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NSR: 9/1/04 - 10/5/05

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DATE: April 9, 2007

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results in the
2004/2005 Administrative and New Shipper Reviews of
Freshwater Crawfish Tail Meat from the People's Republic of
China

SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the 2004/2005 administrative review and new shipper reviews ("NSR") of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China ("PRC"). The period of review ("POR") is September 1, 2004, to August 31, 2005.¹ As a result of our analysis, we have made changes to the preliminary results. See Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2005 Administrative and New Shipper Reviews, 71 FR 59432 (October 10, 2006) (Preliminary Results). We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is a complete list of issues for which we have received comments:

General Issues

Comment 1: Surrogate Financial Ratios

Comment 2: Surrogate Wage Rate

Company-Specific Issues

Comment 3: Bona Fides of Xuzhou Jinjiang Foodstuffs Co., Ltd.'s Sale(s)

¹ We note that Xuzhou Jinjiang's POR, 9/1/04 to 10/5/05, was extended to cover the entry of one of its POR sales.

Background

We published the Preliminary Results of the 2004/2005 administrative and new shipper reviews in the Federal Register on October 10, 2006, and invited comments from interested parties. In the Preliminary Results, the Department of Commerce (“the Department”) found that the POR sales made by the new shippers, Xiping Opeck Food Co., Ltd. (“Xiping Opeck”) and Xuzhou Jinjiang Foodstuffs Co., Ltd. (“Xuzhou Jinjiang”), were bona fide sales, and provided a reasonable or reliable basis for calculating an antidumping margin for the preliminary results of these new shipper reviews. Moreover, the Department found that the POR sales made by Xiping Opeck and Qingdao Jinyongxiang Aquatic Foods Co., Ltd. (“Qingdao JYX”) were made at less than fair value.

On October 30, 2006, the Department received publicly available information, for purposes of valuing factors of production, from the Crawfish Processors Alliance, the Louisiana Department of Agriculture and Forestry, and Bob Odom, Commissioner (collectively, “Domestic Parties”), pursuant to 19 CFR 351.301(c)(3). See Letter to the U.S. Department of Commerce, from Domestic Parties, regarding Freshwater Crawfish Tail Meat from the People’s Republic of China: 2004-05 Administrative Review (October 30, 2006) (“Domestic Parties’ PAI Submission (AR)”), see also Freshwater Crawfish Tail Meat from the People’s Republic of China: 2004-05 New Shipper Review (October 30, 2006) (“Domestic Parties’ PAI Submission (NSR)”). On November 9, 2006, Xuzhou Jinjiang submitted rebuttal surrogate value information responding to Domestic Parties’ October 30, 2006, surrogate value information. See Letter to the U.S. Department of Commerce, from Xuzhou Jinjiang, regarding Freshwater Crawfish Tail Meat from the People’s Rep. of China; Surrogate Value Rebuttal (November 9, 2006) (“Xuzhou Jinjiang’s PAI Rebuttal Submission”)

On November 9, 2006, the Department received a case brief from Domestic Parties as well as Xuzhou Jinjiang. See Case Brief from Domestic Parties, regarding Freshwater Crawfish Tail Meat from the People’s Republic of China: 2004-05 Administrative Review (November 9, 2006) (“Domestic Parties’ AR Case Brief”); Case Brief from Domestic Parties, regarding Freshwater Crawfish Tail Meat from the People’s Republic of China: 2004-05 New Shipper Review (November 9, 2006) (“Domestic Parties’ NSR Case Brief”); Case Brief from Xuzhou Jinjiang, regarding Freshwater Crawfish Tail Meat from the People’s Rep. Of China; Comment on the Preliminary Results (November 9, 2006) (“Xuzhou Jinjiang Case Brief”). Additionally, on November 14, 2006, we received rebuttal briefs from Domestic Parties and Xuzhou Jinjiang. See Freshwater Crawfish Tail Meat From the People’s Republic of China: Petitioner’s Rebuttal Brief, dated April 14, 2006 (“Petitioner’s Rebuttal Brief”). See Rebuttal Brief from Domestic Parties, regarding Freshwater Crawfish Tail Meat from the People’s Republic of China: 2004-05 New Shipper Review (November 14, 2006) (“Domestic Parties’ NSR Rebuttal Brief”), Rebuttal Brief from Xuzhou Jinjiang, regarding Freshwater Crawfish Tail Meat from the People’s Rep. Of China; Comment on the Preliminary Results (November 14, 2006) (“Xuzhou Jinjiang Rebuttal Brief”). No parties requested a hearing in this new shipper review.

On February 2, 2007, the Department placed revised expected non-market economy (“NME”) wage rates on its website and on the record of the above-referenced review, (see, e.g., <http://ia.ita.doc.gov/wages/index.html>) and offered interested parties an opportunity to submit comments on the revised wage rates, as the period for submission of case briefs and rebuttal briefs had already passed. On February 7, 2007, Xuzhou Jinjiang submitted comments on the revised wage rate. See Xuzhou Jinjiang Wage Rate Comments, dated February 7, 2007 (“XJ Wage Rate Comments”). No other comments on the revised wage rates were submitted.

Based on the comments summarized below, we have made certain revisions for the final results.

Discussion of the Issues

Comment 1: Surrogate Financial Ratios

In the Preliminary Results, the Department utilized information from the 2002/2003 financial statements of Nekkanti Sea Foods Ltd. (“Nekkanti”), an Indian producer of seafood, to calculate surrogate values for selling, general, and administrative (“SG&A”) expenses, overhead, and profit. However, on October 30, 2006, the Domestic Parties submitted the 2004/2005 financial statements of Falcon Marine Exports, Ltd. (“Falcon”), as well as calculated ratios for SG&A expenses, overhead, and profit based on information contained in the financial statements. See Domestic Parties’ PAI Submission at Exhibits 1 and 2.

Domestic Parties argued in their case brief that Falcon, like Nekkanti, is an Indian producer of shrimp. Domestic Parties assert, however, that the Falcon financial statements are more appropriate for purposes of the final results. Domestic Parties assert that utilizing the Falcon financial statements requires the consideration of issues which did not arise, or were not considered, in the Preliminary Results. First, the Domestic Parties state that the Falcon financial statements break out “the costs involved in converting raw materials of ‘feed’ and ‘seed’ into shrimp for processing.” See Domestic Parties’ AR Case Brief at 4; see also Domestic Parties’ NSR Case Brief at 4. Therefore, they argue because these costs are reported independently, they cannot be considered part of materials, labor and energy (“MLE”), but should be included in the calculation of overhead. They liken these expenses to a farmer’s costs associated with tilling soil and planting seeds.

Domestic Parties also state that the Department properly excluded Nekkanti’s movement expenses for shipping finished goods from the surrogate ratio calculations in the Preliminary Results. However, in arguing that Falcon’s financial statements should be used for the final results, Domestic Parties assert that packing costs should also be excluded from the calculations as these expenses are added to the normal value after the application of surrogate financial ratios.

The Domestic Parties also argue that the line items for “salary & wages (procurement)” and “procurement expenses” should be considered SG&A expenses. They argue the costs of paying employees to handle purchases, as well as other expenses associated with purchase apart from the

prices paid for the items, are not raw material costs. Additionally, they argue “consumables” should be included in overhead, and insurance claims which were written off should be included in SG&A. Lastly they argue that certain Indian financing schemes (i.e., the “World Turnover Packing Credit Guarantee” premium, a loan guarantee for pre-shipment advances, and the “Export Credit Guarantee Corporation of India,” which they argue assists in obtaining credit for export shipments) should be considered part of SG&A. See Domestic Parties’ AR Case Brief at 5-6; see also Domestic Parties’ NSR Case Brief at 5-6. Furthermore, they assert that the expenses associated with India’s duty entitlement pass book, which they describe as a duty drawback program, should also be included in the calculation of SG&A.

Xuzhou Jinjiang rebuts the Domestic Parties’ arguments that Falcon’s financial statements, as proposed by Domestic Parties, should be used for the final results. If they are used however, Xuzhou Jinjiang argues that certain line items should be allocated differently than that proposed by the Domestic Parties. Specifically, Xuzhou Jinjiang argues that processing charges and culture expenses should properly be considered part of MLE. Xuzhou Jinjiang agrees these expenses are akin to a farmer’s costs associated with tilling soil and planting seeds, but argue they are clearly attributable to labor and energy required during the production process, and should not be attributed to overhead. Xuzhou Jinjiang submitted a definition of “culture” which was defined as “production, development or improvement of a particular plant, animal commodity, etc.” See Xuzhou Jinjiang Rebuttal Brief at 4; see also Xuzhou Jinjiang’s PAI Rebuttal Submission. Xuzhou Jinjiang argues that production, development or improvement expenses are not appropriately attributable to overhead.

Xuzhou Jinjiang also argues that procurement expenses should be included in MLE as well. Specifically, it argues that nothing in the Falcon financial statements indicates these expenses were paid to employees. Rather, it opines that these charges are for procurements paid to middlemen or commissioned agents. Xuzhou Jinjiang further argues that schedule 13 in the financial statements includes line items for wages, bonuses, gratuity, and welfare funds.

Xuzhou Jinjiang also argues that carriage and freight expenses should be included in MLE. It contends that schedule 12 clearly denotes that these expenses are included by Falcon in its raw material expenses and are associated with the attainment of raw materials. It also argues that ‘sea freight’ and ‘shipment expenses,’ in schedule 15, should be excluded from the calculations as freight expenses, and that “monitoring fees” and “inspection charges” should be excluded from the ratio calculations as they relate to merchandise preparation and shipment. See Xuzhou Jinjiang Rebuttal Brief at 6.

Xuzhou Jinjiang further contends that ‘other income’ should be excluded from the SG&A ratio calculation as it believes it is derived from various export subsidy programs. See Xuzhou Jinjiang Rebuttal Brief at 6-7. If this is not done, Xuzhou Jinjiang argues that the entire finance charge from the financial statements, as calculated by the Domestic Parties, should be offset by the “export incentive income.” See id. Moreover, Xuzhou Jinjiang argues that the ratios include expenses that should be excluded for the ratio calculations (i.e., insurance claim written off). It

argues that the ‘super cyclone’ of 1999, and resulting loss of merchandise, led to litigation where the expenses were written off in the 2004-05 financial statements. See id. Xuzhou Jinjiang maintains that these extraordinary and unusual expenses should be excluded from the SG&A calculation, consistent with past practice. See Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuador, 60 FR 7019, 7038 (February 6, 1995) (where the Department stated: “{t}he severe wind storm damage {from a hurricane} resulted in an unusual loss of crop. To make an appropriate adjustment for this loss we have normalized the production level.”); see also Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan 61 FR 38139, 38147 (July 23, 1996) (where the Department stated: “for purposes of the final determination, we did not include any of the additional expenses incurred as a result of the accidents, irrespective of insurance coverage, in the CV for this sale.”); Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Taiwan 63 FR 40461, 40467 (July 29, 1998) (where the Department stated: “it is appropriate in this case to exclude {a respondent’s} flood damage loss from the calculations of {cost of production} and {constructed value}”). Additionally, Xuzhou Jinjiang argues the insurance claims which were written off have no bearing on the 2004-05 actual expenses of Falcon and should be omitted. See Folding Metal Tables and Chairs from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review 71 FR 38852 (July 10, 2006); see also Memorandum from Laurel LaCivita and Matthew Quigley, International Trade Compliance Analysts, through Charles Riggle, Program Manager, to Wendy Frankel, Director, AD/CVD Operations, Office 8, Preliminary Results of the 2004-2005 Administrative Review of Folding Metal Tables and Chairs from the People’s Republic of China: Surrogate Value Memorandum (June 30, 2006).

Moreover, Xuzhou Jinjiang argues that the Department improperly included Nekkanti’s “freezing and processing charges” in its overhead calculation when they should have been considered a direct manufacturing expense. See Xuzhou Jinjiang Case Brief at 2.

In rebuttal, the Domestic Parties argue that the Falcon financial statements are the most appropriate for use in the final results. Specifically, they contend that there are no financial statements of an Indian crawfish tail meat producer available. Moreover, the Domestic Parties argue that Falcon’s financial statements are more recent than Nekkanti’s by two full years and include data partially attributable to the POR, and cite the Department’s preference to use contemporaneous data in support. See Domestic Parties’ NSR Rebuttal Brief at 8; see also Import Administration Policy Bulletin No. 04.1, Non-Market Economy Surrogate Country Selection Process (March 1, 2004).

The Domestic Parties also argue that Xuzhou Jinjiang is wrong to request that ‘freezing and processing charges’ from Nekkanti’s financial statements be considered a direct manufacturing expense. The Domestic Parties assert that the costs are related to some type of processing and freezing cost, but the accounting details behind this line item are unavailable. As the record is devoid of what exactly is classified under this line item, as well as Nekkanti’s Section D questionnaire response from the less than fair value investigation of certain frozen warmwater

shrimp from India, the Domestic Parties argue parties have not examined the above-referenced submission, and Xuzhou Jinjiang's request should be rejected.

Department's Position

Pursuant to section 773(c)(1) of the Tariff Act of 1930, as amended (the Act), it is the Department's practice to use the best available information to derive the surrogate financial ratios. To determine the best information available, the Department considers several factors, including the quality, specificity, and contemporaneity of the source information.²

In deriving appropriate surrogate values for overhead, SG&A, and profit, the Department typically examines the financial statements and categorizes expenses as they relate to MLE, factory overhead, SG&A, profit, and excludes certain other expenses (e.g., certain movement expenses) in a manner consistent with the Department's practice. In this case, Domestic Parties have submitted a 2004-2005 financial statement from Falcon, a producer of comparable merchandise, which is more contemporaneous with the POR than the 2002-2003 Nekkanti financial statements, used by the Department in the Preliminary Results. However, in examining the Falcon financial statements, the Department has found that the listing of "Other Income" includes a category for "Income from Export Incentives." The statements further contain expenses which relate to an export subsidy program, the "Duty Entitlement Passbook Program" ("DEPB"), which the Department has previously determined to be a countervailable subsidy in a number of its countervailing duty investigations from India. See, e.g., Certain Iron-Metal Castings From India: Preliminary Results and Partial Recission of Countervailing Duty Administrative Review, 64 FR 61592 (November 12, 1999) (unchanged in final results); see also <http://ia.ita.doc.gov/esel/eselframes.html>.

The Department has previously determined, in certain frozen fish fillets from Vietnam, that it was appropriate to use a financial statement that appeared to contain a subsidy. However, in that case, there was insufficient information on the record regarding the subsidy program to warrant disregarding the financial statement. See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Second Administrative Review, 72 FR 13242 (March 21, 2007), and accompanying Issues and Decision Memorandum at Comment 9. The Department also has previously accepted the financial statement of Pidilite Industries Ltd. ("Pidilite"), which contained evidence that the company received a subsidy that the Department had found to be countervailable. See Carbazole Violet Pigment 23 from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value, 69 FR 67304 (November 17, 2004) (CVP 23), and accompanying Issues and Decision Memorandum at Comment 1. The subsidy at issue was found countervailable in the concurrent countervailing duty investigation of carbazole

² 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 accompanying Issues and Decision Memorandum at Comment 1.

violet pigment 23 from India.³ In that case, the only other reliable alternative was Reserve Bank of India (RBI) data.⁴ The Department stated that the petitioners had not shown that the “subsidies at issue systematically distort Pidilite’s financial ratios,” concluding that “the RBI data submitted by the respondents are not the best available information on the record because we have the financial data from a producer of identical merchandise.”⁵ As such, the financial ratios of Pidilite, a producer of identical merchandise, was considered as the best available information on the record.

As stated above, the statute directs Commerce to base the valuation of the factors of production on “the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate” Section 773(c)(1) of the Act. Moreover, in valuing such factors, Congress further directed Commerce to “avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices.” Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 576, 100th Cong., 2nd Sess., at 590-91 (1988). The Department calculates the financial ratios based on financial statements of companies producing comparable merchandise from the surrogate country, some of which may contain evidence of subsidization. However, where the Department has a reason to believe or suspect that the company may have received subsidies, the Department may consider that the financial ratios derived from that company’s financial statements are less representative of the financial experience of that company or the relevant industry than the ratios derived from financial statements that do not contain evidence of subsidization. Consequently, they do not constitute the best available information to value the surrogate financial ratios.

In this case, the Department must weigh the relative lack of contemporaneity posed by the otherwise fully acceptable Nekkanti financial statements against the Falcon statements, which

³ See Final Affirmative Countervailing Duty Determination: Carbazole Violet Pigment 23 From India, 69 FR 67321 (Nov. 17, 2004), and accompanying Issues and Decision Memorandum at IV.A.1.b. (Duty Entitlement Passbook Scheme (DEPS)).

⁴ CVP 23 at Comment 1. The RBI data was not industry-specific and was based upon either 997 or 2,204 selected public limited companies based in India.

⁵ Id. The Court of International Trade remanded this determination in Goldlink Industries Co. v. United States, 432 F.Supp. 1323, 1335 (2006), instructing Commerce to “further explain its determination in detail, specifically how the subsidies Pidilite received did not distort its financial ratios rendering them unusable.” At the same time, the Court sustained “Commerce’s decision to reject data from the RBI because the companies represented therein reflect non-CVP-23 producers, which is reasonable when data from a CVP-23 producer is available.” Id. Pursuant to the CIT’s remand instructions, Commerce examined the company’s financial statements and concluded that “based upon the information on the record, and the Department’s methodology for calculating the financial ratios, there is no indication that the financial ratios calculated by the Department for Pidilite are significantly distorted by the presence of these subsidies.” Final Results of Redetermination Pursuant to United States Court of International Trade Remand Order, October 16, 2006 at 7. This redetermination was affirmed on December 8, 2006. The Department does not believe that an attempt to analyze the potential impact of the subsidy on the financial ratios is appropriate in most instances, and particularly in this case, where another producer’s financial statement is the available alternative, rather than RBI data.

contain evidence of subsidization. Because the evidence regarding the existence of subsidization in this case relates to a subsidy program that the Department has previously found countervailable, the Department accords more weight to the existence of subsidies than the small difference in contemporaneity of the otherwise fully acceptable financial statements. Also, in contrast to CVP 23, the alternative to Falcon, Nekkanti, is still a producer of comparable merchandise. As a result of these considerations, the Department will base the financial ratios on information from Nekkanti's financial statements only.

Additionally, we disagree with Xuzhou Jinjiang's argument that Nekkanti's "processing and freezing" charges should be treated as additional manufacturing expenses, and excluded from the calculation of overhead. The Nekkanti financial statements clearly account for direct labor and energy as separate line items, such as "power and fuel" and "salaries and bonus." Thus, the Department finds that these processing and freezing charges are properly allocated to the manufacturing overhead portion of the calculation.

Comment 2: Surrogate Wage Rate

Xuzhou Jinjiang argues that the Department's surrogate wage rate of \$0.97/hour was inappropriate. Specifically, Xuzhou Jinjiang argues that the Department should value labor using wage rate data for India (i.e., \$0.23/hour) because India is a country economically comparable to China and is also a significant producer of the subject merchandise. Xuzhou Jinjiang also argues, if the Department continues to utilize its current wage rate calculation, it should revise its wage rate calculation to include all market economy countries for which there is suitable data in conformity with Dorbest Ltd., et. al. v. United States, Slip Op. 06-160 (October 31, 2006) ("Dorbest").

The Domestic Parties argue that Xuzhou Jinjiang's request for a surrogate wage rate of \$0.23/hour is inappropriate citing the Department's previous statements that a single surrogate value for wage rates would contravene the Department's regulations. See Domestic Parties' NSR Rebuttal Brief at 3; see also Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, 61720 (October 19, 2006). They also argue that because new wage rate calculations had not been posted on the Department's website at the time rebuttal briefs were submitted, the Department should follow its established practice to use the wage rate from the Preliminary Results. See <http://ia.ita.doc.gov/wages/03wages/110805-2003-Tables/03wages-110805.html> which states "{t}hese expected NME wages will be used by the Department in all segments of all NME proceedings for which the date of publication (November 9, 2005) is at least 14 days before the deadline for submission of case briefs." Lastly, the Domestic Parties argue that Xuzhou Jinjiang's reference to Dorbest is misplaced. Specifically, they argue that the U.S. Court of International Trade's ("CIT") decision in that case is not yet final, and that the opinion speaks solely to the Department's actions in another proceeding (i.e., Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China, 70 FR 329 (January 4, 2005)).

In its February 7, 2007 comments, Xuzhou Jinjiang reiterated its position on the Department's revised wage rate calculations and provided additional comments. In addition to Xuzhou Jinjiang's comments provided in its case brief, as noted above, it argues that the Department's expected wage rate calculation using the regression analysis is distortive, as it predicts wage rates significantly higher than their actual values. Xuzhou Jinjiang further states that if the Department continues in its use of its regression-based methodology, it should use the 2004 regression-based wage rate for China, instead of the 2003 wage rate.

Department's Position

The Department has reconsidered the data set used in the updated calculation of the surrogate wage rate, and as more fully described below, has determined to include all data that meet the Department's suitability requirements and that were available at the time the wage rate was calculated.

The Department is not required by statute to limit its data set in its regression analysis to economically comparable countries; however, the Department considered this option.⁶ The Department found that restricting the basket of countries to include only countries that are economically comparable to each NME country is not feasible and would undermine the consistency and predictability of the Department's regression analysis. A basket of "economically comparable" countries could be extremely small. For example, there are only three countries with gross national income ("GNI") less than US\$1,000 in the Department's revised 2004 expected NME wage rate calculation and many NME countries' GNI are around this range. A regression based on an extremely small basket of countries would be highly dependent on each and every data point.

Moreover, relative basket size would not be such a critical factor if there were a perfect correlation between GNI and wage rates. If this were the case, data from only two countries would be sufficient to calculate a precise regression line. However, as the Department has noted repeatedly, while there is a strong worldwide relationship between wage rates and GNI, there is nevertheless variability in the data.⁷ For example, in the data relied upon for the Department's revised 2004 calculation, observed wage rates did not increase in lockstep with increases in GNI in the five countries with GNI less than US\$1,000: Nicaragua, with a GNI of US\$720, had reported a wage rate of US\$0.94 per hour while Sri Lanka, with a GNI of US\$850, had reported a wage rate of US\$0.33 per hour.

⁶ See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716 (October 19, 2006).

⁷ See Memorandum to the File through Christopher D. Riker, Program Manager, AD/CVD Operation, Office 9, from Scot Fullerton, Senior International Trade Analyst, Office 9, regarding Factors of Production Valuation Memorandum for the Final Results of Antidumping Administrative and New Shipper Reviews of Freshwater Crawfish Tail Meat from the People's Republic of China, April 9, 2007) at Attachment 1.

This inevitable variability in the underlying International Labor Organization (“ILO”) data is especially true in the case of countries with a lower GNI where wage rates can be so low that even a difference of a few cents can appear to be enormous if represented in percentage terms. Because reliable wage rate data is available and there exists a consistent relationship between wage rates and GNI over time, the Department is able to avoid periodic variability through the use of a regression-based methodology for estimating wage rates. The Department calculates, in essence, an average wage rate of all market economies, indexed to each NME’s level of economic development via its GNI. Using the Department’s regression methodology, the value for labor in a particular country remains consistent despite the possible selection of different surrogate countries. This enhances the fairness and predictability of the Department’s calculations.

As stated above, a larger basket minimizes the effects of any single data point and, thereby, better captures the global relationship between wage rates and GNI. More data is, therefore, better than less data for the purposes of the Department’s regression analysis, provided it is suitable and reliable.⁸

In response to Xuzhou Jinjiang’s argument regarding the distortive effect of the regression model in predicting India’s wage rate, the Department cannot purport to produce perfect wage rates with its regression methodology, as no estimate ever can claim such precision. However, there is no inherent distortion in the model that would lead to systematic overestimation or underestimation of wages. The Department acknowledges that its regression line provides only an estimate of what an NME’s hourly wage rate would be within a mathematically derived margin of error based on the wage rates and GNI data from market economies. As with any estimate based on a pool of data, some data will fall above the estimate and some data will fall below the estimate.

While Xuzhou Jinjiang points specifically to India as an example of wages “overstated” by the regression calculation, there are a significant number of predicted wage rates that also are above the regression line, *i.e.*, economies for which the model would “understate” wage rates; in all, 23 of the 58 countries included in the model lie above the regression line. India’s wage rate is the lowest reported wage rate in the Department’s data set, despite not being the lowest GNI per capita. Still, the Department treats India’s wage rate not as an anomaly, but as another piece of data that informs the regression line. However, given that India’s wage rate is so much lower than that of other countries in relation to its GNI, any calculation that relies on data from other countries would overstate India’s actual reported wage. Because India’s wage rate is so low relative to its GNI, the regression, unsurprisingly, also “overstates” India’s wage rate, and can lead to an appearance of distortion, even where there is none, such that the calculated wage rate falls within an acceptable margin of error.

The Department’s regression methodology is superior to a single country’s wage rate because the regression methodology ameliorates any country-specific distortion that would cause variation in

⁸ See Antidumping Duties; Countervailing Duties Part II, 61 FR 7308, 7345 (February 27, 1996) and Final Rule, 62 FR at 27367.

the data, ties the estimated wage rate directly to each NME's GNI, and provides predictable results that are as accurate as possible. The Department finds that the regression-based methodology does not distort or systematically overestimate wage rates in general; rather, the regression line serves to smooth out the differences in the reported wage rates. By ensuring the data in the regression includes all earnings data that best reflect the dynamics of contemporaneous labor markets and represents both men and women in all reporting industries, the Department is able to minimize many potential distortions. Therefore, using a large basket of data is less susceptible to both the country-by-country, as well as the year-on-year, variability in data and enables the Department to arrive at the most accurate, predictable, and fair surrogate value for labor.

In response to Xuzhou Jinjiang's contention that calculating wage rates using the PRC's GNI is contrary to the Department's surrogate value policy, the Department acknowledges that the GNI of an NME such as the PRC may reflect, at least to some extent, non-market income data, which is inherently unreliable. However, the Department finds that each NME's GNI, as published in the World Bank Indicators, is the "best available" metric for establishing economic comparability for all surrogate values, including labor. There are no other sources or metrics available that would be untainted by the non-market nature of the economy underlying an NME's GNI, nor has such a metric been suggested. Further, an NME's GNI is the metric that the Department routinely uses in NME cases to establish economic comparability of the surrogate country used to value other surrogate values. Given that there is no better source available or suggested, the Department finds no reason to deviate from its practice of relying on the PRC's GNI in this case.

Though the Department cannot ensure that each NME's GNI is untainted from any non-market influence, it can at least rely on third parties such as the World Bank, which is a reputable intergovernmental organization with reliable data collection methods. The World Bank collects national account data and converts GNI into U.S. dollars from national currencies in a consistent manner. GNI data are collected from national statistical organizations and central banks by visiting and resident World Bank missions, and in high-income, developed countries, the World Bank utilizes data from Organization for Economic Co-operation and Development (OECD) data files. The World Bank then applies the Atlas conversion factor to data from all countries alike, in order to reduce the impact of exchange rate fluctuations in the cross-country comparison of national incomes.

For these reasons, consistent with the regulation and the statute, the Department's revised wage rate calculation applied to this review relies on a significantly larger basket of countries than was used in the Preliminary Results. A larger basket maximizes the accuracy of the regression results, minimizes the effects of the potential year-to-year variability in the basket, and provides predictability and fairness. Importantly, the Department notes that economic comparability is established in the regression calculation through the GNI of the NME in question, which ensures that the result represents a wage rate for a country economically comparable to the NME. Using the revised data set, the recalculated wage rate for the PRC in this review is US\$0.83.

Although Domestic Parties argue that the Department should follow its established practice to use the wage rate from the Preliminary Results, because new wage rate calculations had not been posted on the Department's website at the time rebuttal briefs were submitted, we note that, subsequent to the Preliminary Results, the Department revised the wage rate calculations with updated ILO data. As this wage rate data is more contemporaneous with the POR, and parties have been given an opportunity to comment on the revised data, the Department has determined that it is the most appropriate surrogate value to value labor in this review.

Comment 3: Bona Fides of Xuzhou Jinjiang Foodstuffs Co., Ltd.'s Sales

The Domestic Parties argue that the Department should find Xuzhou Jinjiang's sales to be non-bona fide. First, Domestic Parties argue that only a limited number of suspended entries of subject merchandise, which entered during the POR, involved quantities smaller, and values higher, than Xuzhou Jinjiang's first POR sale. Additionally, Domestic Parties call into question the commercial reasonableness of Xuzhou Jinjiang's first sale, and the arm's length nature of Xuzhou Jinjiang's relationship with its customer. Moreover, Domestic Parties argue that the specifics of Xuzhou Jinjiang's subsequent sale(s) further point to the non-bona fide nature of its first transaction. See Domestic Parties' NSR Case Brief at 8-10.

The Domestic Parties also argue that Xuzhou Jinjiang's second POR sale was non-bona fide. Specifically, they argue the price and quantity, coupled with the specifics of the transaction, similar to those referenced above for the first transaction, should lead the Department to conclude that the totality of the circumstances indicate the transaction was not commercially reasonable and therefore not bona fide. See Domestic Parties' NSR Case Brief at 10-11.

Xuzhou Jinjiang argues that the Department properly concluded that its POR sales, based on the totality of the circumstances, were bona fide. It argues that because entries were subject to the 223.01 percent antidumping duty cash deposits, the quantities themselves cannot render a transaction non-bona fide. Rather, the respondent argues that if a transaction is economically sensible for two parties, the transaction is, by its very nature, bona fide. Additionally, the respondent asserts that both parties in this instance garnered an economic benefit, and that nothing suggests the transaction was commercially unreasonable. Moreover, the respondent argues that the sales negotiation documents presented to the Department support this assertion.

Xuzhou Jinjiang asserts that partial containers cannot, alone, render a transaction unreasonable. It also asserts that the price "was reasonable and reached in a genuine, arm's length, commercial transaction." See Xuzhou Jinjiang Rebuttal Brief at 15. With regard to the price of Xuzhou Jinjiang's subsequent sales, Xuzhou Jinjiang states that petitioner now contends that a price that falls "squarely in the heart of the CBP {entry} data is now too low." See id. at 16.

Department's Position

As stated in the Department's bona fides memorandum, when making a determination whether a sale is bona fide, the Department examines the totality of the circumstances to determine whether the sale is "commercially reasonable" or "atypical." See Memorandum to James C. Doyle,

Director, AD/CVD Operations, Office 9, through Christopher D. Riker, Program Manager, AD/CVD Operations, Office 9, from Scot T. Fullerton, Senior Trade Compliance Analyst, AD/CVD Operations, Office 9, regarding Freshwater Crawfish Tail Meat from the People's Republic of China: Bona Fide Nature of the Sales in the 2004-2005 New Shipper Review of Xuzhou Jinjiang Foodstuffs Co., Ltd. (October 2, 2006) (“Xuzhou Jinjiang Bona Fides Memo”). Atypical in this context means unrepresentative of a normal business practice. See Am. Silicon Techs. v. United States, 110 F. Supp. 2d 992, 995 (CIT 2000) (“Silicon Techs”).

We disagree with Xuzhou Jinjiang's contention that a respondent's sale is necessarily bona fide simply because the respondent characterizes the sale as “economically sensible for both parties.”⁹ If the Department accepted this argument, every sale price would be considered bona fide if a respondent simply asserted that it conducted price negotiations and made a profit. To the contrary, the analysis of “pricing practices” includes an objective analysis of the prices themselves, and a demonstration by the respondent, as opposed to a mere assertion, of how the respondent arrived at a particular price, and, in comparison to its subsequent sales, whether the price of the single POR sale was atypical.

The CIT has affirmed the Department's practice of examining objective, verifiable factors in a bona fides analysis to ensure that a sale is not being made to circumvent an antidumping duty order. See Hebei New Donghua Amino Acid Co., Ltd. v. United States, 374 F. Supp. 2d 1333, 1339, (CIT 2005) (“New Donghua”). In the instant case, the Department has examined POR and post-POR company-specific sales data reported by Xuzhou Jinjiang, and compared the prices of its two sales to the prices of comparable merchandise entered into the United States during the POR. In examining the prices of Xuzhou Jinjiang's two sales within the context of the totality of circumstances, we find that information on the record does not indicate that the price of Xuzhou Jinjiang's POR sales were aberrational. Although one of Xuzhou Jinjiang's two sales was sold at a price higher than most other exports during the POR, Xuzhou Jinjiang's second sale was priced within a range sold by other exporters.

In the Xuzhou Jinjiang Bona Fides Memo, the Department also examined the quantity of Xuzhou Jinjiang's two sales, and noted that the quantity of Xuzhou Jinjiang's two POR sales of subject merchandise fell at the lower range of individual quantities shipped by other exporters. However, as the Department noted, the fact that a respondent's POR sales consisted of low shipment quantities would not be sufficient, by itself, to warrant a finding that the transactions were not bona fide. See Xuzhou Jinjiang Bona Fides Memo at 5.

We disagree with the Domestic Parties' statement that the only conclusion that can be drawn is that the sale is not bona fide. The finding that Xuzhou Jinjiang's two sales were bona fide was not based solely on a comparison of POR and post-POR sales prices and quantities. The Department's bona fides analysis for Xuzhou Jinjiang makes clear that the analysis was based on the totality of circumstances. While some bona fides issues may share commonalities across

⁹ As the Department noted in a previous review of freshwater crawfish tail meat, while it may be a rational “business objective” to limit cash deposits, it would still be unreasonable to allow a company to establish a distorted dumping margin based on sales that are artificially constructed for the purpose of obtaining a low cash deposit rate. See Freshwater Crawfish Tail Meat from the PRC; Notice of Final Results of Antidumping Duty New Shipper Review and Final Rescission of Antidumping Duty New Shipper Review, 68 FR 1439 (January 10, 2003) and accompanying Issues and Decision Memorandum at comment 1.

various Department cases, the Department examines the bona fide nature of a sale on a case-by-case basis, and the analysis may vary with the facts surrounding each sale.¹⁰ In the instant case, over the course of the review, and at verification, the Department conducted a thorough analysis of Xuzhou Jinjiang's corporate structure, as well as the circumstances surrounding the formation of Xuzhou Jinjiang. In addition, the Department examined the circumstances surrounding Xuzhou Jinjiang's negotiations for its two POR sales. Given the absence of any unusual circumstances surrounding the company's POR sales, or regarding the company's formation, we find that no additional circumstances warrant a finding that Xuzhou Jinjiang's POR sales were not bona fide.

In examining all of the information on the record in this case, we have determined that the concerns raised by the Domestic Parties do not cause us to reject the commercial reasonableness of Xuzhou Jinjiang's two POR transactions. As explained above and in the Xuzhou Jinjiang Bona Fides Memo, the information on the record does not indicate that the prices of Xuzhou Jinjiang's two sales were aberrationally high. The concerns raised by the Domestic Parties, with regard to Xuzhou Jinjiang's POR and post-POR customers, do not necessitate a conclusion that its POR sales were not commercially reasonable. Therefore, we find that there is no basis on the record to find that Xuzhou Jinjiang's POR sales to the United States are not bona fide.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend making certain changes to the Preliminary Results and continuing to find that the POR sales made by Xuzhou Jinjiang were bona fide transactions, and thus provide a reasonable and reliable basis for calculating an antidumping margin for the final results of its new shipper review. If accepted, we will publish the final results of the reviews in the Federal Register.

AGREE _____

DISAGREE _____

David M. Spooner
Assistant Secretary
for Import Administration

Date

¹⁰ See New Donghua, 374 F. Supp. 2d at 1340, citing Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review, 68 FR 41304 (July 11, 2003), and accompanying Issues and Decision Memorandum.