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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review: Freshwater Crawfish Tail Meat
from the People's Republic of China

SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). The review covers three producers/exporters of the subject merchandise, Xiping Opeck Food Co., Ltd. (Xiping Opeck), Yancheng Hi-King Agriculture Developing Co., Ltd. (Hi-King Agriculture), and China Kingdom (Beijing) Import & Export Co., Ltd. (China Kingdom).¹ The period of review (POR) is September 1, 2010, through August 31, 2011. We have preliminarily found that sales by Hi-King Agriculture have been made below normal value, and sales by Xiping Opeck and China Kingdom have not been made below normal value. For Xiping Opeck, however, we require additional information regarding the applicable transactions and will further analyze this information in a post-preliminary determination.

BACKGROUND

On September 15, 1997, the Department published an amended final determination and antidumping duty order on freshwater crawfish tail meat from the PRC.² On September 2, 2011, the Department published a notice of opportunity to request an administrative review of the order.³ On October 31, 2011, based on timely requests for an administrative review, the Department initiated a review with respect to China Kingdom, Nanjing Gemen, Shanghai Ocean Flavor International Trading Co., Ltd. (Shanghai Ocean), Xiping Opeck, Xuzhou Jinjiang Foodstuffs Co., Ltd. (Xuzhou Jinjiang), and Hi-King Agriculture.

¹ Nanjing Gemen International Co., Ltd (Nanjing Gemen) was not selected for individual examination.

² See *Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat From the People's Republic of China*, 62 FR 48218 (September 15, 1997).

³ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 76 FR 54735 (September 2, 2011).



On December 13, 2011, we selected Xiping Opeck and Hi-King Agriculture for individual examination.⁴ On July 12, 2012, we selected China Kingdom as a voluntary respondent for individual examination.⁵

We extended the due date for the preliminary results of review by 120 days to October 1, 2012.⁶

We are conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

SCOPE OF THE ORDER

The product covered by the antidumping duty order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or un-purged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the HTSUS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by CBP in 2000, and HTSUS numbers 0306.19.00.10 and 0306.29.00.00, which are reserved for fish and crustaceans in general. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

Intent to Rescind Review in Part

In accordance with 19 CFR 351.213(d)(3), the Department may rescind an administrative review, “in whole or only with respect to a particular exporter or producer, if {the Department} concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise” Record evidence indicates that Shanghai Ocean and Xuzhou Jinjiang did not have any exports of subject merchandise during the POR. *See* the December 29, 2011, submission from Shanghai Ocean and the November 18, 2011, submission from Xuzhou Jinjiang. Moreover, we have reviewed the CBP entry data for the POR and found no evidence of exports from these two entities. *See* Memorandum to File entitled “Freshwater Crawfish Tail Meat from the People’s Republic of China - placing CBP data on the record of this review,” dated November 7, 2011. Additionally, on January 18, 2012, we requested that CBP report any contrary information. To date, CBP has not responded to our inquiry⁷ and we have not received any evidence that these two entities had any shipments to the United States of subject

⁴ *See* Memorandum entitled “Freshwater Crawfish Tail Meat from the People’s Republic of China – Respondent Selection,” dated December 13, 2011.

⁵ *See* Memorandum entitled “Freshwater Crawfish Tail Meat from the People’s Republic of China – Voluntary Respondent Memorandum,” dated July 12, 2012.

⁶ *See* Memorandum entitled “Freshwater Crawfish Tail Meat from the People’s Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,” dated May 16, 2012.

⁷ CBP only responds to the Department’s inquiry when there are records of shipments from the company in question. *See, e.g., Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Flat Products From Brazil: Notice of Rescission of Antidumping Duty Administrative Review*, 75 FR 65453, 65454 (October 25, 2010).

merchandise during the POR. Pursuant to 19 CFR 351.213(d)(3), the Department intends to rescind this review in part with respect to Shanghai Ocean and Xuzhou Jinjiang.

Evaluation of the Nature of Transactions Pertaining to the Entries Under Review with Respect to Xiping Opeck

In the previous administrative review, we determined that record evidence suggested a lack of commercial soundness in the transactions reported by Xiping Opeck and that another entity (hereafter, Company A) in the distribution channel played a role in the pricing associated with the entries of subject merchandise in the review.⁸ Consequently, in the 2009/2010, we issued an antidumping duty questionnaire to Company A. Because Company A failed to respond to our questions, we applied adverse facts available to Xiping Opeck for the 2009/2010 final results.⁹

Due to similar circumstances in this review with respect to Xiping Opeck's sales, we again asked Company A to respond to the Department's antidumping duty questionnaire. On September 21, 2012, we received Company's A's response to section A of the questionnaire. Unlike the previous review, Company A provided responses to our questions. Company A's response to section C of our questionnaire is due October 17, 2012.

We are currently evaluating Company A's response to section A, and intend to issue a supplemental questionnaire to seek clarification on certain areas of its response. Because Company A's response to section C of our questionnaire is not due until October 17, 2012, and because we require further time to evaluate Company A's response to our section A questionnaire and seek additional clarifying information, we find there is not enough time to take account of Company A's section A response for these preliminary results. Therefore, we are not in a position to assess whether Company A played a role in the pricing associated with the entries of Xiping Opeck's merchandise for purposes of these preliminary results. Thus, we intend to provide further analysis in a post-preliminary results memorandum.

Treatment of Affiliated Parties as a Single Entity

Based on record evidence we find that Hi-King Agriculture, Yancheng Seastar Seafood Co., Ltd. (Seastar), Wuhan Hi-King Agriculture Development Co., Ltd. (Wuhan Hi-King), Jiangxi Hi-King Poyang Lake Seafood Co., Ltd. (Jiangxi Hi-King), Yancheng Hi-King Frozen Food Co., Ltd. (Hi-King Frozen), and Yancheng Hi-King Aquatic Growing Co., Ltd. (Hi-King Growing), are affiliated and should be treated as a single entity for the purposes of this administrative review.

The Department has determined that Hi-King Agriculture, Seastar, Wuhan Hi-King, Jiangxi Hi-King, Hi-King Frozen, and Hi-King Growing are affiliated pursuant to sections 771(33)(A), (E),

⁸ We are withholding the identity of this entity because Xiping Opeck's customer claimed business-proprietary treatment of this information. See Memorandum to the File, entitled, "Freshwater Crawfish Tail Meat from the People's Republic of China: 2010-2011 Administrative Review-Transfer of Information from Record of 2009/10 Review," dated March 26, 2012.

⁹ See *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review in Part*, 77 FR 21529 (April 10, 2012), and accompanying Issues and Decision Memorandum at Comment 2.

and (F). Specifically, we find that certain owners of Hi-King Agriculture are affiliated persons pursuant to section 771(33) (A) of the Act because they are brothers, that these persons are members of a family grouping, and that the family grouping collectively has majority ownership in Hi-King Agriculture. Pursuant to section 771(33)(E) of the Act, we find that that Hi-King Agriculture is affiliated with Seastar, Wuhan Hi-King, Jiangxi Hi-King, Hi-King Frozen, and Hi-King Growing because Hi-King Agriculture owns more than five percent of Seastar, Wuhan Hi-King, Jiangxi Hi-King, Hi-King Frozen, and Hi-King Growing, respectively. We also find that Seastar, Wuhan Hi-King, Jiangxi Hi-King, Hi-King Frozen, and Hi-King Growing are affiliated to each other, and to Hi-King Agriculture, pursuant to section 771(33)(F) of the Act because they are under the common control of the family grouping through the family's majority ownership of Hi-King Agriculture, and Hi-King Agriculture's majority ownership of the other five companies.

The Department has also determined that the requirements of 19 CFR 351.401(f)(1) for treating affiliated parties as a single entity are met because these companies have production facilities for similar or identical products that would not require substantial retooling of their facilities in order to restructure manufacturing priorities.

For the Department's complete analysis regarding the affiliation of these six companies, *see* Memorandum to Susan Kuhbach, entitled "Freshwater Crawfish Tail Meat from the People's Republic of China - Collapsing of Yancheng Hi-King Agriculture Developing Co., Ltd., and its Affiliates," (Collapsing Memorandum) dated concurrently with this notice at pages 3-5.

Pursuant to 19 CFR 351.401(f)(1) and (2), the Department has also examined whether a significant potential exists for the manipulation of price or production by Hi-King Agriculture, Seastar, Wuhan Hi-King, Jiangxi Hi-King, Hi-King Frozen, and Hi-King Growing. To do so, the Department has examined all three of the factors in 19 CFR 351.401(f)(2), *i.e.*, common ownership, the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, and intertwined operations. *See* 19 CFR 351.401(f)(2)(i)-(iii). We find that by virtue of the common ownership of the six companies, family members in senior leadership and management positions of at least four of the companies, evidence of a common corporate and advertising strategy, and the existence of significant transactions between three of the companies, there exists the significant potential for manipulation such that Hi-King Agriculture, Seastar, Wuhan Hi-King, Jiangxi Hi-King, Hi-King Frozen, and Hi-King Growing should be treated as a single entity for purposes of this review. For the Department's complete analysis regarding the potential for manipulation for price or production by these six companies, *see* Collapsing Memorandum at pages 5-8.

DISCUSSION OF THE METHODOLOGY

Nonmarket Economy Country Status

The Department considers the PRC to be an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority.¹⁰ None of the parties to this proceeding has

¹⁰ *See Brake Rotors From the Peoples Republic of China: Preliminary Results and Partial Rescission of the 2004/2005 Administrative Review and Preliminary Notice of Intent To Rescind the 2004/2005 New Shipper Review,*

contested NME treatment for the PRC. Therefore, for these preliminary results of administrative review we have treated the PRC as an NME country and applied our current NME methodology in accordance with section 773(c) of the Act.

Surrogate Country

In antidumping proceedings involving NME countries, pursuant to section 773(c)(1) of the Act, the Department generally bases normal value on the value of the NME producer's factors of production (FOPs). In accordance with section 773(c)(4) of the Act, in valuing the FOPs the Department uses, to the extent possible, the prices or costs of the FOPs in one or more market-economy countries that are at a level of economic development comparable to that of the NME country which are significant producers of merchandise comparable to the subject merchandise. The Department has determined that Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine are countries that are at a level of economic development comparable to that of the PRC.¹¹ Moreover, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from these countries.¹² While none of the countries the Department selected is a significant producer of freshwater crawfish tail meat, we have found Indonesia to be the most appropriate primary surrogate country because Indonesia is at a similar level of economic development to the PRC, it is a significant producer of comparable merchandise, and reliable, publicly available data exists for valuing most of the factors of production. Therefore, we have selected Indonesia as the primary surrogate country in which to value the respondents' inputs with the exception of live crawfish, the primary input.¹³

As we indicate above, Indonesia does not have a fresh-crawfish industry (although it has a sea-crawfish industry) and we have determined that other forms of seafood are not sufficiently comparable to crawfish to serve as surrogates for live crawfish. Accordingly, we have valued live crawfish using the only information available on the record with respect to that input, *i.e.*, imports of live crawfish from Portugal into Spain as reported by *Agencia Tributaria*, the Spanish government agency responsible for trade statistics. Spain is a significant producer of comparable merchandise, *i.e.*, whole processed crawfish, this same data has been relied upon in previous reviews,¹⁴ and there are publicly available import statistics for Spain.¹⁵

71 FR 26736 (May 8, 2006) (unchanged in *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review*, 71 FR 66304 (November 14, 2006)).

¹¹ See Memorandum entitled "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Freshwater Crawfish Tail Meat (*FCTM*) from the People's Republic of China (*PRC*)," dated April 5, 2012.

¹² See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process, dated March 1, 2004.

¹³ See Memorandum entitled "Freshwater Crawfish Tail Meat from the People's Republic of China: Selection of a Surrogate Country," dated October 1, 2012 (Surrogate-Country Memorandum).

¹⁴ For an example of a previous segment of the proceeding where this source was used, see *Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative and New-Shipper Reviews*, 75 FR 34100 (June 16, 2010) (unchanged in *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative and New-Shipper Reviews*, 75 FR 79337 (December 20, 2010)).

¹⁵ See Surrogate-Country Memorandum.

Separate Rates

A designation of a country as an NME remains in effect until it is revoked by the Department.¹⁶ In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate.¹⁷

In the *Initiation*, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.¹⁸ It is the Department's policy to assign all exporters of merchandise subject to a proceeding involving an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. The Department assigns separate rates in NME proceedings only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities under a test developed by the Department and described in *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), and *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

In this administrative review, Xiping Opeck, Hi-King Agriculture, China Kingdom, and Nanjing Gensen are the only companies that submitted a separate rate certification. Additionally, the Department received a complete response to the antidumping questionnaire from Xiping Opeck, Hi-King Agriculture, and China Kingdom which contained additional information pertaining to the companies' eligibility for a separate rate.

Separate Rate for a Non-Selected Company

In accordance with section 777A(c)(2) of the Act, we selected Xiping Opeck, Hi-King Agriculture and China Kingdom for individual examination.¹⁹ Nanjing Gensen is the only exporter of crawfish tail meat from the PRC that demonstrated its eligibility for a separate rate which was not selected for individual examination in this review.

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the

¹⁶ See section 771(18)(C) of the Act.

¹⁷ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006), and *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China*, 71 FR 29303 (May 22, 2006).

¹⁸ See *Initiation*, 75 FR at 66350.

¹⁹ See Memorandum to Susan Kuhbach entitled "Freshwater Crawfish Tail Meat from the People's Republic of China – Respondent Selection," dated December 13, 2011, and Memorandum to Susan Kuhbach entitled "Freshwater Crawfish Tail Meat from the People's Republic of China – Voluntary Respondent Memorandum," dated July 12, 2012.

all-others rate in an investigation, for guidance when calculating the rate for respondents we did not examine in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based entirely on facts available. Accordingly, the Department's usual practice has been to average the rates for the selected companies, excluding zero, *de minimis*, and rates based entirely on facts available.²⁰ Consistent with our practice, we have preliminarily applied a rate of 22.02 percent to Nanjing Gemsen, which is the rate we have preliminarily calculated for Hi-King Agriculture, a mandatory respondent in this proceeding. Because we have preliminarily calculated a *de minimis* rate for Xiping Opeck, we did not use this rate in our calculation.

Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; (3) any other formal measures by the government decentralizing control of companies.²¹

Xiping Opeck, Hi-King Agriculture, China Kingdom, and Nanjing Gemsen have all placed on the administrative record a copy of their business licenses and Foreign Trade Operator Registration Records. Xiping Opeck, Hi-King Agriculture, and China Kingdom also placed on the administrative record a copy of the company's Articles of Incorporation. None of these documents contains restrictions with respect to export activities. In their separate rate certifications, Xiping Opeck, Hi-King Agriculture, China Kingdom, and Nanjing Gemsen all certified the following during the POR: (1) as with the previous segment of the proceeding in which each firm was granted a separate rate (previous Granting Period), there were no government laws or regulations that controlled each firm's export activities; (2) the ownership under which the firm registered itself with the official government business license issuing authority remains the same as for the previous Granting Period; (3) the firm had a valid PRC Export Certificate of Approval, now referred to and labeled as a Registration Form for Foreign Trade Operator; (4) as in the previous Granting Period, in order to conduct export activities, the firm was not required by law or regulation at any level of government to possess additional certificates or other documents related to the legal status and/or operation of its business beyond those discussed above; (5) PRC government laws and legislative enactments applicable to Xiping Opeck, Hi-King Agriculture, China Kingdom, and Nanjing Gemsen remained the same as in the previous Granting Period. In prior cases, we have found an absence of *de jure* control absent proof on the record to the contrary.²² We have no information in this review that would cause us to reconsider this determination.

²⁰ See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

²¹ See *Sparklers*, 56 FR at 20589.

²² See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544 (May 8, 1995) (*Furfuryl Alcohol*).

Further, prior verifications have confirmed that there are no commodity-specific export licenses required and no quotas for the seafood category "Other," which includes crawfish, in *China's Tariff and Non-Tariff Handbook* for 1996 and 1997.²³

We have confirmed previously that freshwater crawfish tail meat is not on the list of commodities with planned quotas in the 1992 PRC Ministry of Foreign Trade and Economic Cooperation document entitled *Temporary Provisions for Administration of Export Commodities*.²⁴

The Department has found previously that the *Company Law of the People's Republic of China* governing business activities of Xiping Opeck, Hi-King Agriculture, China Kingdom, and Nanjing Gensen, made effective on July 1, 1994, with the amended version promulgated on October 27, 2005, states that a company is an enterprise legal person, that shareholders shall assume liability towards the company to the extent of their shareholdings, and that the company shall be liable for its debts to the extent of all its assets.²⁵

Additionally, the *Foreign Trade Law of the People's Republic of China* also indicates a lack of *de jure* government control. Specifically, this document identifies the rights and responsibilities of organizations engaging in foreign trade, grants autonomy to foreign-trade operators in management decisions, and establishes the foreign-trade operator's accountability for profits and losses. Based on the foregoing, the Department has preliminarily determined that there is an absence of *de jure* governmental control over the export activities of Xiping Opeck, Hi-King Agriculture, China Kingdom, and Nanjing Gensen.

Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC.²⁶ Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The Department typically considers the following four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by, or subject to the approval of, a government agency; (2) whether the respondent has the authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; (4) whether

²³ See *Freshwater Crawfish Tail Meat From The People's Republic of China; Preliminary Results of New Shipper Review*, 64 FR 8543 (February 22, 1999) (*1999 Crawfish NSR Preliminary Results*) (unchanged in *Freshwater Crawfish Tail Meat From the Peoples Republic of China; Final Results of New Shipper Review*, 64 FR 27961 (May 24, 1999)).

²⁴ See *1999 Crawfish NSR Preliminary Results*, 64 FR at 8544.

²⁵ See *Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results and Partial Rescission of the 2005-2006 Antidumping Duty Administrative Review and Preliminary Intent to Rescind 2005-2006 New Shipper Reviews*, 72 FR 57288 (October 9, 2007) (unchanged in *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results and Partial Rescission of the 2005-2006 Antidumping Duty Administrative Review and Rescission of 2005-2006 New Shipper Reviews*, 73 FR 20249 (April 15, 2008)).

²⁶ See *Silicon Carbide*, 59 FR at 22587.

the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.²⁷

Xiping Opeck, Hi-King Agriculture, China Kingdom, and Nanjing Gensen have each made the following assertions: (1) it establishes its own export prices; (2) it negotiates contracts without guidance from any government entities or organizations; (3) it makes its own personnel decisions; (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans.

Based on the information on the record of this review, the Department has preliminarily determined that there is an absence of *de facto* governmental control over the export activities of Xiping Opeck, Hi-King Agriculture, China Kingdom, and Nanjing Gensen. Given that the Department has found that Xiping Opeck, Hi-King Agriculture, China Kingdom, and Nanjing Gensen operate free of *de jure* and *de facto* governmental control, we have preliminarily determined that Xiping Opeck, Hi-King Agriculture, China Kingdom, and Nanjing Gensen have satisfied the criteria for a separate rate.

U.S. Price

Xiping Opeck

In accordance with section 772(a) of the Act, we based Xiping Opeck's U.S. price on export price because the record information available at this time indicates that the first sales to unaffiliated purchasers were made prior to importation and constructed export price was not otherwise warranted by the facts on the record. We calculated export price based on the packed Cost and Freight price to the first unaffiliated purchaser in the United States. In accordance with section 772(c) of the Act, we calculated net export price by deducting foreign inland-freight expenses, foreign brokerage and handling expenses, and ocean-freight expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States. We based all movement expenses on surrogate values because a PRC company provided the movement services for Xiping Opeck (see the "Normal Value" section of this notice for further details).

Hi-King Agriculture

In accordance with section 772(a) of the Act, we based Hi-King Agriculture's U.S. price on export price because the first sales to unaffiliated purchasers were made prior to importation and constructed export price was not otherwise warranted by the facts on the record. We calculated export price based on the packed Free on Board (FOB) price to the first unaffiliated purchaser in the United States. In accordance with section 772(c) of the Act, we calculated net export price by deducting foreign inland-freight expenses, foreign brokerage and handling expenses, and cold-storage expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States. We based all movement expenses on surrogate values because a PRC company provided the movement services for Hi-King Agriculture (see the "Normal Value" section of this notice for further details).

²⁷ See *Silicon Carbide*, 59 FR at 22586-87, and *Furfuryl Alcohol*, 60 FR at 22545.

China Kingdom

In accordance with section 772(a) of the Act, we based China Kingdom's U.S. price on export price because the first sales to unaffiliated purchasers were made prior to importation and constructed export price was not otherwise warranted by the facts on the record. We calculated export price based on the packed FOB price to the first unaffiliated purchaser in the United States. In accordance with section 772(c) of the Act, we calculated net export price by deducting foreign inland-freight expenses and foreign brokerage and handling expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States. We based all movement expenses on surrogate values because a PRC company provided the movement services for China Kingdom (see the "Normal Value" section of this notice for further details).

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value using an FOP methodology if the merchandise is exported from an NME country and the available information does not permit the calculation of normal value using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department uses an FOP methodology because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under its normal methodologies.²⁸

In accordance with section 773(c) of the Act, we relied on the FOP data reported by Xiping Opeck, Hi-King Agriculture, and China Kingdom for the POR.²⁹ We calculated normal value by adding together the value of the FOP, general expenses, profit, and packing costs. Specifically, we valued material, labor, energy, and packing by multiplying the reported per-unit rates for the FOPs consumed in producing the subject merchandise by the average per-unit surrogate value of the . In addition, we added freight costs to the surrogate costs that we calculated for material inputs. We calculated freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. This adjustment is in accordance with the decision by the United States Court of Appeals for the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407-1408 (Fed. Cir. 1997). We increased the calculated costs of the FOP for surrogate general expenses and profit.³⁰

²⁸ See *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part*, 70 FR 39744, 39754 (July 11, 2005) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003-2004 Administrative Review and Partial Rescission of Review*, 71 FR 2517 (January 17, 2006)).

²⁹ We based the values of the FOPs on surrogate values (see "Surrogate Values" section).

³⁰ See Memorandum entitled "Freshwater Crawfish Tail Meat from the People's Republic of China: Surrogate-Value Memorandum," dated October 1, 2012 (Surrogate-Value Memorandum).

Surrogate Values

In selecting surrogate values, we considered the quality, specificity, and contemporaneity of the data. For these preliminary results, in selecting the best available data for valuing FOPs in accordance with section 773(c)(1) of the Act, we followed our practice of choosing publicly available values which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive.³¹ We also considered the quality of the source of surrogate information in selecting surrogate values.³² For those surrogate values which are not contemporaneous with the POR, we adjusted for inflation using country-specific wholesale prices (WPI) or consumer prices (CPI) or purchase price indices (PPIs) as reported in the *International Financial Statistics* and published by the International Monetary Fund.³³

As explained in the legislative history of the Omnibus Trade and Competitiveness Act of 1988, the Department continues to apply its long-standing practice of disregarding surrogate values if it has a reason to believe or suspect the source data may be subsidized.³⁴ In this regard, we have previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies. Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, we find that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies.³⁵ Additionally, we disregarded prices from NME countries.³⁶

We used the following surrogate values in our margin calculations for these preliminary results of review. We valued coal and packing materials using September 2010-August 2011 weighted-average Indonesian import values derived from the *Global Trade Atlas* online (*GTA*).

We valued whole live crawfish using the publicly available data for Spanish imports of whole live crawfish from Portugal during the 2008-2009 POR and inflated this value using the Spanish

³¹ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004) (unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004)).

³² See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China*, 59 FR 55625, 55633 (November 8, 1994).

³³ See Surrogate-Value Memorandum.

³⁴ Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590, reprinted in 1988 U.S.C.C.A.N. 1547, 1623-24.

³⁵ See, e.g., *Small Diameter Graphite Electrodes From the People's Republic of China: Preliminary Results of the First Administrative Review of the Antidumping Duty Order; Partial Rescission of Administrative Review; and Intent To Rescind Administrative Review, in Part*, 76 FR 12325, 12334 (March 7, 2011) (unchanged in *Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order and Final Rescission of the Administrative Review, in Part*, 76 FR 56397 (September 13, 2011)).

³⁶ See, e.g., *Kitchen Racks Prelim*, 74 FR at 9600, unchanged in *Kitchen Racks Final*.

WPI to make it contemporaneous with the POR.³⁷ We valued the crawfish shell by-product using a 2001 price quote from Indonesia for wet crab and shrimp shells and inflated this value using the Indonesian WPI to make it contemporaneous with the POR.

We valued water using data collected by the United Nations in 2006.³⁸ We based the value for water on the 2005 value listed for large hotels, high-rise buildings, banks, and factories. To represent value for water during the POR, we used the Indonesian CPI to inflate these values to make it contemporaneous with the POR.

To value electricity, we used the pricing information for Indonesia specified in the World Bank's *2003 Electricity for All: Options for Increasing Access in Indonesia, issued in 2003 (Electricity for All)*. The electricity rates reported represent actual, country-wide, publicly available information on tax-exclusive electricity rates charged to small, medium, and large industries in Indonesia. To represent value for electricity during the POR, we used the Indonesian CPI to inflate these values to POR price levels.

We valued truck-freight expenses using an average of the per-unit average rates that we calculated based on data from PT Mantap Abiah Abadi for September 2011. To make it contemporaneous with the POR, we deflated the per-kg/km value using the Indonesian WPI.

We valued brokerage and handling expenses using the information in the World Bank Group's *Doing Business 2012 – Indonesia*. This source provides the price list based on a survey case study of the procedural requirements necessary to export a standardized cargo of goods by ocean transit from Indonesia. Because data reported in this source were current as of June 1, 2011, and, thus contemporaneous with the POR, we did not inflate the surrogate value for domestic brokerage and handling expenses.³⁹

We valued international freight using the data obtained from the Descartes Carrier Rate Retrieval Database (Descartes) which is available at <http://descartes.com/>. The Descartes database is a web-based service which publishes the ocean freight rates of numerous carriers. In prior administrative reviews the Department did not use the Descartes database as an ocean freight surrogate value source because the data did not appear to be publicly available.⁴⁰ Upon reexamination, however, we have found that this database is accessible to government agencies without charge in compliance with Federal Maritime Commission regulations and, thus, we now find that this is a publicly available source.

³⁷ We determined that it is not appropriate to use the contemporaneous Spanish import prices because the volume of shipments from Portugal during the POR does not appear to reflect the industry's typical commercial quantity. See, e.g., *Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 52100, 52105 (October 12, 2001) (unchanged in *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative and New-Shipper Reviews*, 75 FR 79337 (December 20, 2010)) (2008-2009 Crawfish Review); see also Surrogate-Value Memorandum for further details.

³⁸ See *Human Development Report: Disconnected Poverty: Water Supply and Development in Jakarta, Indonesia (Water Supply and Development)*.

³⁹ See Surrogate-Value Memorandum for further details.

⁴⁰ See, e.g., *Fresh Garlic from the Peoples Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews*, 71 FR 26329 (May 4, 2006), and accompanying Issues and Decision Memorandum at Comment 7.

In addition to being publicly available, the Descartes data reflect rates for multiple carriers, the website reports rates on a daily basis, the price data are based on routes that correspond closely to those used by the respondent, and they reflect merchandise similar to subject merchandise. Therefore, the Descartes data are product-specific, publicly available, a broad-market average, and contemporaneous with the POR. Accordingly, we find that the Descartes database is the best available source for valuing international freight on the record of this review because it provides rates that are representative of the entire POR and a broader representation of product-specificity.

While we find that the Descartes database is the superior source on the record of the reviews for valuing international freight, to make the source less impractical, we had to define certain parameters in our selection of data. For example, we calculated the period-average international freight rate by obtaining rates from multiple carriers for a single day in each quarter of the POR. Further, we did not include rates in the period-average international freight calculation that we determined were from NME carriers. Additionally, we excluded from any individual rate calculation any charges that are covered by the brokerage and handling expenses that the respondent incurred and which are valued by the appropriate surrogate value.⁴¹

For Hi-King Agriculture, we valued cold storage using a 2010-2011 long-term lease price quote obtained from Snowman Frozen Foods Ltd., an Indian company involved in the distribution and storage of frozen and chilled foods. Because data reported in this source were contemporaneous with the POR, we did not inflate it.⁴² No Indonesian value for cold storage was available and this source was used in the 2008-2009, and 2009-2010 *Crawfish Review*. When the product is fully processed, packed, and then placed into a cold-storage facility not located at the production/processing facility prior to the date of shipment from the exporting country, our practice is to treat cold storage as a movement expense and deduct it from the U.S. price.⁴³

To calculate the labor input, we based our calculation on the methodology which the Department enunciated on June 21, 2011, in *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (*Labor Methodologies*). Prior to 2010, the Department used regression-based wages that captured the worldwide relationship between per capita GNI and hourly manufacturing wages, pursuant to 19 CFR 351.408(c)(3). On May 3, 2010, the Federal Circuit, in *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372 (Fed Cir. 2010) (*Dorbest*), invalidated part of that regulation. As a consequence of the Federal Circuit's ruling in *Dorbest*, the Department no longer relies on the regression-based methodology described in 19 CFR 351.408(c)(3).

In *Labor Methodologies*, the Department explained that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country.⁴⁴ Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (ILO) Yearbook of

⁴¹ See Surrogate-Value Memorandum for further details.

⁴² See Surrogate-Value Memorandum.

⁴³ See, e.g., *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews*, 69 FR 46498, 46500 (August 3, 2004).

⁴⁴ See *Labor Methodologies*, 76 FR at 36093.

Labor Statistics (Yearbook).⁴⁵ While our practice is to use industry-specific labor rates from Chapter 6A of the ILO Yearbook, we were unable to find any Indonesian labor statistics under Chapter 6A, so we considered looking into Chapter 5B as an alternative to Chapter 6A. We were able to find Indonesian labor statistics under Chapter 5B and therefore, consider it to be the best data source for industry-specific labor rates for these preliminary results.

For these preliminary results, we have calculated the labor inputs using the method described in *Labor Methodologies*. To value Xiping Opeck's, Hi-King's, and China Kingdom's labor inputs, we relied on data reported by Indonesia to the ILO in Chapter 5B of the Yearbook. We find further that the two-digit description under ISIC-Revision 3 (*i.e.*, 15 - "Manufacture of Food Products and Beverages") is the best available information on the record because it is specific to the industry being examined and is, therefore, derived from industries that produce comparable merchandise. Specifically, this category captures class 1512 - "Processing and Preserving of Fish and Fish Products." Accordingly, relying on Chapter 5B of the Yearbook, we calculated the labor inputs using labor data reported by Indonesia to the ILO under Sub-Classification 15 of the ISIC-Revision 3 standard in accordance with section 773(c)(4) of the Act. The ILO data reported under Chapter 5B of the Yearbook reflects all costs related to labor, including wages, benefits, housing, training, *etc.* A more detailed description of the wage-rate calculation methodology is provided in the Surrogate-Value Memo.

Because we do not have any financial statements on the record for any seafood processor from Indonesia, we found it appropriate to consider using financial statements used in other PRC cases that have a comparable product to freshwater crawfish tail meat. Specifically, we found the surrogate value information utilized in a recent review of the frozen warmwater shrimp from the People's Republic of China order to be a reasonable proxy to value factory overhead, selling, general and administrative expenses (SG&A), and profit in this proceeding. Therefore, for the preliminary results we have placed on the record of this review the surrogate memorandum entitled, "*Sixth Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China: Surrogate Values for Final Results*," dated, August 29, 2012. Thus, to value factory overhead, SG&A, and profit, we used the 2010 financial statements from three seafood processors in Thailand and calculated an average of the three to derive factors for overhead, SG&A, and profit, respectively.⁴⁶

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. These exchange rates are available on the IA website at <http://ia.ita.doc.gov/exchange/index.html>.

⁴⁵ See *id.*, 76 FR at 36093-94.

⁴⁶ See Surrogate-Value Memorandum for further details.

