor valuation and instead value labor using industry-specific wages from India as applied by the Department in Allied Pacific Food Co., Ltd. v. United States ("Allied 2008").

II. Petitioner and Domestic Processor's Rebuttal Brief Arguments

- a. The Department should continue to use the regression-based wage rate, per its regulations and because it remains the best information on the record.

III. Hilltop's Additional Comments Regarding New Wage Rate Data (I)⁶³

- a. The Department should use the wage rate methodology employed in Allied 2008.

IV. Petitioner's Additional Comments Regarding New Wage Rate Data (I)

- a. The Department should calculate a simple average of the wage rates from countries exporting shrimp and bracket the PRC in terms of GNI.

⁵⁸ See Certain Tissue Paper Products From the People's Republic of China: Final Results and Partial Rescission of the 2007-2008 Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 74 FR 52176 (October 9, 2009) and accompanying Issues and Decision Memorandum at Comment 3.

⁵⁹ See Id.

⁶⁰ See Hilltop's Case Brief, dated April 12, 2010 at 20.

⁶¹ See Prestressed Concrete Steel Wire Strand From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 74 FR 68232 (December 23, 2009) unchanged Wire Strand, at 75 FR 28560.

⁶² See Hilltop's Surrogate Value Submission, dated September 4, 2009 at Exhibit 7.

⁶³ Following the decision of the U.S. Court of Appeals for the Federal Circuit ("CAFC") in Dorbest Limited et. al. v. United States, 604 F.3d 1363, 1372-3 (CAFC 2010) ("Dorbest II"), the Department placed data on the record of the review and invited comment from the interested parties. See Memoranda to the File re; Wage Rate Data, dated June 15, June 23, and July 14, 2010. Interested parties submitted comments on June 22, June 30, and July 21, 2010.

- V. Domestic Processor’s Additional Comments Regarding New Wage Rate Data (I)**
- a. The Department should use the wage rate from Uniroyal Marine Export’s (“Uniroyal”) financial statements.
- VI. Petitioner’s Additional Comments Regarding New Wage Rate Data (II)⁶⁴**
- a. The ILO’s reported wage rate for Honduras is treated as a daily rate rather than hourly rate, suggesting that wage rates have been incorrectly reported to the ILO.
 - b. The wage rates for El Salvador, Guatemala, Peru, Thailand and Ukraine are not contemporaneous.
- VII. Hilltop’s Additional Comments Regarding New Wage Rate Data (II)⁶⁵**
- a. The additional data placed on the record on June 23, 2010, does nothing to bolster the Department’s proposed new wage rate calculation methodology and does not change Hilltop’s position that an industry-specific wage rate from India should be used for the labor surrogate value, as in Allied 2008.
 - b. The Department’s new proposed methodology would fail to use the best available information on the record to value labor because India is the primary surrogate country and a significant producer of comparable merchandise. Hilltop argues that exports alone do not render a country as a significant producer of comparable merchandise, as in the case of Bosnia and Ukraine, even with a “net exporter” analysis.
 - c. There is no information on the record in this case indicating whether the wage rate data relates to the shrimp or comparable industry.
- VIII. Petitioner’s Additional Comments Regarding New Wage Rate Data (III)⁶⁶**
- a. The Department should employ available 2008 ILO country wage rates in the calculation of the labor surrogate value, which were not included in the July 14, 2010 data released to parties. Consequently, the wage rates utilized in this most recent calculation are not contemporaneous with the POR with respect to Guatemala, Ukraine, and El Salvador.
 - b. The Department should modify the calculation of Honduras’s wage rate by altering the reported ILO wage rate for Honduras as hourly rather than daily. Alternatively, the Department should exclude Honduras’s wage rate from the labor surrogate value calculation.
- IX. Domestic Processor’s Additional Comments Regarding New Wage Rate Data (III)⁶⁷**
- a. The Department should average the hourly labor rates of all countries within the range of economically comparable countries that produce significant amounts of frozen warmwater shrimp, and for whom useable earnings data are available. The adoption of this methodology results in a labor surrogate value of \$1.51/hour, as calculated by the Domestic Processors.

⁶⁴ Petitioner submitted additional comments on June 30, 2010.

⁶⁵ Hilltop submitted additional comments on June 30, 2010.

⁶⁶ The Department placed additional data on the record of the review and invited comment from the interested parties. See Memoranda to the File re; Wage Rate Data, dated July 14, 2010. Petitioner and Domestic Processors submitted comments on July 21, 2010.

⁶⁷ Domestic Processors stated in their comments dated July 21, 2010, that their proposed wage rate methodology therein has supplanted the proposed methodology in their comments dated June 22, 2010.

Department's Position:

As a consequence of the CAFC's ruling in Dorbest II, the Department is no longer relying on the regression-based wage rate described in 19 CFR 351.408(c)(3). The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. For these final results, we have calculated an hourly wage rate to use in valuing Hilltop's and Regal's reported labor input by averaging earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.

Hilltop argues that the Department should use Indian industry-specific hourly wage rates from the ILO as an alternative to our previous regression-based wage rate. The Department disagrees with Hilltop's recommended methodology. While information from a single surrogate country can reliably be used to value other FOPs, wage data from a single surrogate country does not constitute the best available information for purposes of valuing the labor input due to the variability that exists between wages and GNI. While there is a strong worldwide relationship between wage rates and GNI, too much variation exists among the wage rates of comparable market economies ("ME"). As a result, we find reliance on wage data from a single country to be unreliable and arbitrary. For example, when examining the most recent wage data, even for countries that are relatively comparable in terms of GNI for purposes of factor valuation (e.g., countries with GNIs between USD 950 and USD 4,100), the wage rate spans from USD 0.41 to USD 2.08.⁶⁸ Additionally, although both India and Guatemala have GNIs below USD 2500, and both could be considered economically comparable to the PRC, India's observed wage rate is USD 0.47, as compared to Guatemala's observed wage rate of USD 1.14 – over double that of India.⁶⁹ There are many socio-economic, political and institutional factors, such as labor laws and policies unrelated to the size or strength of an economy, that cause significant variances in wage levels between countries. For this reason, and because labor is not traded internationally, the cross-country variability in labor rates, as a general rule, does not characterize other production inputs or impact other factor prices. Accordingly, the large variance in these wage rates illustrates the arbitrariness of relying on a wage rate from a single country. For these reasons, the Department maintains its longstanding position that, even when not employing a regression methodology, more data are still better than less data for purposes of valuing labor. Consequently, we will not rely on Uniroyal's financial statements to derive a labor surrogate value, as initially suggested by the Domestic Processors. Accordingly, the Department has employed a methodology that relies on a large number of countries in order to minimize the effects of the variability that exists between wage data of comparable countries.

To achieve a labor value that is based on the best available information for these final results, we have relied on labor data from several countries determined to be both economically comparable to the PRC, and significant producers of comparable merchandise. First, in order to determine the economically comparable surrogate countries from which to calculate a surrogate wage rate, the Department looked to our preliminary surrogate country selection analysis.⁷⁰ Early in this review, the Department selected six countries for consideration as the surrogate country for this review. To determine which countries were at comparable levels of economic development to the PRC, the Department placed primary emphasis on GNI.⁷¹ The Department relies on GNI to

⁶⁸ See Prelim Surrogate Value Memo at 3-4, citing to "Expected Wages of Selected NME Countries," revised in December 2009, available at <<http://ia.ita.doc.gov/wages/index.html>>.

⁶⁹ See Id.

⁷⁰ See Preliminary Results at 11859.

⁷¹ See 19 CFR 351.408(b).

generate its initial list of countries considered to be economically comparable to the PRC. In this review, the list of potential surrogate countries found to be economically comparable to the PRC included India, Indonesia, the Philippines, Colombia, Thailand and Peru. The Department used the high- and low-income countries identified in the surrogate countries list as “bookends” and then identified all countries in the World Bank’s World Development Report for 2007 with per capita incomes (using the 2007 GNIs from the 2009 Expected Wages of Selected NME Countries) that placed them between these “bookends”. This resulted in 29 countries, ranging from India with USD 950 GNI to Colombia with USD 4,100.⁷²

Regarding the second criterion of “significant producer,” the Department identified all countries which have exports of comparable merchandise (defined as HTS 030613 and 160520) between 2007 and 2009.⁷³ After screening for countries that had exports of comparable merchandise, we found that 29 of the 50 countries designated as economically comparable to the PRC are also significant producers. In this case, we have defined a “significant producer” as a country that has exported comparable merchandise from 2007 through 2009. The antidumping statute and regulations are silent in defining a “significant producer,” and the antidumping statute grants the Department discretion to look at various data sources for determining the best available information. See section 733(c) of the Act. Moreover, while the legislative history provides that the “term ‘significant producer’ *includes* any country that is a significant net exporter”,⁷⁴ it does not preclude reliance on additional or alternative metrics. In practice, the Department has relied on other indices for determining whether a country is a significant producer. For example, in Wooden Bedroom Furniture from the PRC,⁷⁵ the Department relied on production data for selecting the primary surrogate country. In this case, we have relied on countries with exports of comparable merchandise as significant producers. Further, as there is no information on the record that refutes what the Department determined to be a “significant producer,” we find, for the final results, that the countries listed below are all significant producers of comparable merchandise.

The Department disagrees with Hilltop’s assertion that the Department must only rely upon wage rate data that are specific to the Indian shrimp industry. Given the significant variability of wage rates across surrogate countries noted above, the Department finds that using a single industry from one surrogate country does not represent the best available information for valuing the labor input. Because a shrimp producer in one country might have very different wages from a shrimp producer in another country, for reasons exclusive of the global shrimp industry, we find that our intended methodology explained above is appropriate here. Accordingly, we will not do as Hilltop requests and use wage data specific to the Indian shrimp industry, but will continue to use a rate derived from several countries, which the Department finds are significant producers of shrimp.

For purposes of valuing wages in this review, the Department determines the following 29 countries to be both economically comparable to the PRC, and significant producers of

⁷² See “Memorandum to the File, from Irene Gorelik, Senior Analyst, through Catherine Bertrand, Program Manager, Office 9, re; Data on Labor Wage,” dated July 14, 2010 at Attachment I.

⁷³ The export data is obtained from the Global Trade Atlas. “Memorandum to the File, from Irene Gorelik, Senior Analyst, through Catherine Bertrand, Program Manager, Office 9, re; Data on Labor Wage,” dated July 14, 2010 at Attachment I.

⁷⁴ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Conf. Rep. No. 576, 590, 100th Cong. 2nd Sess. (1988), reprinted in 134 Cong. Rec. H2031 (daily ed. April 20, 1988).

⁷⁵ See Wooden Bedroom Furniture from the People’s Republic of China: Preliminary Results of Antidumping Duty New Shipper Review, 75 FR 9581, 9584 (March 3, 2010).

comparable merchandise: Albania, Algeria, Belize, Bosnia & Herzegovina, Cape Verde, Colombia, Dominican Republic, Ecuador, Egypt, El Salvador, Fiji, Guatemala, Guyana, Honduras, India, Indonesia, Jordan, Morocco, Namibia, Nicaragua, Nigeria, Peru, Philippines, Sri Lanka, Swaziland, Thailand, Tunisia, Ukraine, and Yemen.

Third, from the 29 countries that the Department determined were both economically comparable to the PRC and significant producers of comparable merchandise, the Department identified those with the necessary wage data. In doing so, the Department has continued to rely upon ILO Chapter 5B data “earnings”, if available and “wages” if not.⁷⁶ We used the most recent data within five years of the base year (2007 and 2008, if available) and adjusted to the base year using the relevant Consumer Price Index.⁷⁷ Of the 29 countries that the Department has determined are both economically comparable and significant producers of comparable merchandise, 9 countries, *i.e.*, Algeria, Belize, Cape Verde, Morocco, Namibia, Nigeria, Swaziland, Tunisia, and Yemen, were not used in the wage rate valuation because there was no earnings or wage data available. The remaining 20 countries reported either earnings or wage rate data to the ILO within the last five years.⁷⁸

However, of those remaining 20 countries, the Department is rejecting the Honduran wage rate provided by the ILO, because record evidence demonstrates that this wage rate is inaccurate, possibly due to an ILO reporting error. Record evidence demonstrates that the effective Honduran minimum wage during the same year as the underlying ILO data is \$91.99 per month during 2006.⁷⁹ With the assumption that the current reported ILO wage rate of \$0.17, a worker would earn an average monthly wage of \$32.64, a third of the minimum wage rate.⁸⁰ Furthermore, information from the ILO, the Department’s source, reports the Honduran monthly minimum over \$250 per month in 2007, using purchasing power parity.⁸¹ Based on the

⁷⁶ The Department maintains its current preference for “earnings” over “wages” data under Chapter 5B. However, under the previous practice, the Department was typically able to obtain data from somewhere between 50-60+ countries. Given that the current basket now includes 16 countries, the Department found that our long-standing preference for a robust basket outweighs our exclusive preference for “earnings” data. We note that several countries that met the statutory criteria for economic comparability and significant production, such as Indonesia and Thailand, reported only a “wage” rate. Thus, if earnings data is unavailable from the base year (2007) of the previous five years (2002-2006) for certain countries that are economically comparable and significant producers of comparable merchandise, the Department will use “wage” data, if available, from the base year or previous five years. The hierarchy for data suitability described in the 2006 Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback, and Request for Comments, 71 FR 61716, (October 19, 2006) (“Antidumping Methodologies”) still applies for selecting among multiple data points within the “earnings” or “wage” data. This allows the Department to maintain consistency as much as possible across the basket.

⁷⁷ Under the Department’s regression analysis, the Department limited the years of data it would analyze to a two-year period. See Antidumping Methodologies, 71 FR at 61720. However, because the overall number of countries being considered in the regression methodology was much larger than the list of countries now being considered in the Department’s calculations, the pool of wage rates from which we could draw from two years-worth of data was still significantly larger than the pool from which we may now draw using five years worth of data (in addition to the base year). The Department believes it is acceptable to review ILO data up to five years prior to the base year as necessary (as we have previously), albeit adjusted using the Consumer Price Index. See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology, 70 FR 37761, 37762 (June 30, 2005). In this manner, the Department will be able to capture the maximum amount of countries that are significant producers of comparable merchandise, including those countries that choose not to report their data on an annual basis. See also CPI data placed on record, obtained from the International Monetary Fund’s International Financial Statistics.

⁷⁸ See International Labour Organization’s Yearbook of Labour Statistics.

⁷⁹ See Petitioner’s July 20, 2010 Wage Rate Comments at Exhibit 1.

⁸⁰ This assumes 24 working days per month and 8 working hours per day.

⁸¹ See Petitioner’s July 20, 2010 Wage Rate Comments at Exhibit 2.

comparison of the minimum wage rates on the record, the Department finds that the calculated wage rate for Honduras is unreliable. Therefore, the Department is rejecting the Honduran wage rate for the purposes of averaging surrogate wage rates in this administrative review.

The Department agrees with respect to Petitioner's argument and supporting data on the record for the Honduran wage rate, as we explained above. However, we disagree with Petitioner's argument regarding the wage rate data point for Thailand. We note that Petitioner's Thai wage rate data point is from Chapter 5A of the ILO data, which we have determined not to use in favor of Chapter 5B of the ILO, as stated above.

Further, we disagree with Petitioner's suggested wage rate data point for the Ukraine because the Petitioner's wage rate data point for the Ukraine is calculated using a different number of hrs/month than the Department's calculation.⁸² In this revised wage rate calculation methodology, the Department has used a standard hourly wage rate calculation for each country, which is based on 24 working days/month, 5.5 days/week, and 8 hours/day. Because Petitioner calculated the Ukrainian wage rate using its own formula without providing any alternative data on the administrative record, we are rejecting Petitioner's Ukrainian labor rate data point for these final results and continue to utilize the standard formula applied to all countries.

Finally, we agree with Petitioner's argument that the Department should use the 2008 ILO data for El Salvador, Guatemala, Peru, and Ukraine, which we have adopted in the labor surrogate value calculation. See Final SV Memo.

Consequently, the Department relied on data from the following 19 countries to arrive at its wage rate in these final results: Albania, Bosnia & Herzegovina, Colombia, Dominican Republic, Ecuador, Egypt, El Salvador, Fiji, Guatemala, Guyana, India, Indonesia, Jordan, Nicaragua, Peru, Philippines, Sri Lanka, Thailand, and Ukraine. The Department calculated a simple average of the wage rates from these 19 countries. This resulted in a wage rate derived from comparable economies that are also significant producers of the comparable merchandise, consistent with the CAFC's ruling in Dorbest II and the statutory requirements of section 773(c) of the Act. See Final SV Memo.

Surrogate Financial Ratios

Comment 9: Use of Uniroyal's and Waterbase's Financial Statements

I. Petitioner's Case Brief Arguments

- a.** The financial statements of Falcon Marine Exports Ltd. ("Falcon Marine") used in the Preliminary Results are not contemporaneous with the POR.
- b.** Falcon Marine's financial statements show evidence of countervailable subsidies.
- c.** Uniroyal and The Waterbase Ltd.'s ("Waterbase") financial statements meet all the criteria evaluated in calculating surrogate financial ratios.
- d.** The Department has a preference for using multiple financial statements to yield the most representative surrogate financial ratios.

⁸² See Petitioner's June 30, 2010 Wage Rate Comments at Exhibit 5.

II. Hilltop's Case Brief Arguments

- a. The Department should continue to use the financial statements of Falcon Marine because the financial statements of Uniroyal and Waterbase are not appropriate for surrogate financial ratios, because Uniroyal is not an integrated producer and Waterbase did not make a profit from regular business operations.

III. Petitioner's Rebuttal Brief Arguments

- a. The Department should reject the financial statements of Falcon Marine because they are not contemporaneous with the POR and the Department has previously found that Falcon Marine's financial statements contain subsidies.⁸³
- b. The financial statements of Uniroyal and Waterbase meet all of the basic surrogate value selection criteria and should be used for the final results.
- c. The Department has made no finding that the Uniroyal or Waterbase contain subsidies that the Department has previously found countervailable.

IV. Hilltop's Rebuttal Brief Arguments

- a. The Department should use Falcon Marine's financial statements for the final results.
- b. The Department should reject both Uniroyal and Waterbase because they both have subsidies the Department has found to be countervailable.
- c. Uniroyal is not an integrated company and is not representative of Hilltop.
- d. Waterbase had no profit related to business operations and was only profitable because it sold unused agricultural land.
 - i. Waterbase's sales of shrimp are too negligible to be considered a producer of comparable merchandise.

V. Regal's Rebuttal Brief Arguments

- a. Regal argues the Department should continue to use Falcon Marine's financial statements for the final results.
- b. Regal further argues the Department should reject the financial statements of Uniroyal and Waterbase.
 - i. Uniroyal is not an integrated company like Regal.
 - ii. Waterbase did not make a profit from regular operations. Moreover, frozen shrimp only represents 3% of its total sales.

Department's Position:

The Department disagrees with Petitioner regarding the contemporaneity of Falcon Marine's financial statements. Further, the Department disagrees with Petitioner regarding the appropriateness of using Waterbase's financial statements or Uniroyal's financial statements for the final results. Section 773(c)(1) of the Act states that "the valuation of the factors of production shall be based on the best available information regarding the values of such factors..." In choosing surrogate financial ratios, it is the Department's practice to use data from market-economy surrogate companies based on the "specificity, contemporaneity, and quality of the data."⁸⁴ We find that Falcon Marine's financial statements continue to be the best

⁸³ See PRC Shrimp AR3 at Comment 1.

⁸⁴ See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances, 71 FR 29303 (May 22, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

information available with which to calculate surrogate financial ratios based on the following reasons.

First, we disagree with Petitioner's argument that Falcon Marine's financial statements are not contemporaneous. Falcon Marine's financial statements are for the period April 1, 2007 through March 31, 2008, while the POR for this administrative review is February 1, 2008, through January 31, 2009. Although both Waterbase's and Uniroyal's financial statements overlap the POR by ten months compared with Falcon Marine's two month overlap, the Department still considers Falcon Marine's financial statements contemporaneous with the POR.⁸⁵

Petitioner's argument that Falcon Marine's financial statements should not be used because of evidence of subsidies is not determinative in this case. As stated in Tires, it is the Department's practice to disregard financial statements where we have reason to believe or suspect that the company has received actionable subsidies, if there is other usable data on the record.⁸⁶ In the past, the Department has used financial statements from companies that received actionable subsidies when all of the financial statements on the record indicated the existence of actionable subsidies.⁸⁷ In the instant case, similar to PET Film, we found evidence of countervailable programs in all three companies' financial statements.⁸⁸

The Department then looked to the other criteria we consider when selecting surrogate financial statements. In reviewing each annual report, we find both Uniroyal's and Waterbase's financial statements are not the best available information on the record with which to calculate surrogate financial ratios. With respect to Uniroyal, we find that the financial statements do not indicate that it is an integrated producer of comparable merchandise, whereas the mandatory respondents are both integrated producers, in that they farm, harvest, and process warmwater shrimp into subject merchandise. Because we have, on the record, financial statements of an integrated Indian producer of comparable merchandise, Falcon Marine, we find that Uniroyal's financial statements are not the best available information on the record for surrogate financial ratio calculations.

With respect to Waterbase, we find that the financial statements indicate that the majority of the company's production and sales focused on shrimp feed rather than shrimp.⁸⁹ Specifically, the sales and production of shrimp feed for the 2008-2009 period was reported at 5017.69 MT, accounting for 97.3 percent of total production and sales, while production and sales of processed prawns accounted for only 82.177 MT, or 1.59 percent of the total.⁹⁰ We further noted that Waterbase also produced and sold other seafood products such as softshell crab, crab cake, and claw meat, which suggests a production experience that is more diverse and less specific to

⁸⁵ See, e.g., PRC CVP 23 (where we stated that "because the average coal price was for December 2007, which is the first month of the POR, we treated the value for steam coal as contemporaneous with the POR.").

⁸⁶ See Tires at Comment 17A.

⁸⁷ See, e.g., PET Film at Comment 3; Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order, 75 FR 8301 (February 24, 2010) ("CTL Plate") and accompanying Issues and Decision Memorandum at Comment 8.

⁸⁸ See Hilltop's Surrogate Value Submission, dated September 4, 2009 at Exhibit 10 (Falcon Marine's financial statement shows "DEPB" benefits in Schedule 15); Petitioner's Post-Preliminary Surrogate Value Submission, dated April 1, 2010 at Attachment 1 (Uniroyal's financial statement shows an "Export Packing Credit" on page 22 and Waterbase's financial statement shows "DEPB benefits" on page 24).

⁸⁹ See Petitioner's Post-Preliminary Surrogate Value Submission, dated April 1, 2010 at Attachment 1 (Waterbase's financial statements at page 27).

⁹⁰ See Id.

comparable merchandise.⁹¹ In fact, the Department has previously rejected using a financial statement where the potential surrogate company engaged in diverse activities and the majority of the production was not comparable to the respondents' activities.⁹² Thus, we find that Falcon Marine's financial statements better satisfy the surrogate company selection criteria than those of Waterbase. Moreover, Falcon Marine was a respondent in a parallel administrative review on shrimp from India, which suggests that it has produced and sold considerable quantities of comparable, if not identical, merchandise to warrant examination by the Department.⁹³ With respect to Hilltop's argument that Waterbase was not profitable except for the sale of land, we find that the issue is moot in this case, as we determined that Waterbase's financial statements would not be used to calculate surrogate financial ratios for this POR because the record contained financial statements of a company that better represented the production experience of the mandatory respondents. Thus, because Waterbase shows a vast majority of its production and sales focused on shrimp feed rather than comparable merchandise, we find that Waterbase's financial statements are not the best available on the record to calculate surrogate financial ratios.

Consequently, we continue to find that, among all potential surrogate financial statements on the record of this review, Falcon Marine's financial statements are the best available information with which to calculate surrogate financial ratios because they are complete, legible, publicly-available, contemporaneous with the POR, and the company is a fully integrated producer of comparable merchandise. A review of Falcon Marine's financial statements shows that it farms and processes shrimp with profitable results.⁹⁴ We note that while the financial statements mention Falcon Marine selling "seafood products," the only product specifically mentioned in the statement is shrimp.⁹⁵ In light of the foregoing, the record evidence suggests that farming and selling shrimp is the main business in which Falcon Marine is engaged. Accordingly, we find that Falcon Marine represents the best available information on the record, because Falcon Marine's main line of business appears to be the production of comparable merchandise and it is a fully integrated producer. Consequently, in accordance with section 773(c)(1) of the Act, we find that the financial statements for Falcon Marine are the best information available on the record.

Comment 10: Classification of Expenses from Falcon Marine's Financial Statements

I. Hilltop's Case Brief Arguments

- a. The Department should make the following changes to the calculation of the surrogate financial ratios using Falcon Marine's financial statements.
 - i. Remove FDA related charges and entry taxes from the ratio calculations because Hilltop has accounted for these expenses.
 - ii. Reclassify gratuities from overhead to materials, labor and energy ("MLE").

⁹¹ See *Id.*

⁹² See PRC Shrimp AR3 at Comment 1, where we stated that because "we find that because Thai Union's corporate and production experiences are more diverse and less specific to comparable merchandise, Thai Union does not represent the best information available for the purposes of calculating surrogate financial ratios."

⁹³ See Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Notice of Revocation of Order in Part, 75 FR 41813 (July 19, 2010).

⁹⁴ See Hilltop's Surrogate Value Submission, dated September 4, 2009 at Exhibit 10, at page 1 (referencing Falcon Marine's prawn farm; and page 14 referencing ponds and aerators, both of which are used to farm shrimp. In addition, at page 16, the financial statements refer to consumption of feed and seed.

⁹⁵ The only seafood product mentioned by name in the financial statement is shrimp. See, e.g., Falcon Marine's financial statements at 5.

- iii. Centre Peeling charges should be classified as a labor expense rather than overhead.
- iv. Rent/taxes should be reclassified as selling, general, and administrative (“SG&A”) expenses rather than an overhead expense.

II. Petitioner’s Rebuttal Brief Arguments

- a. The Department should not use the financial statements of Falcon Marine.

Department’s Position:

FDA Expense

In deriving appropriate surrogate values for overhead, SG&A, and profit, the Department typically examines the financial statements on the record of the proceeding and categorizes expenses as they relate to MLE, factory overhead (“OH”), SG&A and profit, and excludes certain expenses (e.g., movement expenses) consistent with the Department’s practice of accounting for these latter expenses elsewhere.⁹⁶ However, in NME cases, it is impossible for the Department to further dissect the financial statements of a surrogate company as if the surrogate company were an interested party to the proceeding, because the Department does not seek information from or verify the information from the surrogate company.⁹⁷ Therefore, in calculating surrogate overhead and SG&A ratios, it is the Department’s practice to accept data from the surrogate producer’s financial statements in toto, rather than performing a line-by-line analysis of the types of expenses included in each category.⁹⁸ As stated by the Court of International Trade, the Department is “neither required to ‘duplicate the exact production experience of the Chinese manufacturers,’ nor undergo ‘an item-by-item analysis in calculating factory overhead.’”⁹⁹

In the Preliminary Results, the Department classified “FDA Expense” as overhead, while Falcon Marine categorized this expense as an SG&A item. Because we cannot go behind the financial statements, in determining the appropriateness of including an item in the financial ratio calculations, we look to information within the respective financial statements to determine the possible nature of the activity generating the potential adjustment, to see if a relationship exists between the activity and the principal operations of the company.¹⁰⁰ In the current case, the “FDA expense” at issue is recorded under Schedule 15, “Selling & Distribution Expenses” in Falcon Marine’s financial statement. Further, there are no explanatory notes or footnotes attached to this expense item. Therefore, because there is no information in Falcon Marine’s financial statement to indicate that the “FDA expense” is not related to the general operations of the company, in accordance with the Department’s practice, the “FDA expense” should be reflected in the SG&A expense ratio for this company. Consequently, for the final results, we will reclassify the “FDA expense” and treat it as an SG&A expense.¹⁰¹

⁹⁶ See Tires at Comment 18A.

⁹⁷ See Id.

⁹⁸ See Rhodia, Inc. v. United States, 240 F. Supp. 2d 1247, 1250 -1251 (CIT 2002); see also Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People’s Republic of China, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 15.

⁹⁹ See Rhodia, at 240 F. Supp. 2d 1247, 1250.

¹⁰⁰ See, e.g., Tires at Comment 18A.

¹⁰¹ See Id.

Hilltop

The Department agrees with Hilltop's argument that the Department should exclude the "FDA expenses" from Hilltop's surrogate financial ratio calculation. The Department's practice is to exclude certain expenses in the surrogate financial ratio calculations for constructed export price ("CEP") sales where those expenses have been accounted for elsewhere in the margin program.¹⁰² Because Hilltop reported only CEP sales, where FDA charges were reported as a U.S. sales expense and properly deducted from the gross unit price in the margin calculation program, the Department excluded the FDA expense from Hilltop's surrogate financial ratio calculation. In Hilltop's case, its FDA expenses are treated as price adjustments that are accounted for elsewhere in the margin calculation, thus, we have excluded them from only Hilltop's financial ratio calculations for the final results.

Regal

Unlike Hilltop, all of Regal's sales were export price ("EP") sales. In EP situations for NME cases, the "Department does not make circumstance-of-sale adjustments as the offsetting adjustments to the normal value are not normally possible."¹⁰³ Consequently, we will not exclude FDA related charges in the calculation of the surrogate financial ratios for Regal.

Entry Taxes and Others

We disagree with Hilltop that we should exclude the expenses listed as "Entry Taxes & Other" from Falcon Marine's financial statements. Falcon Marine categorizes "Entry taxes & Other" within Schedule 14 under "Administrative & Operating Expenses." There is no explanatory note or footnote in Schedule 14 for this expense that would identify it as an expense that would be accounted for elsewhere in the margin calculations. Without more explanatory information, the Department cannot determine with certainty that Falcon Marine's "Entry taxes & Other" accounts for only U.S. entry duties, as Hilltop is suggesting. Therefore, we find it inappropriate to exclude this expense because the financial statements do not indicate what "Other" expenses are included in that SG&A item or whether the "Entry Taxes" refer specifically to U.S. duties paid. Consequently, we will continue to classify "Entry Taxes & Other" as an SG&A expense.

Contribution to Gratuity Fund

We disagree with Hilltop's argument that Falcon Marines "Contribution to Gratuity Fund" should be categorized as part of MLE, rather than as overhead costs. The Department bases its calculation of the expected PRC wage rate on the International Labour Organization's ("ILO") categorization of information provided by the countries it surveys. The Department notes that the ILO defines "earnings" under Chapter 5B of its Yearbook of Labour Statistics ("YLS") as being inclusive of "wages," and as including both bonuses and gratuities. It further defines earnings to "exclude employers' contributions in respect of their employees paid to social security and pension schemes and also the benefits received by employees under these schemes."¹⁰⁴

With respect to any "Contribution to Gratuity Fund," it has been the Department's consistent practice to categorize all individually identifiable labor costs not included in the ILO's definition

¹⁰² See Id., at Comment 18C.

¹⁰³ See, e.g., Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews, Final Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not To Revoke in Part, 69 FR 55581 (September 15, 2004) and accompanying Issues and Decision Memorandum at Comment 15.

¹⁰⁴ See <http://laborsta.ilo.org>.

of “earnings” under as overhead expenses.¹⁰⁵ In past cases, as well as in the preceding administrative review, we found that contributions to gratuity funds are not inclusive of wages in accordance with Chapter 5B of the YLS.¹⁰⁶ Accordingly, for these final results we have included “Contribution to Gratuity Fund” as a part of the overhead calculation.

Centre Peeling Charges

We disagree with Hilltop that “Centre Peeling Charges” are a specific labor expense. Falcon Marine categorizes “Centre Peeling Charges” within Schedule 12 under “Raw Materials, Processing & Packing.” There is no explanatory note or footnote in Schedule 12 for this expense that would identify it as a labor expense. Thus, we are unable to determine whether “Centre Peeling Charges” refers only to labor related to the production of the comparable merchandise or is associated with other additional expenses. Therefore, the Department declines to classify it as a specific labor expense. However, because Falcon Marine deemed it part of its production operations, we will continue to classify it as an overhead expense.

Rent/Taxes

We agree with Hilltop with respect to the classification of “Rent/Taxes” as an SG&A expense. It has been the Department’s practice to include the “Rent, Rates, and Taxes” in the surrogate SG&A ratio calculation, unless the taxes are related to income, value-added-tax (“VAT”), or excise taxes.¹⁰⁷ As noted in Tissue Paper 2009, we find that this expense category likely represents not only miscellaneous business taxes, but also rental expenses, rates charged by external parties, and other property taxes. As for the portion which represents taxes, we find that it is appropriate to include this amount when not related to income taxation, VAT, and excise taxes in the financial ratio calculations. Financial statements represent the overall operations of a company which can include tax liabilities in the normal course of operation and, therefore, inclusion of these taxes when not related to income, VAT, or excise taxes accurately reflects the financial experience of a surrogate company. Therefore, for the final results, we will reclassify the “Rent/Taxes” and treat it as an SG&A expense.

¹⁰⁵ See, e.g., Tires at Comment 18G; Folding Metal Tables and Chairs from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 2905 (January 18, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

¹⁰⁶ See Tires at Comment 18G; see also PRC Shrimp AR3 at Comment 4B.

¹⁰⁷ See, e.g., Certain Tissue Paper Products From the People’s Republic of China: Final Results and Partial Rescission of the 2007-2008 Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 74 FR 52176 (October 9, 2009) (“Tissue Paper 2009”) and accompanying Issues and Decision Memorandum at Comment 6; Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 52645 (September 10, 2008) and accompanying Issues and Decision Memorandum at Comment 5.

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