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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, Partial Rescission  
of Antidumping Duty Administrative Review: Certain Frozen  
Warmwater Shrimp from the People's Republic of China

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## SUMMARY

In response to requests from interested parties, the Department of Commerce ("Department") is conducting the administrative review of the antidumping duty order on certain frozen warmwater shrimp from the People's Republic of China ("PRC") for the period of review ("POR") from February 1, 2011, through January 31, 2012. The Department has preliminarily determined that Zhanjiang Regal Integrated Marine Resources Co., Ltd. ("Regal") did not make sales in the United States at prices below normal value ("NV") during the POR. Additionally, the Department has preliminarily determined that Hilltop International ("Hilltop") failed to cooperate to the best of its ability and is, therefore, applying adverse facts available ("AFA").

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We will issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("Act").

## Background

On March 30, 2012, the Department initiated an administrative review of certain frozen warmwater shrimp from the PRC for the period February 1, 2011, through January 31, 2012.<sup>1</sup> The Department initiated an administrative review of 76 exporters of subject merchandise.<sup>2</sup> On May 11, 2012, Zhanjiang Newpro Foods Co., Ltd. ("Newpro") submitted a timely separate rate

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<sup>1</sup> See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 77 FR 19179 (March 30, 2012) ("Initiation").

<sup>2</sup> See id.

application.<sup>3</sup> On July 26, 2012, The American Shrimp Processors Association (“Processors”), a domestic interested party, submitted a targeted dumping allegation against Regal, alleging Regal engaged in targeted dumping during certain periods of time during the POR.<sup>4</sup>

On April 18, 2012, the Department received a “no shipment certification”<sup>5</sup> from Allied Pacific Food (Dalian) Co., Ltd. and Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd. (collectively “Allied Pacific Group”).<sup>6</sup> On March 28, 2012 the Department received a properly filed “no shipment certification”<sup>7</sup> from Shantou Yuexing Enterprise Company (“SYEC”). In its certification, SYEC also requested that the Department rescind the review with respect to SYEC, pursuant to 19 CFR 351.213(d)(3).<sup>8</sup> On April 6, 2012, the Department received a properly filed “no shipment certification” from Rizhao Smart Foods Co., Ltd. (“Smart Foods”)<sup>9</sup>.

On August 20, 2012, the Department issued a memorandum extending the time period for issuing the preliminary results by 120 days.<sup>10</sup> Additionally, as explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for the preliminary results of this review is now March 4, 2013.<sup>11</sup>

### Respondent Selection

Section 777A(c)(1) of the Tariff Act of 1930, as amended (“Act”), directs the Department to calculate an individual weighted-average dumping margin for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted average dumping margin determinations because of the large number of exporters and producers involved in the review.

On March 30, 2012, the Department placed CBP data on the record for the Harmonized Tariff Schedule (“HTS”) numbers listed in the scope of the order on the record of the review and

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<sup>3</sup> See Newpro’s Separate Rate Application filed May 11, 2012 (“Newpro SRA”).

<sup>4</sup> See ASPA’s Targeted Dumping Comments dated July 26, 2012, at 3 and Attachment 1.

<sup>5</sup> Companies have the opportunity to submit statements certifying that they did not enter, export or sell subject merchandise to the United States during the POR.

<sup>6</sup> See Letter from Allied Pacific Group, No Shipment Certificate, dated April 18, 2012.

<sup>7</sup> Companies have the opportunity to submit statements certifying that they did not enter, export or sell subject merchandise to the United States during the POR.

<sup>8</sup> See Letter from Shantou Yuexing regarding Request for Rescinding an Administrative Review, dated March 28, 2012.

<sup>9</sup> See Letter from Smart Foods, dated April 6, 2012.

<sup>10</sup> See Memorandum to Gary Taverman, Senior Adviser, Antidumping and Countervailing Duty Operations, from Katie Marksberry, International Trade Compliance Analyst, Office 9, Antidumping and Countervailing Duty Operations, Subject: Certain Frozen Warmwater Shrimp from the People’s Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review, dated August 20, 2012.

<sup>11</sup> See Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding “Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Hurricane,” dated October 31, 2012.

requested comments on the data for use in respondent selection.<sup>12</sup> On April 6, 2012, we extended the comment deadline to April 16, 2012.<sup>13</sup> On April 16, 2012, we received respondent selection comments from the Ad Hoc Shrimp Trade Action Committee (“Petitioner”), Regal, and Processors. On April 17, 2012, we set the deadline for rebuttal comments to April 20, 2012.<sup>14</sup> We did not receive any rebuttal comments.

The Department selected Regal and Hilltop as mandatory respondents in this review, because based on the CBP data, they were the largest exporters by volume of total U.S. entries of shrimp from the PRC under review.<sup>15</sup>

### Questionnaires

On May 17, 2012, the Department issued its initial nonmarket economy (“NME”) antidumping duty questionnaire to Hilltop and Regal, and issued supplemental questionnaires to Hilltop and Regal between June 2012 and December 2012. Regal responded to the Department’s initial and subsequent supplemental questionnaires between July 2011 and January 2013. After filing its initial Sections A, C and D questionnaire responses, Hilltop notified the Department it was declining further requests for information.<sup>16</sup>

### Scope of the Order

The scope of the order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,<sup>17</sup> deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of the order, regardless of definitions in the HTS, are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

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<sup>12</sup> See Memo To: The File, From: Katie Marksberry, International Trade Specialist, Office 9, Import Administration Re: Certain Frozen Warmwater Shrimp from the People’s Republic of China (“PRC”), Subject: Customs Data of U.S. Imports of Certain Frozen Warmwater Shrimp, dated March 30, 2012.

<sup>13</sup> See Memo To: The File, From: Katie Marksberry, International Trade Specialist, Office 9, Import Administration Re: Certain Frozen Warmwater Shrimp from the People’s Republic of China (“PRC”), Subject: Extension of the Deadline for Comments Regarding Customs Data of U.S. Imports of Certain Frozen Warmwater Shrimp, dated April 6, 2012.

<sup>14</sup> See Memorandum to The File, from Katie Marksberry, International Trade Specialist, Office 9, Re: Deadline for Rebuttal Comments Regarding Customs Data of U.S. Imports of Certain Frozen Warmwater Shrimp, dated April 17, 2012.

<sup>15</sup> See Memorandum To: James Doyle, Director, Office 9, Import Administration, From: Katie Marksberry, Senior International Trade Analyst, Office 9, Import Administration, Re: Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Selection of Respondents for Individual Review, dated May 17, 2012.

<sup>16</sup> See Hilltop’s October 3, 2012, submission, Re: *Further Information Requests for Hilltop International* in the Seventh Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China, Case No. A-570-893 (“Hilltop Further Information submission”).

<sup>17</sup> “Tails” in this context means the tail fan, which includes the telson and the uropods.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, white-leg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the order. In addition, food preparations, which are not “prepared meals,” that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.1020); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheadings 0306.23.0020 and 0306.23.0040); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.0510); (5) dried shrimp and prawns; (6) Lee Kum Kee’s shrimp sauce;<sup>18</sup> (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.1040); and (8) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a “dusting” layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (“IQF”) freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by these orders are currently classified under the following HTS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. These HTS subheadings are provided for convenience and for customs purposes only; the written description of the scope of these orders is dispositive.<sup>19</sup>

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<sup>18</sup> The specific exclusion for Lee Kum Kee’s shrimp sauce applies only to the scope in the PRC case.

<sup>19</sup> On April 26, 2011, the Department amended the antidumping duty order to include dusted shrimp, pursuant to the U.S. Court of International Trade (“CIT”) decision in Ad Hoc Shrimp Trade Action Committee v. United States, 703 F. Supp. 2d 1330 (CIT 2010) and the U.S. International Trade Commission (“ITC”) determination, which found the domestic like product to include dusted shrimp. See Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision, 76 FR 23277 (April 26, 2011); see also Ad Hoc Shrimp Trade Action Committee v. United States, 703 F. Supp. 2d 1330 (CIT 2010) and Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam (Investigation Nos. 731-TA-1063, 1064, 1066-1068 (Review), USITC Publication 4221, March 2011).

## DISCUSSION OF THE METHODOLOGY

### Separate Rates

Pursuant to section 771(18)(C) of the Act, a designation of a country as an NME remains in effect until it is revoked by the Department. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.<sup>20</sup> In the Initiation, the Department notified parties of the application process by which exporters may obtain separate rate status in NME proceedings.<sup>21</sup> It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (de jure) and in fact (de facto), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in Sparklers,<sup>22</sup> as amplified by Silicon Carbide.<sup>23</sup> However, if the Department determines that a company is wholly foreign-owned or located in a market economy ("ME"), then a separate rate analysis is not necessary to determine whether it is independent from government control.<sup>24</sup> The Department received a completed response to the Section A portion of the NME antidumping questionnaire from Regal and Hilltop, which contained information pertaining to its eligibility for a separate rate.<sup>25</sup> However, Hilltop subsequently notified the Department that it was declining to answer further requests for information in this proceeding.<sup>26</sup> Accordingly, the Department will preliminarily treat Hilltop as part of the PRC-wide entity and apply AFA to the PRC-wide entity because of Hilltop's failure to cooperate.<sup>27</sup>

We have considered whether Regal is eligible for a separate rate. In its Section A response, Regal reported that it is wholly-owned by individuals or companies located in an ME country.<sup>28</sup> Therefore, because it is wholly foreign-owned, and we have no evidence indicating that it is under the control of the PRC, a separate rate analysis is not necessary to determine whether this company is independent from government control.<sup>29</sup> Accordingly, we have preliminarily granted a separate rate to Regal.

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<sup>20</sup> See 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, 53082 (September 8, 2006); 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, 29307 (May 22, 2006).

<sup>21</sup> See Initiation, 76 FR at 67133-34.

<sup>22</sup> See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991) ("Sparklers").

<sup>23</sup> See 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").

<sup>24</sup> See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China, 72 FR 52355, 52356 (September 13, 2007) ("Wax Candles from the PRC").

<sup>25</sup> See Regal Voluntary Response to Section A, dated June 18, 2012 ("Regal Section A").

<sup>26</sup> See Hilltop Further Information submission.

<sup>27</sup> See Administrative Review of Honey from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 70417 (November 26, 2012), and accompanying Issues and Decision Memorandum at Comments 3-5.

<sup>28</sup> See Regal Section A, at 2.

<sup>29</sup> See, e.g., Wax Candles from the PRC, 72 FR at 52356.

In the Initiation, we instructed all companies requesting separate rate status in this administrative review to submit, as appropriate, either a separate rate status application or certification. As discussed above, the Department initiated this administrative review with respect to 76 companies. However, as discussed below, SYEC and Allied Pacific Food (Dalian) Co., Ltd. and Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd. (collectively “Allied Pacific Group”) indicated they had no shipments. Additionally, on May 11, 2012, Zhanjiang Newpro Foods Co., Ltd. (“Newpro”) submitted a timely separate rate application.<sup>30</sup> Due to discrepancies in the nature of Newpro’s sale(s) in its separate rate application, the Department is unable to determine Newpro’s eligibility for a separate rate at this time. The Department has issued Newpro a supplemental questionnaire requesting further information about the nature of its sale(s) to the United States during the POR.<sup>31</sup> However, because of the close proximity to the preliminary results, we are unable to take Newpro’s response into consideration for the preliminary results. Newpro’s response will be taken into consideration for the post-preliminary results. Because the Department cannot determine Newpro’s eligibility for a separate rate for these preliminary results, pending the post-preliminary results, Newpro will remain part of the PRC-wide entity, as has been its status prior to this review. While Regal provided documentation supporting its eligibility for a separate rate, and Hilltop declined to provide further information, the remaining companies under active review have not demonstrated their eligibility for a separate rate. Therefore, the Department preliminarily determines that 70 PRC exporters, including Newpro, have not demonstrated their eligibility for separate rate status.<sup>32</sup> As a result, the Department is treating these 70 PRC exporters as part of the PRC-wide entity, subject to the PRC-wide rate.

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<sup>30</sup> See Newpro’s Separate Rate Application filed May 11, 2012 (“Newpro SRA”).

<sup>31</sup> See letter from Catherine Bertrand, to Zhanjiang Newpro Foods Co., Ltd. (“Newpro”), Re: Certain Warmwater Shrimp from the People’s Republic of China (“PRC”), dated February 13, 2013.

<sup>32</sup> Those companies are: Aqua Foods (Qingdao) Co., Ltd., Asian Seafoods (Zhanjiang) Co., Ltd., Beihai Evergreen Aquatic Product Science And Technology Co Ltd., Dalian Hualian Foods Co., Ltd., Dalian Shanhai Seafood Co., Ltd., Dalian Taiyang Aquatic Products Co., Ltd., Dalian Z&H Seafood Co., Ltd., Fujian Chaohui International Trading, Fujian Dongshan County Shunfa Aquatic Product Co., Ltd., Fujian Rongjiang Import and Export Corp., Fuqing Minhua Trade Co., Ltd., Fuqing Yihua Aquatic Food Co., Ltd., Fuqing Yiyuan Trading Co., Ltd., Guangdong Jiahuang Foods Co., Ltd., Guangdong Jinhang Foods Co., Ltd., Guangdong Shunxin Sea Fishery Co. Ltd., Guangdong Wanya Foods Fty. Co., Ltd., Hai Li Aquatic Co., Ltd., Hainan Brich Aquatic Products Co., Ltd., Hainan Hailisheng Food Co., Ltd., Hainan Xiangtai Fishery Co., Ltd., Haizhou Aquatic Products Co., Ltd., Hua Yang (Dalian) International Transportation Service Co., Kingston Foods Corporation, Maoming Xinzhou Seafood Co., Ltd., Ocean Duke Corporation Olanya (Germany) Ltd., Qingdao Yuanqiang Foods Co., Ltd., Rizhao Xinghe Foodstuff Co., Ltd., Rui’an Huasheng Aquatic Products Processing Factory, Savvy Seafood Inc., Sea Trade International Inc., Shandong Meijia Group Co., Ltd., Shanghai Linghai Fisheries Trading Co. Ltd., Shanghai Lingpu Aquatic Products Co., Shanghai Smiling Food Co., Ltd., Shanghai Zhoulian Foods Co., Ltd., Shantou Jiazhou Foods Industry, Shantou Jin Cheng Food Co., Ltd., Shantou Longsheng Aquatic Product Foodstuff Co., Ltd., Shantou Ruiyuan Industry Company Ltd., Shantou Wanya Foods Fty. Co., Ltd., Shenzhen Allied Aquatic Produce Development Ltd., Shenzhen Yudayuan Trade Ltd., Thai Royal Frozen Food Zhanjiang Co., Ltd., Xiamen Granda Import & Export Co., Ltd., Yancheng Hi-king Agriculture Developing Co., Ltd., Yanfeng Aquatic Product Foodstuff, Yangjiang Anyang Food Co., Ltd., Yangjiang City Yelin Hoi Tat Quick Frozen Seafood Co., Ltd., Yangjiang Wanshida Seafood Co., Ltd., Yelin Enterprise Co., Ltd., Zhangzhou Xinwanya Aquatic Product, Zhangzhou Yanfeng Aquatic Product, Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd., Zhanjiang Fuchang Aquatic Products Co., Ltd., Zhanjiang Go Harvest Aquatic Products Co., Ltd., Zhanjiang Haizhou Aquatic Product Co. Ltd., Zhanjiang Hengrun Aquatic Co, Ltd., Zhanjiang Jinguo Marine Foods Co., Ltd., Zhanjiang Join Wealth Aquatic Products Co., Ltd., Zhanjiang Longwei Aquatic Products Industry Co., Ltd., Zhanjiang Newpro Foods Co., Ltd., Zhanjiang Rainbow Aquatic Development, Zhanjiang Universal Seafood Corp., Zhejiang Daishan Baofa Aquatic Products Co., Ltd., Zhejiang Xinwang Foodstuffs Ltd., Zhejiang Zhoufu Food Co., Ltd., Zhoushan Corporation, and Zhoushan Haiwang Seafood Co., Ltd.

### PRC-Wide Entity

As discussed above, because Hilltop failed to cooperate to the best of its ability in this review, we have preliminarily determined it did not demonstrate its eligibility for a separate rate and is properly considered part of the PRC-wide entity.

### Use of Facts Available and AFA

Section 776(a) of the Act provides that the Department shall apply “facts otherwise available” if (1) necessary information is not on the record or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Furthermore, section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

### Application of Total AFA to the PRC-Wide Entity

In the Initiation Notice, the Department stated that “if the above-named company does not qualify for a separate rate, all other exporters of Certain Frozen Warmwater Shrimp from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.”<sup>33</sup> As noted above, the Department has preliminarily determined that Hilltop is not eligible for a separate rate because it ceased participating in this review in October, and is consequently now being treated as part of the PRC-wide entity.

The PRC-wide entity, including Hilltop, withheld information requested by the Department, failed to provide the requested information within the established deadlines, and significantly impeded the proceeding. As a result, the Department preliminarily determines, in accordance with sections 776(a)(2)(A), (B) and (C) of the Act, that the Department must rely on facts otherwise available to assign a dumping margin to the PRC-wide entity. Further, the Department finds that the PRC-wide entity’s failure to provide the requested information constitutes circumstances under which the Department concludes that less than full cooperation has been shown. Hence, pursuant to section 776(b) of the Act, the Department has preliminarily determined that because the PRC-wide entity has failed to cooperate by not acting to the best of its ability, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to the PRC-wide entity.

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<sup>33</sup> See Initiation Notice, 77 FR at 19179, fn 8.

## Selection of AFA Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. In reviews, the Department normally selects as AFA the highest rate determined for any respondent in any segment of the proceeding.<sup>34</sup> The CIT and the Court of Appeals for the Federal Circuit (“CAFC”) have consistently upheld the Department’s practice.<sup>35</sup> The Department’s practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.”<sup>36</sup> The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>37</sup>

In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent’s commercial activity, selecting the highest prior margin reflects a “common sense inference that the highest prior margin is the most probative evidence of current rates because, if it were not so, the importer, knowing the rule, would have produced current information showing the respondent’s rate to be less.”<sup>38</sup> Consistent with the statute, court precedent, and its normal practice, the Department has assigned as AFA a rate of 112.81 percent to the PRC-wide entity, including Hilltop. This margin, which is the PRC-wide rate from the final determination of the LTFV investigation, is the highest dumping margin on the record of any segment of this proceeding, and the rate currently applicable to the PRC-wide entity.<sup>39</sup>

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<sup>34</sup> See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 68 FR 19504, 19507 (April 21, 2003).

<sup>35</sup> See KYD, Inc. v. United States, 607 F.3d 760, 766-67 (CAFC 2010) (“KYD”); Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1190 (CAFC 1990) (“Rhone Poulenc”); NSK Ltd. v. United States, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a less-than-fair-value (“LTFV”) investigation); Kompass Food Trading Int’l v. United States, 24 CIT 678, 684 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and Shanghai Taoen International Trading Co., Ltd. v. United States, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

<sup>36</sup> See Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103-316, vol. 1, at 870 (1994) (“SAA”).

<sup>37</sup> See id.; see also Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil, 69 FR 76910, 76912 (December 23, 2004), and D&L Supply Co. v. United States, 113 F.3d 1220, 1223 (CAFC 1997).

<sup>38</sup> See KYD, 607 F.3d at 766 (citing Rhone Poulenc, 899 F.2d at 1190) (original emphasis).

<sup>39</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the People’s Republic of China, 69 FR 70997 (December 8, 2004) (“Shrimp LTFV Final”), unchanged in Administrative Review of Certain Frozen Warmwater Shrimp From the People’s Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 77 FR 53856 (September 4, 2012).

## Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>40</sup> To corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.<sup>41</sup> To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.<sup>42</sup> Independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.<sup>43</sup> In this case, the AFA rate being assigned to the PRC-wide entity (112.81 percent), including Hilltop, is the highest rate from any segment of this proceeding, and is the PRC-wide rate from final determination of the LTFV investigation.<sup>44</sup> Furthermore, no information has been presented in the current review that calls into question the reliability of this information. Thus, the Department finds that the information continues to be reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in Fresh Cut Flowers From Mexico,<sup>45</sup> the Department disregarded the highest margin in that case as adverse best information available (the predecessor to “facts available”) because the margin was based on another company’s uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been judicially invalidated.<sup>46</sup> The information used in calculating this margin was based on sales and production data submitted by the petitioner in the LTFV investigation, together with the most appropriate surrogate value

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<sup>40</sup> See SAA, at 870.

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

<sup>42</sup> See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996), unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).

<sup>43</sup> See SAA at 870; see also Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada, 70 FR 12181, 12183 (March 11, 2005).

<sup>44</sup> See Shrimp LTFV Final, 77 FR at 71003.

<sup>45</sup> See Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996).

<sup>46</sup> See D&L Supply, 113 F.3d at 1221 (the Department will not use a margin that has been judicially invalidated).

(“SV”) information available to the Department chosen from submissions by the parties in the LTFV investigation.<sup>47</sup>

Furthermore, the calculation of this margin was subject to comment from interested parties during the investigation after it was selected as the rate for the PRC-wide entity in the preliminary results.<sup>48</sup> This has been the rate applicable to the PRC-wide entity since the investigation. As there is no information on the record of this review that demonstrates that this rate is not appropriate for use as AFA, we determine that this rate continues to be relevant. Further, the CIT has held that where a respondent is found to be part of the country-wide entity based on adverse inferences, the Department need not corroborate the country-wide rate with respect to information specific to that respondent because there is “no requirement that the country-wide entity rate based on AFA relate specifically to the individual company.”<sup>49</sup>

As the 112.81 percent rate is both reliable and relevant, we determine that it has probative value. Accordingly, we determine that the calculated rate of 112.81 percent, which is the current PRC-wide rate, is in accordance with the requirement of section 776(c) of the Act that secondary information be corroborated (*i.e.*, that it have probative value). Thus, we have assigned this AFA rate to exports of the subject merchandise from the PRC-wide entity, including Hilltop.

#### Regal Revocation Request

In its request for review, Regal submitted a request for company-specific revocation pursuant to 19 CFR 351.222(e). Pursuant to section 751(d) of the Act, the Department “may revoke, in whole or in part” an antidumping duty order upon completion of a review under section 751(a) of the Act. In determining whether to revoke an antidumping duty order in part, the Department considers: (1) whether the company in question has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether during each of the three consecutive years for which the company sold the merchandise at not less than NV, it sold the merchandise to the United States in commercial quantities; and (3) the company has agreed in writing to its immediate reinstatement in the order, as long as any exporter or producer is subject to the order, if the Department concludes that the company, subsequent to revocation, sold the subject merchandise at less than NV.<sup>50</sup>

Regal’s request for revocation was accompanied by certifications, pursuant to 19 CFR 351.222(e)(1), stating that Regal has sold subject merchandise at not less than NV for at least three consecutive review periods and that they will not sell the merchandise at less than NV in the future, and that Regal sold subject merchandise to the United States in commercial quantities

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<sup>47</sup> See Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the People’s Republic of China, 69 FR 42654, 42662 (July 16, 2004).

<sup>48</sup> See *id.*

<sup>49</sup> See Watanabe Group v. United States, 2010 Ct. Int. Trade LEXIS 144, Slip. Op. 2010-139 (2010); quoting Peer Bearing Co. - Changshan v. United States, 587 F. Supp. 2d 1319, 1327 (CIT 2008); Shandong Mach. Imp. & Exp. Co. v. United States, Slip Op. 09-64, 2009 Ct. Intl. Trade LEXIS 76, 2009 WL 2017042, at \*8 (CIT June 24, 2009) (“Commerce has no obligation to corroborate the PRC-wide rate as to an individual party where that party has failed to qualify for a separate rate”).

<sup>50</sup> See 19 CFR 351.222(e)(1).

for at least three consecutive review periods.<sup>51</sup> Regal also agreed to immediate reinstatement of the antidumping duty order, as long as any exporter or producer is subject to the order, if the Department concludes that, subsequent to its revocation, they sold the subject merchandise at less than NV.<sup>52</sup>

We note that in the fifth administrative review (“AR5”), Regal was a separate rate company and in accordance with our practice, we assigned to Regal the rate calculated for it in the fourth administrative review (“AR4”), which was zero.<sup>53</sup> Regal was a mandatory respondent and received a calculated zero percent margin in AR6.<sup>54</sup> Because the rate assigned to Regal for AR5 was not calculated for that review period, the Department is currently obtaining and reviewing Regal’s AR5 data. We will issue a post-preliminary decision regarding Regal’s revocation request once our review of the AR5 data is complete.

#### Preliminary Determination of No Shipments

As discussed in the Background section above, SYEC, Allied Pacific Group, and Smart Foods filed no shipment certifications indicating that they did not export subject merchandise to the United States during the POR. On April 20, 2012, the Department sent inquiries to CBP to determine whether CBP entry data is consistent with SYEC’s and Allied Pacific Group’s no shipments certifications and received no information contrary to that statement. On February 5, 2013, the Department sent an inquiry to CBP to determine whether CBP entry data consistent with Smart Foods no shipment certification and received no information contrary to that statement. As CBP only responds to the Department’s inquiry when there are records of shipments from the company in question<sup>55</sup> and no party submitted comments, we preliminarily determine that SYEC, Allied Pacific Group, and Smart Foods had no shipments during the POR.

Based on SYEC’s, Allied Pacific Group’s, and Smart Foods certifications and our analysis of CBP information, we preliminarily determine that SYEC, Allied Pacific Group, and Smart Foods did not have any reviewable transactions during the POR. In addition, the Department finds that consistent with its recently announced refinement to its assessment practice in NME cases, it is appropriate not to rescind the review in part in this circumstance but, rather, to complete the review with respect to SYEC, Allied Pacific Group, and Smart Foods and issue appropriate instructions to CBP based on the final results of the review.<sup>56</sup>

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<sup>51</sup> See Regal’s Request for Administrative Review and Revocation, dated February 28, 2012, at 2-3.

<sup>52</sup> See *id.*, at 3.

<sup>53</sup> See *id.*

<sup>54</sup> See *id.*, at 3.

<sup>55</sup> See 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); Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Notice of Intent to Rescind Administrative Review, 74 FR 3559, 3560 (January 21, 2009); and Certain In-Shell Raw Pistachios from Iran: Rescission of Antidumping Duty Administrative Review, 73 FR 9292, 9293 (February 20, 2008).

<sup>56</sup> See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694 (October 24, 2011) and the “Assessment Rates” section, below.

## Non-Market Economy Country

The Department considers the PRC to be an NME country.<sup>57</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results.

## Surrogate Country and Surrogate Value Data

On June 25, 2012, the Department sent interested parties a letter inviting comments on surrogate country selection and SV data.<sup>58</sup> On July 9, 2012, Processors submitted surrogate country comments.<sup>59</sup> On July 18, 2012, the Department extended the deadline for SV comments to August 27, 2012.<sup>60</sup> On August 24, 2012, the Department further extended the deadline to submit SV comments to September 24, 2012.<sup>61</sup> On September 24, 2012, Petitioners and Processors submitted SV comments.<sup>62</sup>

## Surrogate Country

When the Department investigates imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production ("FOPs"), valued in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the SVs are discussed under the Normal Value section below and in the Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Josh Startup, Case Analyst, Office 9, "Seventh Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of

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<sup>57</sup> See Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results, 76 FR 62765, 62767-68 (October 11, 2011) ("KASR from the PRC 1<sup>st</sup> Review Preliminary Results"), unchanged in Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review, 77 FR 21734 (April 11, 2012) ("KASR from the PRC 1<sup>st</sup> Review Final Results").

<sup>58</sup> See the Department's Letter to All Interested Parties, Re: the Second Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Deadlines for Surrogate Country and Surrogate Value Comments, dated June 25, 2012 ("Surrogate Country and Values Memo").

<sup>59</sup> See Letter to the Department from Processors, Re: Processors' Surrogate Country Selection Comments, dated July 9, 2012.

<sup>60</sup> See Memo to the File, from Katie Marksberry, Senior International Trade Specialist, Office 9, Import Administration, Subject: Extension of Deadline for Submission of Publicly Available Information to Value Factors, dated July 18, 2012.

<sup>61</sup> See Memo to the File, from Katie Marksberry, Senior International Trade Specialist, Office 9, Import Administration, Subject: Extension of Deadline for Submission of Publicly Available Information to Value Factors, dated August 24, 2012.

<sup>62</sup> See Letter to the Department from Petitioners, Re: Submission of Publicly Available Information to Value Factors of Production, dated September 24, 2012, and Letter to the Department from Processors, Re: Processors' Surrogate Value Submission, dated September 24, 2012.

China: Surrogate Factor Valuations for the Preliminary Results,” dated concurrently with this notice (“Surrogate Value Memo”).

As discussed in the NME Country Status section, above, the Department considers the PRC to be an NME country. The Department determined that Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine are countries comparable to the PRC in terms of economic development.<sup>63</sup> Based on Global Trade Atlas (“GTA”) export data, the Department determined that Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand and Ukraine all had significant exports of identical or comparable merchandise during the POR. Therefore, we consider all of these countries to be significant producers based on the existence of exports during the POR. Moreover, it is the Department’s practice to select an appropriate surrogate country based on the availability and reliability of data from these countries.<sup>64</sup>

Processors submit that of the countries listed on the Department’s Surrogate Country List Thailand is the closest to the PRC in its level of economic development and is a significant producer of identical or comparable merchandise.<sup>65</sup> Additionally, Processors note that Thailand was selected as the surrogate country by the Department in the sixth administrative review (“AR6”) of this proceeding, and that the other five potential surrogates considered in the AR6 are also included in the list for this review, making the Department’s analysis in that review applicable to this segment.<sup>66</sup>

### Economic Comparability

As explained in our Surrogate Country List, the Department considers Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine as all comparable to the PRC in terms of economic development.<sup>67</sup> Therefore, we consider all seven countries on the Surrogate Country List as having met this prong of the surrogate country selection criteria. Accordingly, unless we find that all of these countries are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data or are unsuitable for use for other reasons, or we find that another equally comparable country is an appropriate surrogate, we will rely on data from one of these countries.<sup>68</sup>

### Significant Producers of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the

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<sup>63</sup> See the Department’s letter to All Interested Parties, dated June 25, 2012 (“Surrogate Country List”).

<sup>64</sup> See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process, dated March 1, 2004 (“Policy Bulletin”).

<sup>65</sup> See Processors’ Surrogate Country Selection Comments, submitted July 9, 2012, (“Processors’ SC Comments”) at 3-4.

<sup>66</sup> See *id.*, at 1.

<sup>67</sup> See Surrogate Country List.

<sup>68</sup> See Certain Cased Pencils From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent Not To Revoke Order In Part: 2010-2011, 78 FR 2363 (January 11, 2013), and Decision Memorandum for Preliminary Results of 2010- 2011 Antidumping Duty Administrative Review: Certain Cased Pencils from the People’s Republic of China, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Import Administration, dated January 2, 2013, at 6.

Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the Policy Bulletin for guidance on defining comparable merchandise. The Policy Bulletin states that "the terms 'comparable level of economic development,' 'comparable merchandise,' and 'significant producer' are not defined in the statute."<sup>69</sup> The Policy Bulletin further states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."<sup>70</sup> Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.<sup>71</sup> Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.<sup>72</sup> "In cases where the identical merchandise is not produced, the team must determine if other merchandise that is comparable is produced. How the team does this depends on the subject merchandise."<sup>73</sup> In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.<sup>74</sup>

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.<sup>75</sup> Moreover, while the legislative history provides that the term "significant producer" includes any country that is a significant "net exporter,"<sup>76</sup> it does not preclude reliance on additional or alternative metrics. In this case, we examined export data published by GTA to determine which countries included on the Surrogate Country List were producers of comparable merchandise. GTA export data indicate that all of the countries listed on the Surrogate Country List had exports of the primary HTS numbers included in the scope of the order during the POR, *i.e.*, of HTS numbers 0306.13 and 1605.20. However, Indonesia and Thailand had the largest and second largest export volumes, respectively, of the aforementioned HTS numbers.

As noted above, all countries on the Surrogate Country List had exports of HTS numbers included in the scope of the order, according to GTA export data, making them significant

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<sup>69</sup> See [Policy Bulletin](#).

<sup>70</sup> See *id.*

<sup>71</sup> The Policy Bulletin also states that "if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise." See *id.*, at note 6.

<sup>72</sup> See [Sebacic Acid from the People's Republic of China: Final Results of Antidumping Duty Administrative Review](#), 62 FR 65674 (December 15, 1997), and accompanying Issues and Decision Memorandum at Comment 1 (to impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute).

<sup>73</sup> See [Policy Bulletin](#), at 2.

<sup>74</sup> See *id.*, at 3.

<sup>75</sup> See section 773(c) of the Act; [Nation Ford Chem. Co. v. United States](#), 166 F.3d 1373, 1377 (Fed. Cir. 1990).

<sup>76</sup> See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

producers during the POR. Since none of the potential surrogate countries have been definitively disqualified through the above analysis, the Department looks to the availability of SV data to determine the most appropriate surrogate country.

### Data Availability

When evaluating SV data, the Department considers several factors including whether the SV is publicly available, contemporaneous with the POR, represents a broad-market average, from an approved surrogate country, tax- and duty-exclusive, and specific to the input. There is no hierarchy among these criteria. 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.<sup>77</sup> In this case, Petitioners placed SV data on the record of this review for Thailand, including prices for broodstock, and financial statements for a Thai processor of subject merchandise.<sup>78</sup> Processors placed SV data on the record for Thailand, including financial statements of a Thai processor of subject merchandise.<sup>79</sup> Additionally, Processors submitted an Indian SV to value shrimp feed, noting that the Department had previously found the Thai value is aberrational.<sup>80</sup> We note that Regal reported that it farms its own shrimp,<sup>81</sup> and raises young broodstock until they are sexually mature.<sup>82</sup> Because broodstock are an essential part of Regal's farming of its own shrimp, we consider broodstock as the primary input of Regal's production process and the most important input in our analysis.

In addition to the SV data placed on the record by interested parties, we conducted an extensive search for SVs from other countries included on the Surrogate Country List. As stated above, the Department considers broodstock to be the main input for shrimp production, and we note that the Thai GTA data contain a viable value for broodstock for the POR. The Department also notes that only Indonesia and the Philippines have specific HTS numbers for broodstock, which also contained pricing data for broodstock during the POR. However, a search for financial statements from other countries on the surrogate country list did not produce any usable statements, leaving only the Thai financial statements placed on the record by interested parties.

While we recognize potential issues with the two financial statements on the record from Thailand, we find the SV data from Thailand, as a whole, to be more robust than the available data from Indonesia and the Philippines. The Thai data on the record includes two viable financial statements and a GTA value for the broodstock input, making Thailand the best choice for a surrogate country. Furthermore, the Department finds that because the Thai GTA value for shrimp feed appears to be aberrational, as discussed below, Thailand does not have the best data

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<sup>77</sup> See Policy Bulletin.

<sup>78</sup> See Petitioners' Surrogate Value Submission dated September 24, 2012, at Attachments 2 and 5.

<sup>79</sup> See Processors' Surrogate Value Submission dated September 24, 2012.

<sup>80</sup> See id., at 2, and Attachment 1.

<sup>81</sup> See Regal's Section C&D Questionnaire Response dated July 10, 2012, at Exhibit D-2 ("Regal C&D").

<sup>82</sup> Regal defines broodstock as "a group of mature individual shrimp used in aquaculture for breeding purposes." See Regal's August 28, 2012 submission at Exhibit SD-3. Regal explains that the broodstock are put into separate pools according to their sex, where they are raised until they become sexually mature. Once they mature the broodstock becomes a spawner, where they go through a breeding process and lay eggs which hatch into larvae. The larvae are then raised into the required size of shrimp and become subject merchandise. See Regal C&D at Exhibit D-2.

upon which to base the shrimp feed SV. Rather, Indonesia has a viable SV for shrimp feed that meets the Department's SV criteria. However, Indonesia lacks any publicly available financial statements and, therefore, is not the best choice for a surrogate country. For further discussion of this issue, see Surrogate Value Memo.

Therefore, the Department finds Thailand to be the best choice for a surrogate country because Thailand is at a comparable level of economic development pursuant to 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available and reliable SV data, with the exception of an SV for shrimp feed, and two financial statements. Given the above facts, the Department has selected Thailand as the primary surrogate country for this review.<sup>83</sup>

#### Date of Sale

Regal reported that the date of sale was determined by the invoice date.<sup>84</sup> In this case, as the Department found no evidence contrary to Regal's claims that invoice date was the appropriate date of sale, the Department used invoice date as the date of sale for these preliminary results in accordance with 19 CFR 351.401(i).<sup>85</sup>

#### Targeted Dumping

In antidumping investigations, the Department examines whether to use the average-to-transaction method by using a targeted dumping analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of an administrative review, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in an administrative review is, in fact, analogous to the issue in antidumping investigations. Accordingly, the Department finds the analysis that has been used in antidumping investigations may be instructive for purposes of examining whether to apply the average-to-transaction method in this administrative review.

In recent antidumping investigations and administrative reviews where the Department has addressed targeted dumping allegations, the Department has employed the Nails test<sup>86</sup> for each respondent subject to an allegation.<sup>87</sup> The Department in the preliminary results of this

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<sup>83</sup> See Surrogate Value Memo.

<sup>84</sup> See Regal Section A.

<sup>85</sup> See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

<sup>86</sup> See Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 33977 (June 16, 2008) and Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value, 73 FR 33985 (June 16, 2008) (collectively, "Nails"), as modified in more recent investigations, e.g., Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011); see also Mid Continent Nail Corp. v. United States, Slip. Op. 2010-47 (CIT 2010) and Mid Continent Nail Corp. v. United States, Slip. Op. 2010-48 (CIT 2010).

<sup>87</sup> See, e.g., Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value, 75 FR 14569 (March 26, 2010); Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and

administrative review for Regal has applied the Nails test, a two-step process as described below, in order to consider whether to use the average-to-transaction method so that parties may comment on this approach.

In the first stage of the test, the “standard deviation test,” the Department determined the share of alleged targeted group’s sales of subject merchandise (by sales volume) that are at prices more than one standard deviation below the weighted-average price of all sales under review, targeted and non-targeted. The Department calculated the standard deviation on a product-specific basis (*i.e.*, by control number (“CONNUM”)) using the weighted-average prices for the alleged targeted groups and the groups not alleged to have been targeted. If that share did not exceed 33 percent, then the Department did not conduct the second stage of the Nails test. If that share exceeded 33 percent, on the other hand, then we proceeded to the second stage of the Nails test.

In the second stage, the “gap test,” the Department examined all sales of identical merchandise (*i.e.*, by CONNUM) sold to the alleged targeted group which passed the standard deviation test. From those sales, the Department determined the total volume of sales for which the difference between the weighted-average price of sales to the alleged targeted group and the next higher weighted-average price of sales to a non-targeted group exceeds the average price gap (weighted by sales volume) between the non-targeted groups. The Department weighted each of the price gaps between the non-targeted groups by the combined sales volume associated with the pair of prices for the non-targeted groups that defined the price gap. If the share of the sales that met this test exceeded five percent of the total sales volume of subject merchandise to the alleged targeted group, then the Department considered these sales to have been targeted.

If the Department determined that a sufficient volume of U.S. sales were found to have passed the Nails test, then the Department considered whether the average-to-average method could take into account the observed price differences. To do this, the Department evaluated the difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using the average-to-transaction method. Where there was a meaningful difference between the results of the average-to-average method and the average-to-transaction method, then the Department would find that the average-to-average method could not take into account the observed price differences, and the average-to-transaction method would be used to calculate the weighted-average margin of dumping for the respondent in question.

#### Results of the Targeted Dumping Analysis

For Regal, the Department preliminarily finds that a pattern of EPs for comparable merchandise that differ significantly among time periods does not exist, and, therefore, the Department has not considered whether the average-to-average method can take into account the observed price differences.<sup>88</sup> Accordingly, the Department determines, pursuant to 19 CFR 351.414(c)(1), to calculate the weighted-average dumping margin for Regal using the average-to-average method for these preliminary results.

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Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010); and Certain Coated Paper Suitable for High- Quality Print Graphics Using Sheet-Fed Presses From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 59217 (September 27, 2010).

<sup>88</sup> See Regal Analysis Memo, at 9.

## Fair Value Comparisons

To determine whether sales of certain frozen warmwater shrimp to the United States by Regal were made at less than NV, the Department compared the EP to NV, as described in the U.S. Price, and Normal Value sections below. In these preliminary results, the Department applied the average-to-average comparison methodology adopted in the Final Modification for Reviews.<sup>89</sup> In particular, the Department compared monthly, weighted-average EPs with monthly, weighted-average NVs, and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

## Export Price

In accordance with section 772(a) of the Act, we calculated the EP for sales to the United States for Regal, because the first sale to an unaffiliated party was made before the date of importation and the use of constructed EP was not otherwise warranted. We calculated EPs for Regal based on the prices to its unaffiliated purchasers in the United States. In accordance with section 772(c) of the Act, where appropriate, we deducted from the starting price to unaffiliated purchasers foreign inland freight, foreign brokerage and handling, customs duties, domestic brokerage and handling and other movement expenses incurred. For the expenses that were either provided by an NME vendor or paid for using an NME currency, we used SVs as appropriate.<sup>90</sup> Regal reported ME international freight expenses paid for in an ME currency, and therefore we preliminarily used these reported expenses.<sup>91</sup> Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for Regal, see Regal Analysis Memo.

## Normal Value

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

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<sup>89</sup> See Final Modification for Reviews.

<sup>90</sup> See Memorandum to The File, through Catherine Bertrand, Program Manager, Office 9, from Josh Startup, Case Analyst, Re: Certain Frozen Warmwater Shrimp from the People's Republic of China: Surrogate Values for the Preliminary Results, dated March 4, 2013 ("Prelim Surrogate Value Memo") for details regarding the SVs for movement expenses.

<sup>91</sup> See Memorandum to The File, through Catherine Bertrand, Program Manager, Office 9, from Josh Startup, Case Analyst, Re: Analysis Memorandum for the Preliminary Results of the Seventh Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Zhanjiang Regal Integrated Marine Resources Co., Ltd., dated March 4, 2013 ("Regal Analysis Memo").

## Factor Valuations

In accordance with section 773(c) of the Act, for subject merchandise produced by Regal, the Department calculated NV based on the FOPs reported by Regal for the POR. The Department used Indonesian and Thai import data and other publicly available Thai sources in order to calculate SVs for Regal's FOPs. To calculate NV, the Department multiplied the reported per-unit FOP quantities by publicly available Regal SVs. The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.<sup>92</sup>

As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We added to each Thai import SV a surrogate freight cost calculated from the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the decision of the CAFC in Sigma Corp. v. United States, 117 F.3d 1401, 1408 (Fed. Cir. 1997). Additionally, where necessary, the Department adjusted SVs for inflation and exchange rates, taxes, and the Department converted all applicable FOPs to a per-kilogram ("kg") basis.

Furthermore, with regard to the Thai import-based SVs, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from India, Indonesia and South Korea may have been subsidized because we have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies.<sup>93</sup> Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.<sup>94</sup> Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.<sup>95</sup> Rather, the Department bases its decision on information that is available to it at

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<sup>92</sup> See, e.g., Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 48195 (August 18, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>93</sup> See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20.

<sup>94</sup> See 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 7.

<sup>95</sup> See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988); see also Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China, 72 FR 30758, 30763 (June 4, 2007), unchanged in Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007).

the time it makes its determination. Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an “unspecified” country from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.<sup>96</sup> Therefore, we have not used prices from these countries either in calculating the Thai import-based SVs or in calculating ME input values.

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (i.e., not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization.<sup>97</sup> Where the Department finds ME purchases to be of significant quantities (i.e., 33 percent or more), in accordance with our statement of policy as outlined in Antidumping Methodologies: Market Economy Inputs,<sup>98</sup> the Department uses the actual purchase prices to value the inputs. Information reported by Regal demonstrates that international freight was sourced from an ME country and paid for in ME currencies.<sup>99</sup> The information reported by Regal also demonstrates that such this input was purchased in significant quantities (i.e., 33 percent or more) from ME suppliers; hence, the Department has used Regal’s actual ME purchase prices to value this input.<sup>100</sup> Where appropriate, freight expenses were added to the ME price of the input.

The Department used Thai Import Statistics from GTA to value the raw material, certain energy inputs and packing material inputs that Regal used to produce subject merchandise during the POR, except where listed below.

Processors noted that, in the AR6, the Department determined the Thai GTA value for feed to be aberrational.<sup>101</sup> Therefore, Processors placed on the record GTA data from Indonesia, which the Department used in the AR6, and Indian GTA data for the current POR.<sup>102</sup> Petitioners placed on the record GTA data for Thai Shrimp feed for the POR.<sup>103</sup>

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<sup>96</sup> See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People’s Republic of China, 69 FR 75294, 75300 (December 16, 2004), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People’s Republic of China, 70 FR 24502 (May 10, 2005).

<sup>97</sup> See, e.g., Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27366 (May 19, 1997).

<sup>98</sup> See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, 61717-61718 (October 19, 2006) (“Antidumping Methodologies: Market Economy Inputs”).

<sup>99</sup> See Regal’s Section C Questionnaire Response, dated July 10, 2012, at C-2 and C-3.

<sup>100</sup> See id. at C-3, and Exhibit C-2. See also Regal’s Supplemental Questionnaire Response dated November 2, 2012, at 10, Exhibit S3-11 and Exhibit S3-12.

<sup>101</sup> See Processors’ Surrogate Value Submission dated September 24, 2012, at 2, citing Certain Frozen Warmwater Shrimp from the People’s Republic of China: Preliminary Results, Partial Rescission, Extension of Time Limits for the Final Results, and Intent to Revoke, in Part, of the Sixth Antidumping Duty Administrative Review, 77 FR 12801, 12808 (March 2, 2012) (“AR6 Preliminary Results”).

<sup>102</sup> See id., at 2 and Attachment 1.

<sup>103</sup> See Petitioners Submission of Publicly Available Information to Value Factors of Production, dated September 24, 2012, at 2 and Attachment 2.

We note that for the current POR, the average unit value (“AUV”) of Thai shrimp feed imports was \$28.40/kg, while the AUVs of Indonesian and Philippine shrimp feed imports were \$1.04/kg and \$1.00/kg, respectively.<sup>104</sup> In AR6, we found that the AUV for Thai shrimp feed of \$14.54/kg was aberrational when compared to AUVs for periods corresponding to the fourth (\$2.6/kg) and fifth (\$25.49/kg) administrative reviews of this case.<sup>105</sup> As in AR6, while the Department is unable to determine the root cause of this variance, we do find that it may indicate aberrational data when compared to the AUVs of previous PORs.<sup>106</sup> Therefore, the Department has looked to other potential sources by which to value shrimp feed for these preliminary results. It is the Department’s preference to value all FOPs in a single surrogate country, when possible, consistent with 19 CFR 351.408(c)(2), which states that “the Secretary normally will value all factors in a single surrogate country.” However, where no suitable SV is available from the primary surrogate country, the Department has valued FOPs in other countries that have been found to be significant producers of comparable merchandise and economically comparable to the NME country in question.<sup>107</sup> As such, to value shrimp feed, the Department is placing shrimp feed import data for Indonesia, the second largest producer and exporter of shrimp, on the record of this review because it does not appear to be aberrational, it is contemporaneous with the POR, it is a broad-market average, it is specific to the input and it is tax and duty exclusive. For further discussion of this issue, see Surrogate Value Memo.

To value water, the Department used data published by the Metropolitan Waterworks Authority of Thailand (<http://www.mwa.co.th>) specific to prices charged to Commerce, Government Agency, State Enterprise and Industry. Although this source states that the published prices are effective as of December 1999 there is no information to indicate that these prices are not still in effect.<sup>108</sup>

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in Thailand. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Thailand that is published in Doing Business 2012: Thailand by the World Bank.<sup>109</sup>

We used Thai transport information in order to value the freight-in cost of the raw materials. The Department determined the best available information for valuing truck freight to be from Doing Business 2012: Thailand. This World Bank report gathers information concerning the distance and cost to transport products in a 20-foot container from the largest city in Thailand to the nearest seaport. We calculated the per-unit inland freight costs using the distance from

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<sup>104</sup> See Prelim Surrogate Value Memo, at 4.

<sup>105</sup> See AR6 Preliminary Results, 77 FR at 12808, and Memorandum To: The File, Through: Catherine Bertrand, Program Manager, Office 9, Import Administration, From: Kabir Archuleta, Case Analyst, Office 9, Subject: Sixth Administrative Review of Certain Frozen Warmwater Shrimp from the People’s Republic of China: Surrogate Factor Valuations for the Preliminary Results, at 4-6.

<sup>106</sup> See Prelim Surrogate Value Memo, at 4.

<sup>107</sup> See Tapered Roller Bearings, and accompanying Issues and Decision Memorandum at Comment 3; see also Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 70 FR 12651 (March 15, 2005), and accompanying Issues and Decision Memorandum at Comment 3.

<sup>108</sup> See Prelim Surrogate Value Memo.

<sup>109</sup> See Prelim Surrogate Value Memo.

Thailand's largest city, Bangkok, to the nearest seaport. The inland freight costs in the World Bank report are for shipping a 20-foot container. We calculated a per-kg, per-kilometer surrogate inland freight rate of 0.0022 U.S. dollars per-kilometer per-kg based on the methodology used by the World Bank.<sup>110</sup>

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.<sup>111</sup> In Labor Methodologies, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. 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 Labor Statistics ("Yearbook").

As announced above, the Department's methodology is to use data reported under Chapter 6A by the ILO. For this review the Department found that Thailand last reported data in 2000 for Chapter 6A under Sub-Classification 15 of the ISIC-Revision 3, which we have adjusted for the POR using the relevant consumer price index as published by the International Monetary Fund's International Financial Statistics under series "64..ZF Consumer Prices." Accordingly, we are relying on Chapter 6A of the Yearbook, and have calculated the labor input using Sub-Classification 15 "Manufacture of Food Products and Beverages" labor data reported by Thailand to the ILO, in accordance with section 773(c)(4) of the Act. A more detailed description of the wage rate calculation methodology is provided in the Surrogate Value Memo.

As stated above, the Department used Thailand ILO data reported under Chapter 6A of the ILO Yearbook, which reflects all costs related to labor, including wages, benefits, housing, training, etc. Pursuant to Labor Methodologies, the Department's practice is to consider whether financial ratios reflect labor expenses that are included in other elements of the respondent's FOPs (e.g., general and administrative expenses). However, the financial statements used to calculate financial ratios in this review were insufficiently detailed to permit the Department to isolate whether any labor expenses were included in other components of NV. Therefore, in this review, the Department made no adjustment to these financial statements.<sup>112</sup>

To value factory overhead, selling, general, and administrative expenses ("SG&A"), and profit, the Department used the audited financial statements of the Thai shrimp processors Kiang Huat Sea Gull Trading Frozen Food Public Company Limited ("Kiang Huat")<sup>113</sup> and Surapon Foods Public Company Limited ("Surapon") for 2011.<sup>114</sup> When the Department selects a surrogate value for "manufacturing overhead, general expenses and profit," 19 CFR 351.408(c)(4) provides that the Department will "normally" "use nonproprietary information gathered from products of identical or comparable merchandise in the surrogate country." Kiang Huat's and Surapon's statements were the only financial statements on the record of this review, and neither company's production experience is identical to that of the respondents because the two

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<sup>110</sup> See id.

<sup>111</sup> See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) ("Labor Methodologies").

<sup>112</sup> See Prelim Surrogate Value Memo.

<sup>113</sup> See Processors' Surrogate Value Comments, dated September 24, 2012, at Attachment 5 ("Processors' SV Comments").

<sup>114</sup> See Petitioners' Surrogate Value Comments, dated September 24, 2012, at Attachment 5 ("Petitioner's SV Comments").

surrogate financial statements reflect that they only process shrimp and do not also farm shrimp. Nonetheless, we believe that the production experience of Kiang Huat and Surapon are comparable to the respondents.<sup>115</sup>

In determining the suitability of SVs, the Department carefully considers the available evidence with respect to the particular facts of each case and evaluates the suitability of each source on a case-by-case basis.<sup>116</sup> Accordingly, when examining the merits of financial statements on the record, the Department does not have an established hierarchy that automatically gives certain characteristics more weight than others. Rather, the Department must weigh available information with respect to each situation and make a product and case-specific decision as to what constitutes the “best” available information. Furthermore, the CIT has recognized the Department’s discretion in selecting the best SVs on the record.<sup>117</sup>

Although the Department’s standard criteria for selecting financial statements in calculating surrogate financial ratios also includes examining the level of integration of the surrogate company in order to approximate the overhead costs, SG&A, and profit levels of the respondent,<sup>118</sup> the CIT has held that the Department is “neither required to duplicate the exact production experience of the integrated manufacturers, nor undergo an item by item analysis in calculating factory overhead.”<sup>119</sup> Moreover, it has been our experience that it is rarely possible to achieve exact symmetry between the NME producer and the surrogate producer.<sup>120</sup>

While the Department notes that both financial statements state that the companies receive promotional privileges under the Industrial Investment Promotion Act,<sup>121</sup> there is nothing in the financial statements to indicate that these promotional privileges were export contingent or based upon some other criteria that would make the receipt of these privileges countervailable.

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<sup>115</sup> See Processors’ SC Comments at Attachment 5, page 10 (“The principal business of the Company {Kiang Huat} is frozen seafood manufacturing”), and Petitioner’s SV Comments at Attachment 5 page 12 (“The principal businesses of the Company {Surapon} and its subsidiaries are the manufacturing and distribution of seafood, finished and semi-finished frozen foods.”).

<sup>116</sup> See Certain Preserved Mushrooms from the People’s Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review, 71 FR 40477 (July 17, 2006), and accompanying Issues and Decision Memorandum at Comment 1; see also 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), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>117</sup> The CIT has upheld its previous determinations that “when Commerce is faced with the decision to choose between two reasonable alternatives and one alternative is favored over the other in their eyes, then they have the discretion to choose accordingly.” See FMC Corp. v. United States, 27 CIT 240, 241 (CIT 2003), (citing Technoimportexport, UCF America Inc. v. United States, 783 F. Supp. 1401, 1406 (CIT 1992)), affirmed FMC Corp. v. United States, 87 Fed. Appx. 753 (Fed. Cir. 2004).

<sup>118</sup> See Drill Pipe from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances, 76 FR 1966 (January 11, 2011), and accompanying Issues and Decision Memorandum at Comment 5.

<sup>119</sup> See Rhodia, Inc. v. United States, 240 F. Supp. 2d 1247 (CIT 2002).

<sup>120</sup> See Bulk Aspirin from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 48337 (August 13, 2003), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>121</sup> See Processors’ SV Comments at Attachment 5, page 33, and Petitioner’s SV Comments at Attachment 5, page 99.

Therefore, in this instance, we find that the Department’s legislative obligation to avoid using values potentially distorted by subsidies outweighs the difference in levels of integration between the surrogate company and the respondents. Accordingly, for these preliminary results we have calculated the surrogate financial ratios based on the financial statements of Kiang Huat and Surapon, which we find to be the best available information on the record because they do not contain evidence that the companies received a countervailable subsidy during the POR from a program previously investigated by the Department.

Additionally, we note that the Kiang Huat and Surapon financial statements do not identify energy expenses. When the Department is unable to segregate and, therefore, exclude energy costs from the calculation of the surrogate financial ratio, it is the Department’s practice to disregard the respondents’ energy inputs in the calculation of NV in order to avoid double-counting energy costs which have necessarily been captured in the surrogate financial ratios.<sup>122</sup>

#### Currency Conversion

Where necessary, the Department 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.

#### Conclusion

We recommend applying the above methodology for these preliminary results.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Import Administration

\_\_\_\_\_  
(Date)

<sup>122</sup> See 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, 16839 (April 13, 2009), and accompanying Issues and Decision Memorandum at Comment 2. See Surrogate Value Memo.