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

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

SUBJECT: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review and New-Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China for the Period of Review September 1, 2008, through August 31, 2009

Summary

We have analyzed the case and rebuttal briefs of interested parties in the administrative review and new-shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) for the period of review (POR) September 1, 2008, through August 31, 2009. As a result of our analysis, we made changes in the margin calculations for all companies. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in these reviews for which we received comments from a party.

1. Valuation of Labor
2. Valuation of Cold Storage
3. Valuation of Live Crawfish
4. Filing of New Factual Information

Background

On June 16, 2010, the Department of Commerce (the Department) published *Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative and New-Shipper Reviews*, 75 FR 34100 (June 16, 2010) (*Preliminary Results*), in the *Federal Register*.

We invited interested parties to comment on the *Preliminary Results*. We received case briefs from Xiping Opeck Food Co., Ltd. (Xiping Opeck), Shanghai Ocean Flavor International Trading Co., Ltd. (Shanghai Ocean Flavor), China Kingdom (Beijing) Import & Export Co., Ltd. (China Kingdom), Nanjing Gemsen International Co., Ltd. (Nanjing Gemsen), Xuzhou Jinjiang

Foodstuffs Co., Ltd. (Jinjiang), and the petitioner, the Crawfish Processors Alliance. We also received a rebuttal brief from the petitioner. No interested party requested a hearing.

Discussion of the Issues

Valuation of Labor

In the *Preliminary Results*, we followed the regression-based methodology, pursuant to 19 CFR 351.408(c)(3), to value the labor input for the subject merchandise. After publication of the *Preliminary Results*, multiple additions to the record of the reviews were made as follows:

- On June 22, 2010, we notified interested parties that, as a result of the recent decision by the Court of Appeals for the Federal Circuit (CAFC) in *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372 (CAFC 2010) (*Dorbest IV*),[1] we would be reconsidering our valuation of the labor wage rate in these reviews. We placed export and national wage-rate data on the record of the reviews and invited parties to comment in their case briefs on the narrow issue of the labor wage value in light of the CAFC's decision.
- On July 2, 2010, and July 15, 2010, Jinjiang submitted certain factual information regarding the wage-rate issue.
- On July 16, 2010, we placed additional export and national wage-rate data on the record and extended the deadline for parties to comment.
- On July 16, 2010, the petitioner and Jinjiang submitted comments in their case briefs regarding the wage-rate issue.
- On July 21, 2010, the petitioner submitted rebuttal comments on this issue.
- On August 4, 2010, we placed on the record certain factual information concerning the wage-rate issue and invited interested parties to comment. We received comments from the petitioner.
- On October 5, 2010, we placed on the record industry-specific wage data and the wage-rate calculations and invited interested parties to comment. No party provided comments.[2]

Comment 1: The petitioner argues that the Department should calculate the surrogate value (SV) for labor relying on the methodology used, among others, in *Certain Woven Electric Blankets From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 38459 (July 2, 2010), and accompanying Issues and Decision Memorandum (I&D Memo) at Comment 13 and *Certain Cased Pencils From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review*, 75 FR 38980 (July 7, 2010) (*Cased Pencils*) and accompanying I&D Memo at Comment 1, in which the Department used national

[1] The court in *Dorbest IV* found that the regression-based methodology does not comport with section 773(c) of the Tariff Act of 1930, as amended (the Act), because the calculation includes countries that were neither economically comparable to the PRC nor significant producers of comparable merchandise. See *Dorbest IV*, 604 F.3d at 1372.

[2] Although Jinjiang provided comments on October 14, 2010, we rejected Jinjian'g submission as untimely. See October 19, 2010, letter.

wage-rate data. The petitioner asserts that the Department used this methodology in these and other most recent cases published in July 2010 for the purpose of valuing labor after *Dorbest IV* invalidated the Department's regression-based analysis set forth in 19 CFR 351.408(c)(3).

In its case brief, the petitioner replicates the calculation of the SV for labor in these reviews using the Department's post-*Dorbest IV* methodology. In doing so, the petitioner observes that, while the wage data exists for Honduras, it should be excluded in accordance with the Department's established hierarchy for data suitability as described in *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716 (October 19, 2006) (*Antidumping Methodologies*). The petitioner asserts that the wage rate of U.S. Dollars (USD) 0.18 is a candidate for exclusion under the Department's practice because it cannot possibly be reflective of an actual wage level in Honduras.

Jinjiang argues that the Department should value labor using the industry-specific labor rates from a comprehensive research study on the fisheries sector in India carried out by the Centre for Social Research in New Delhi, India, in 2006 (CSR Report) in collaboration with the United Nations Conference of Trade and Development.

Jinjiang asserts that the Department used this source of data in the May 21, 2009, Final Results of Redetermination Pursuant to Court Remand (Shrimp from PRC Remand) in *Allied Pac. Food (Dalian) Co. v. United States*, 587 F. Supp. 2d 1330 (CIT 2008) (*Allied Pacific*), concerning an appeal of *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), as amended by *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China*, 70 FR 5149 (February 1, 2005) (collectively, *Shrimp from PRC LTFV*).

Citing *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From the Russian Federation*, 68 FR 6885 (February 11, 2003), and accompanying I&D Memo at Comment 7 and *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 74 FR 16838 (April 13, 2009) (*Citric Acid)*, and accompanying I&D Memo at Comment 5A, Jinjiang argues that the Department's preference is to derive SVs from the primary surrogate country if there are useable data from that country. Jinjiang argues that 19 CFR 351.408(c)(2) supports the valuation of factors of production (FOPs) using a single surrogate country; Jinjiang asserts that in *Dorbest IV* the court has invalidated the exception in the regulation which concerns the valuation of labor. Citing the Department's selection in the *Preliminary Results* of India as the primary surrogate country, Jinjiang argues that there is no reason to look beyond India in these reviews for the valuation of labor when there are data on the record of these reviews providing an Indian seafood-processing labor rate.

Jinjiang asserts that selecting a source for labor specific to the industrial sector in which the subject merchandise falls is supported by legal and administrative precedent. Citing *Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Magnesium Metal From the People's Republic of China*, 69 FR 59187, 59195 (October 4, 2004), *Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 44827 (August 9, 2007), and accompanying I&D Memo at Comment 2, and *Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1262 (CIT 2006) (*Dorbest I*), Jinjiang argues that, in evaluating data for reliability, availability,

quality, specificity, and contemporaneity, the Department has a long-established policy of selecting SVs that are most specific to the input to be valued. Following this principle, Jinjiang argues, selecting the most specific surrogate to value fish-processing labor in these reviews will achieve the Department's mandate of calculating accurate dumping margins.

Citing *Allied Pacific*, 587 F. Supp. 2d at 1357, 1361, Jinjiang argues that the court stated expressly that labor is not excluded from the statutory mandate of selecting industry-specific SVs. Jinjiang argues that the use of the CSR Report in these reviews will permit the Department to calculate a SV applicable to the seafood-processing industry (which the Department has determined is a comparable industry to crawfish tail meat) from the primary surrogate country. Jinjiang asserts that the rates in the CSR Report are on a country-wide basis and represent actual wages received by workers in the seafood-processing industry in India.

In contrast, citing *Cased Pencils* and the accompanying I&D Memo at Comment 1, Jinjiang argues that the labor rates for various countries from the International Labor Organization's (ILO's) *Yearbook of Labor Statistics* (*ILO Yearbook*), placed on the record of these reviews by the Department with its accompanying June 22, 2010, memorandum, are derived from numerous disparate manufacturing sectors that may or may not include the seafood-processing industry sector. If the labor rates for the seafood-processing industry are included, argues Jinjiang, then they are surely distorted by the labor rates associated with higher-skilled manufacturing sectors. If the labor rates for the seafood-processing industry are not included, Jinjiang argues, then the Department would be valuing crawfish-processing labor using rates from non-comparable industries.

Arguing against the use of data from multiple countries to value labor, Jinjiang challenges the Department's reasoning in *Cased Pencils*, which Jinjiang interpreted to mean that variations in wage rates among countries with similar Gross National Income (GNI) renders those rates, individually, distorted and unreliable. Citing *Dorbest IV*, 604 F.3d at 1363, 1369, *Allied Pac. Food (Dalian) Co. v. United States*, 435 F. Supp. 2d 1295 (CIT 2006), and *China Nat'l Mach. Imp. & Exp. Corp. v. United States*, 264 F. Supp. 2d 1229, 1239 (CIT 2003), Jinjiang argues that the record of these reviews does not contain evidence suggesting that the wage rates in India, or any other country, are unreliable. In fact, Jinjiang argues, the variability in wage rates among countries with similar GNIs may be explained by differences in other elements that comprise the calculation of gross national product and not by reason of "socioeconomic, political, and institutional" factors influencing the wages in certain countries, as the Department proclaimed in *Cased Pencils*. Jinjiang argues that, without evidence demonstrating that certain wage rates are distorted, the Department has no basis on which to reject an Indian, industry-specific wage rate in favor of wage rates from a basket of countries and industries unrelated to a seafood-processing industry.

Jinjiang asserts that, if the Department uses a multiple-country methodology to value labor as it did in *Cased Pencils*, it should use industry-specific data from those countries. Citing *Allied Pacific*, 587 F. Supp. 2d at 1357, Jinjiang argues that the Department must ensure that the data used are specific to the type of labor being valued (*i.e.*, from a comparable industry). Jinjiang argues that the data from the selected countries must be filtered further to meet one of the Department's guiding principles of SV evaluation, specificity. Jinjiang argues that because, as the *ILO Yearbook* data demonstrate, labor rates in any given country may differ significantly depending on the industry in question, the Department should use the labor rate as specific to seafood processing as possible. Jinjiang urges the Department to use the minimum wage rates

published in the 2008 Human Rights Report for each selected country with respect to an agricultural sector. Jinjiang argues that crawfish processing requires a skill level comparable more to that of agriculture than of manufacturing. In the alternative, Jinjiang urges the Department to use the data from *ILO Yearbook* Chapter 5A for the selected countries which contain data for the fishing and agriculture sectors. Again, Jinjiang argues, these data are more specific to the crawfish-processing industry than the manufacturing labor data contained in *ILO Yearbook* Chapter 5B.

The petitioner asserts that Jinjiang's reliance on *Dorbest IV* is grossly misplaced in that Jinjiang vastly overstates the breadth of the court's decision. The petitioner contends that a proper understanding of the court's decision in *Dorbest IV* can be gleaned through an examination of the preceding opinions of the Court of International Trade (CIT) in the underlying case. Specifically, the petitioner asserts, in *Dorbest I* (462 F. Supp. 2d at 1292-98), the court held that (1) although 19 CFR 351.408(c)(3) was not invalid on its face, it was invalid as applied in *Shrimp from PRC LTFV* because the Department's calculations produced distorted results when contrasted with other record evidence and (2) it has no opinion on whether the Department's regression methodology is salvageable. In *Dorbest Ltd. v. United States*, 547 F. Supp. 2d 1321, 1327 n. 8 (CIT 2008) (*Dorbest II*), affirming the Department's multi-country regression-based methodology in calculating the labor SV, the court also observed that no party challenged the Department's guiding assumption that the inclusion of data from more countries in its analysis produces a more accurate estimate of the expected wages in a non-market economy (NME) in question, based on that country's GNI. Consequently, the petitioner argues, in *Dorbest IV* the court held that 19 CFR 351.408(c)(3) does not comply with the statutory requirements of section 773(c)(4) of the Act because it permits the use of data from countries that are not at the same level of economic development as the PRC and/or the use of data from countries that are not significant producers of merchandise comparable to subject merchandise. Accordingly, the petitioner argues, the scope of the court's ruling in *Dorbest IV* is limited only to the issue of the inclusion of certain countries in the Department's regression-based analysis – it does not, in any way, invalidate the Department's reliance on data from multiple countries to calculate an SV for labor. The petitioner contends that the Department's underlying rationale, driven by various policy and/or administrative considerations, supporting its preference in using a multi-country approach has not been altered as a result of the court's decision in *Dorbest IV*.

With respect to Jinjiang's argument that labor requires the same approach to valuation as other SVs, the petitioner contends that the Department considered and rejected similar arguments in the administrative precedent before and after *Dorbest IV* as well as in its notice-and-comment rule-making *Federal Register* notices. The petitioner asserts that the Department's methodology in antidumping determinations after *Dorbest IV* to calculate an SV for labor demonstrates the Department's commitment to a multi-country approach which is on par with its pre-*Dorbest IV* practice and within the confines of the court's instructions.

The petitioner challenges Jinjiang's reliance on *Allied Pacific* as the unequivocal support for its proposition that the Department is required to favor the use of single-country, industry-specific wage data instead of multi-country wage data aggregated across all industries to calculate an SV for labor in these reviews. The petitioner asserts that, in *Zhejiang DunAn Hetian Metal Co. v. United States*, 707 F. Supp. 2d 1355, 1369 (CIT 2010), the court rejected the rationale in *Allied Pacific* by stating that section 773(c) of the Act mandates the selection of data on the basis of country comparability and not on the basis of merchandise specificity.

Accordingly, the petitioner argues, the CIT provided conflicting opinions on the issue at hand and, absent a subsequent resolution by the CAFC, the Department is not barred from following its established practice of valuing labor.

Finally, the petitioner argues, in the absence of persuasive administrative or judicial precedent mandating the use of single-country, industry-specific data to value labor, there is no factual basis that Jinjiang's proposed SVs are more superior, reliable, or predictable than an SV calculated by the Department using the methodology in determinations following *Dorbest IV*. With respect to the CSR Report, the petitioner questions the alleged credibility of its information and advocates the Department's preference for labor data that is more recent. With respect to the 2008 Human Rights Report, the petitioner contends that Jinjiang cites no factual support for its assertion that crawfish-processing labor requires skills comparable to those in agriculture rather than in the manufacturing sector. With respect to the *ILO Yearbook* Chapter 5B data, the petitioner argues that Jinjiang does not quantify or demonstrate the distortions it alleges prevail in the data from the inclusion of wages of allegedly highly skilled, high-wage manufacturing workers.

Department's Position: In *Dorbest IV*, the CAFC invalidated the Department's regulation, 19 CFR 351.408(c)(3), which directs the Department to value labor using a regression-based method. As a consequence of the CAFC's decision, the Department is no longer relying on the regression-based wage rate. The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. For the final results of these reviews, we have calculated an hourly wage rate in valuing the respondents' reported labor input by averaging industry-specific earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.

Jinjiang argues that we should use Indian industry-specific wage rates from the CSR Report as an alternative to our post-*Dorbest IV* wage-rate calculation methodology using a multi-country approach. We disagree with Jinjiang's recommended methodology. Although the Department is no longer using a regression-based method to value labor, the Department has determined that reliance on labor data from multiple countries, as opposed to labor data from a single country, constitutes the best available information for valuing the labor input. While information from a single surrogate country can be used reliably to value other FOPs, wage data from a single surrogate country does not constitute the best available information for purposes of valuing the labor input due to the variability that exists across wages from countries with similar GNIs. While there is a strong worldwide relationship between wage rates and GNIs, too much variation exists among the wage rates of comparable market economies. As a result, we find reliance on wage data from a single country is not preferable where data from multiple countries are available for us to use.

For example, when examining the most recent national wage data, even for countries that are relatively comparable in terms of GNI for purposes of factor valuation (*e.g.*, countries with GNIs between USD 1040 and USD 3990), the hourly wage rate spans from USD 0.48 to USD 2.37.[3] Additionally, although both India and Guatemala have GNIs below USD 2700 and both could be considered economically comparable to the PRC, India's observed wage rate is USD

[3] See Memorandum to File entitled "Freshwater Crawfish Tail Meat from the People's Republic of China – Release of Data," dated July 16, 2010.

0.48 as compared to Guatemala's observed wage rate of USD 1.23 which is over double that of India.[4] There are many socio-economic, political, and institutional factors, such as labor laws and policies unrelated to the size or strength of an economy, that cause significant variances in wage levels between countries. See *e.g.*, International Labor Organization, *Global Wage Report: 2009 Update*, (2009) at 5, 7, 10 (http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_116500.pdf). For this reason and because labor is not traded internationally, the variability in labor rates that exists among otherwise economically comparable countries is a characteristic unique to the labor input. Moreover, the large variance in these wage rates illustrates why it is preferable to rely on data from multiple countries for purposes of valuing labor. Thus, we find that reliance on wage data from a single country is not preferable where data from several countries are available. For these reasons, we maintain our long-standing position that, even when not employing a regression methodology, more data are still better than fewer data for purposes of valuing labor. Accordingly, in order to minimize the effects of the variability that exists between wage data of comparable countries, the Department continues to employ a methodology that relies on as large a number of comparable countries as possible in order to minimize the effects of the variability that exists between wage data of individual comparable countries.[5]

In developing our extensive practice with respect to labor valuation, we emphasized consistently the necessity of using data from more than one surrogate country in order to achieve accuracy, fairness, and predictability in NME proceedings. See *Antidumping Duties; Countervailing Duties*, 61 FR 7308, 7345 (February 27, 1996) ("{T}here is great variation in the wage rates of the market economy countries that the Department typically treats as being comparable. As a practical matter, this means the result of an NME case can vary widely depending on which of the economically comparable countries is selected as the surrogate."). As such, we do not find it appropriate to rely on the wage-rate data that are specific to the Indian seafood-processing industry because a seafood producer in one country might have very different wages from a seafood producer in another country, for reasons exclusive of the global seafood industry.

The CSR Report does not represent the best available information in these reviews for additional reasons. Using the wage rates in the CSR Report, the respondent in the *Shrimp from PRC LTFV* litigation calculated an average rate of 3.02 rupees per hour[6] in 2005 for the fisheries sector in India, which equated to USD 0.05.[7] As a preliminary matter, the study generally cites monthly wages for fisherman and fisherwomen, while also providing certain statistics of labor activities, by the number of people involved, in the fisheries sector, comprising marketing of fish, making/repairing nets, curing/processing, peeling, laborers, and others. As such, the study does not appear to provide specific wage rates for the main type of labor involved in the production of

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[4] *Id.*

[5] See *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), and accompanying I&D Memo at Comment 30.

[6] See Jinjiang's April 23, 2010, submission of factual information to value FOPs at Exhibit 10.

[7] See Shrimp from PRC Remand at 20.

crawfish tail meat, peelers. Furthermore, the labor rate the Department applied pursuant to the litigation in *Allied Pacific* was done under protest in direct response to a court directive. See Shrimp from PRC Remand at 13. When completing the Shrimp from PRC Remand in connection with *Allied Pacific*, we expressed significant concerns about the accuracy and reliability of the data the court directed us to employ. Specifically, we explained that the labor wage rates in the CSR Report may not necessarily be representative of the average wage rate paid to fisheries workers in India because (1) the study collected data from only two states in India (thus, not a broad-market study), (2) the data sample was not representative of the population of workers in the industry, and (3) the data sample was not reflective of the make-up of the gender proportions actually employed in the sector. See Shrimp from PRC Remand at 16-19.

Furthermore, both the statute and our regulations recognize the need to source factor data from more than one country.[8] Although 19 CFR 351.408(c)(2) provides that the Department will *normally* source the FOPs from a single surrogate country, the language in the regulation provides sufficient discretion for the Department to address situations in which sourcing the FOPs from a single source is not preferable. The use of the word "normally" in the regulations means that this is not an absolute mandate. As we explained above, the unique nature of the labor input warrants a departure from our normal preference of sourcing all factor inputs from a single surrogate country.

We disagree that Jinjiang's rendering of our reasoning in *Cased Pencils* stands to mean that we do not rely on the primary surrogate country's wage rate for reasons that variations in wage rates between countries makes the primary surrogate country's wage rate distorted and unreliable. We did not find that any such distortion existed. Rather, in the context of our objective of valuing labor that produces an accurate, fair, and predictable result, we said it is arbitrary and unreliable to rely on a wage rate from a single country, given the wide disparity in wage rates among countries with comparable GNIs.

We also disagree with Jinjiang that the implication of the court's decision in *Dorbest IV* requires labor to be valued on the same basis as any other SV (*i.e.*, using input-specific information from a primary surrogate country). *Dorbest IV* did not invalidate the underlying principles guiding the Department's calculations (whether by way of regression or other mathematical means) - using data from multiple countries, using data without regard to the skill level, *etc*. *Dorbest IV* did not rule that the investigation- or product-specific wage data from the primary surrogate country constitutes the best available information for labor valuation under section 773(c)(1)(B)(2) of the Act.

We disagree with Jinjiang that we should use an average of the country-specific minimum wages, applicable to the agricultural sector and provided in the 2008 Human Rights Reports which Jinjiang submitted[9] for each country identified in our June 22, 2010, memorandum. Jinjiang provided no argument as to why it is more appropriate to use minimum wages cited in these reports instead of our established practice of using the *ILO Yearbook* Chapter 5B data on earnings that include competitively established wages, overtime, and bonuses.

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[8] See section 773(c)(1) of the Act ("the valuation of the factors of production shall be based on the best available information . . . in a market economy *country or countries* considered to be appropriate. . . ." (emphasis added)); see also section 773(c)(4) of the Act ("in valuing factors of production {the Department} . . . shall utilize . . . the prices or costs of factors of production in *one or more* market economy countries . . . ." (emphasis added)).

[9] See Jinjiang's July 15, 2010, submission of factual information to value the FOPs, Attachment I.

Further, a handful of country-specific reports, such as that for India, do not even list minimum wages and/or state that regulations mandating the enforcement of minimum wages are rarely followed.

We do not agree with Jinjiang that, in using a multiple-country approach to value labor in these reviews, we must use the information from either the 2008 Human Rights Reports or the *ILO Yearbook* Chapter 5A on the grounds that crawfish-processing labor requires a skill level akin to those in either agriculture or fishing sectors instead of the manufacturing sector. There is no record evidence that supports Jinjiang's assertion that manufacturing labor in the PRC requires either more skill or demands higher wages than the type of labor involved in processing crawfish. Jinjiang's argument appears to be more squarely directed at the issue of skilled versus non-skilled labor. Even if were we able to classify, generally, the labor type involved in every NME proceeding into one or the other grouping, neither the *ILO Yearbook* Chapter 5 data nor any other data on the record provide a differentiation of wage rates between skilled and unskilled labor. On this issue, we have previously acknowledged the problems posed by data limitations. In *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27367 (May 19, 1997), we stated that, "{e}ven using a single country as a surrogate, it has been rare for the Department to find different wage rates for skilled and unskilled labor."

In order to determine the economically comparable surrogate countries from which to calculate a surrogate wage rate, the Department looked to the Surrogate-Country Memo.[10] In the *Preliminary Results*, we selected six countries for consideration as the primary surrogate country for these reviews based on the Surrogate-Country Memo.[11] To determine which countries were at comparable levels of economic development to the PRC, we placed primary emphasis on GNI.[12] We rely on GNI to generate our initial list of countries considered to be economically comparable to the PRC. From the list of countries contained in the Surrogate-Country Memo, we used the country with the highest GNI (*i.e.*, Peru) and the lowest GNI (*i.e.*, India) as "bookends" for economic comparability. We then identified all countries in the World Bank's 2009 *World Development Report* with per-capita incomes that fell between these bookends. This resulted in 43 countries, ranging from India with a GNI of USD 1040 to Peru with GNI of USD 3990.[13]

Regarding the "significant producer" prong of the statute, we identified all countries which have exports of comparable merchandise (defined as exports under 1605.40, 0306.19, and 0306.29, the six-digit codes in the Harmonized Tariff Schedule of the United States identified in

[10] See memorandum entitled "Freshwater Crawfish Tail Meat from the People's Republic of China: Selection of a Surrogate Country," dated June 9, 2010 (Surrogate-Country Memo).

[11] These six countries are part of a non-exhaustive list of countries that are at a level of economic development comparable to the PRC. See Surrogate-Country Memo.

[12] See 19 CFR 351.408(b).

[13] See memoranda dated July 16, 2010, and October 5, 2010, both entitled "Freshwater Crawfish Tail Meat from the People's Republic of China – Release of Data" (Wage-Data Release Memos). See also the memorandum entitled "Freshwater Crawfish Tail Meat from the People's Republic of China: Industry-Specific Wage Rate Selection," dated October 5, 2010 (Wage-Rate Selection Memo).

the scope of the order)[14] between 2007 and 2009.[15] In this case, we have defined a "significant producer" as a country that has exported comparable merchandise between 2007 through 2009. After screening for countries that had exports of comparable merchandise, we determine that 22 of the 43 countries designated as economically comparable to the PRC are also significant producers. Accordingly, for purposes of valuing wages for these final results, we determine the following 22 countries to be both economically comparable to the PRC and significant producers of comparable merchandise: Ecuador, Egypt, Indonesia, Jordan, Peru, Philippines, Thailand, Ukraine, Belize, Bolivia, Cape Verde, El Salvador, Guatemala, Guyana, Honduras, Morocco, Nicaragua, Nigeria, Samoa, Sri Lanka, Tunisia, and India.[16]

We then identified which of these 22 countries also reported the necessary wage data. In doing so, we have continued to rely upon the *ILO Yearbook* Chapter 5B "earnings," if available, and "wages," if not.[17] We used the most recent data available (2008) and went back five years, resulting in wage data from 2003-2008. We then adjusted the wage data for countries where it was available to the POR using the relevant Consumer Price Index (CPI).[18] Of the 22 countries that we have determined are both economically comparable and significant producers, 14 countries were omitted from the wage-rate valuation because there were no earnings or wage data available. The remaining countries reported either earnings or wage-rate data to the ILO within the prescribed six-year period.[19]

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[14] See *Preliminary Results*, 75 FR at 34101.

[15] The Global Trade Atlas is the source of the export data.

[16] See Wage-Data Release Memos and Wage-Rate Selection Memo.

[17] The Department maintains its current preference for "earnings" over "wages" data under Chapter 5B. Under the previous practice, the Department was typically able to obtain data from somewhere between 50-60+ countries. Given that the current basket now includes fewer countries, we found that our long-standing preference for a robust basket outweighs our exclusive preference for "earnings" data. Thus, if earnings data are unavailable from the base year (2008) or the previous five years (2003-2007) for certain countries that are economically comparable and significant producers of comparable merchandise, the Department will use "wage" data, if available, from the base year or previous five years. The hierarchy for data suitability described in the 2006 *Antidumping Methodologies* still applies for selecting among multiple data points within the "earnings" or "wage" data. This allows the Department to maintain consistency as much as possible across the basket.

[18] Under the Department's regression analysis, the Department limited the years of data it would analyze to a two-year period. See *Antidumping Methodologies*, 71 FR at 61720. Because the overall number of countries being considered in the regression methodology was much larger than the list of countries now being considered in our calculations, the pool of wage rates from which we could draw from two years' worth of data was still significantly larger than the pool from which we may now draw using five years' worth of data (in addition to the base year). We believe it is acceptable to review ILO data up to five years prior to the base year as necessary (as we have previously), albeit adjusted using the CPI. See *Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology*, 70 FR 37761, 37762 (June 30, 2005). In this manner, the Department is able to capture the maximum amount of countries that are significant producers of comparable merchandise, including those countries that choose not to report their data on an annual basis. See also Wage-Data Release Memos for the CPI data used in these reviews.

[19] See *ILO Yearbook*.

Based on the selection methodology set forth above, we have determined it is most appropriate to rely on industry-specific wage data reported by the ILO for the final results of these reviews. Determinations as to whether industry-specific ILO datasets constitute the best available information must necessarily be made on a case-by-case basis. In making these determinations, we consider a number of factors such as the appropriateness of the ILO industry-specific data in light of the subject merchandise and the availability of industry-specific data.

Because an industry-specific dataset relevant to these reviews exists within our preferred ILO source and because, absent evidence to the contrary, the industry-specific data would be *at least* more specific to the subject merchandise than the national manufacturing data, we have used industry-specific data to calculate a surrogate wage rate for the final results, in accordance with section 773(c)(1) of the Act. Thus, we have determined to calculate the wage rate using a simple average of the data provided to the ILO under Sub-Classification 15 of the ISIC-Revision 3 standard by countries determined to be both economically comparable to the PRC and significant producers of comparable merchandise. We have determined that this is the best available information from which to derive the surrogate wage rate based on the analysis set forth below.

The ISIC code is maintained by the United Nations Statistical Division and is updated periodically. The ILO, an organization under the auspices of the United Nation, uses this classification for reporting purposes. Currently, wage and earnings data are available from the ILO under the following revisions: ISIC-Revision 2, ISIC-Revision 3, and ISIC-Revision 4. The ISIC code establishes a two-digit breakout for each manufacturing category and also often provides a three- or four-digit sub-category for each two-digit category. Depending on the country, data may be reported at either the two-, three-, or four-digit subcategory.

Due to concerns that the industry definitions may lack consistency between different ISIC revisions, the Department finds that averaging wage rates within the same ISIC revision (*i.e.*, not mixing revisions) constitutes the best available information for the final results. It is our preference to use data reported under the most recent revision. In this case, however, we found that none of the countries found to be economically comparable and significant producers reported data pursuant to ISIC-Revision 4. Accordingly, in this case, we turned to the industry definitions contained in ISIC-Revision 3 to find the appropriate classification for freshwater crawfish tail meat. Under the ISIC-Revision 3 standard, the Department identified the two-digit series most specific to freshwater crawfish tail meat as Sub-Classification 15, which is described as "Manufacture of food products and beverages." The explanatory notes for this sub-classification states that this sub-classification includes the "preservation of fish and fish products by such processes as drying, smoking, salting, immersing in brine, or canning; production of cooked fish;" the Department has calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 15 of the ISIC-Revision 3 standard by countries determined to be economically comparable to the PRC and significant producers of comparable merchandise. Additionally, when selecting data available from the countries reporting under ISIC-Revision 3, Sub-Classification 15, we used the most specific wage data available within this revision.

From the 22 countries that we determined were both economically comparable to the PRC and significant producers of comparable merchandise, we identified those with the necessary wage data. Of these 22 countries, the following eight reported industry-specific data under the ISIC-Revision 3, under Classification 15, "Manufacture of food products and

beverages": Ecuador, Egypt, Indonesia, Jordan, Peru, Philippines, Thailand, and Ukraine. The following fourteen did not report wage data on an industry-specific basis: Belize, Bolivia, Cape Verde, El Salvador, Guatemala, Guyana, Honduras, Morocco, Nicaragua, Nigeria, Samoa, Sri Lanka, Tunisia, and India; accordingly, these fourteen countries are not included in our wage-rate calculation.

While we prefer to use the most specific wage data available within the selective ISIC revision, because no country that was considered economically comparable and a significant producer reported earnings or wage data below the two-digit level, we have relied on the two-digit sub-classification in our industry-specific wage-rate calculation. Accordingly, based on the above, we relied on data reported under ISIC-Revision 3, Sub Classification 15, "Manufacture of food products and beverages," from the following countries to arrive at the industry-specific wage rate calculated for these final results of reviews: Ecuador, Egypt, Indonesia, Jordan, Peru, Philippines, Thailand, and Ukraine.

Based on the foregoing methodology, the revised wage rate we have applied for the final results is USD 1.38/hour. A full description of the industry-specific wage-rate calculation methodology is provided in the Wage-Rate Selection Memo. This wage rate is derived from comparable economies that are also significant producers of the comparable merchandise, consistent with the CAFC's ruling in *Dorbest IV* and the statutory requirements of section 773(c) of the Act.

Valuation of Cold Storage

Comment 2: Xiping Opeck argues that data upon which the Department relied in the *Preliminary Results* to calculate the SV for cold storage is insufficient and inferior, in terms of quality, specificity, and contemporaneity, to other data available on the record. In calculating the cold-storage SV for the final results of these reviews, Xiping Opeck argues that the Department should use the price quote that Xiping Opeck submitted with respect to the cold storage of frozen seafood in India. Xiping Opeck asserts that its submitted price information represents an actual price quote from the largest national cold-storage provider in India obtained at an arm's-length price from a seafood processor.

Xiping Opeck is doubtful of the quality of the source of data underlying the SV for cold storage that the Department used in the *Preliminary Results*. Xiping Opeck asserts that the source of data, an article from 1995 which mentions that the unnamed "staff reporter" obtained from Pakistani "meat importers" a range of monthly per-kilogram rates for cold storage, calls the legitimacy of its data into question because the prices listed in the article are not actual price quotes from cold-storage service providers but mere price speculations by unnamed third-party sources and because the article, which has the appearance of a general press release, does not name a single provider of quoted rates. Xiping Opeck argues that there is no indication that the accuracy and reliability of the prices quoted in the article were confirmed, in any way, or that the prices represent a country-wide average.

Xiping Opeck argues further that, notwithstanding the fact that the prices quoted in the article are more than fifteen years old, the Department's method of inflating them using the Indian Wholesale Price Index is also grossly imprecise and inappropriate. Xiping Opeck argues that it is not appropriate to use an *Indian* wholesale price-inflation gauge for *goods* to inflate the cold-storage *service* rates in *Pakistan*.

Xiping Opeck argues that its price quote is more specific to subject merchandise than the pricing information the Department used in the *Preliminary Results*. Xiping Opeck asserts that its price quote for the cold storage of frozen seafood in India is superior to the price for the cold storage of frozen mutton in Pakistan that the Department used in the *Preliminary Results*. Xiping Opeck argues that its price quote is also more specific to the experience of Xiping Opeck because it reflects the terms for the cold storage on the basis of a fixed-term lease for a large quantity of merchandise whereas the 1995 article reflects rates on a per-kilogram, per-month basis. Xiping Opeck argues that its submitted Indian price quote must be used in the final results of these reviews because the Department established in these reviews that India is the preferred surrogate country for valuing FOPs.

Finally, Xiping Opeck argues that its submitted price quote is far more contemporaneous than the fifteen-plus-year-old information used by the Department in the *Preliminary Results*. Xiping Opeck asserts that the price information it submitted was quoted in June 2010, less than ten months after the POR.

The petitioner argues that Xiping Opeck overlooks the crucial fact that its price quote is for long-term cold storage, based on a one-year contract, while the value the Department used in the *Preliminary Results* is a monthly rate. The petitioner asserts that the short-term storage lease will inevitably cost more to cover expenses associated with frequent turnovers and the risk of intermittent vacancies. It is precisely why, the petitioner argues, there is a significant difference between the Department's value and Xiping Opeck's price quote. The petitioner asserts that this fact does not demonstrate that the Department's value is unreasonable or distortive as applied in these reviews.

Department's Position: The regulations at 19 CFR 351.408(c)(2) state that the Department normally will value all factors in a single surrogate country. With the exception of labor, our practice has been to use SVs from a single country to the greatest extent possible. See *Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium from the People's Republic of China*, 67 FR 71137 (November 29, 2002), and accompanying I&D Memo at Comment 19.

In the *Preliminary Results*, we selected India as the primary surrogate country in which to value all inputs with the exception of live crawfish, the primary input, and the by-product, crawfish shell. See *Preliminary Results*, 75 FR at 34102 and the Surrogate-Country Memo. No interested party disputed the selection of India as the primary surrogate country in these reviews. Accordingly, our preference is to value cold-storage costs in these reviews using the information from the primary surrogate country, India. See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From the Russian Federation*, 68 FR 6885 (February 11, 2003), and accompanying I&D memo at Comment 7 and *Citric Acid*, and accompanying I&D memo at Comment 5A. The only source of information available to us at the time of the *Preliminary Results* to value cold storage was from Pakistan, a country that is not the primary surrogate country in these reviews nor a country among the potential surrogate countries identified in the Surrogate-Country Memo. Further, in selecting the appropriate SVs we also consider quality, specificity, and contemporaneity of the data. 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 I&D Memo at Comment 3. In valuing cold storage, the Indian price

quote that Xiping Opeck provided is superior to the information we used in the *Preliminary Results* in terms of these requirements. Specifically, the pricing information that Xiping Opeck submitted is more reliable than the information we used in the *Preliminary Results* because the cold-storage price quote was obtained directly from the source, a national Indian provider of cold-storage services. The pricing information Xiping Opeck provided is more specific to subject merchandise because it reflects a price quote for the cold storage of frozen seafood.[20] Because the pricing information was quoted in 2010, it is significantly more contemporaneous with the POR than the information we used in the *Preliminary Results*.

We are concerned that price lists, price quotes and invoices are not publicly available in the sense that the information cannot be duplicated by parties that do not have access to the records from which it was derived and particularly when they are single and self-selected values. See, *e.g.*, *Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China*, 69 FR 67313 (November 17, 2004), and accompanying I&D Memo at Comment 24 and *Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 16116 (March 30, 2006), and accompanying I&D Memo at Comment 4. Therefore, we prefer to use broad-market averages as opposed to data derived from a single producer. When the only competing source for SV data is, however, fifteen years old and not from the primary surrogate country, such as in this case, we may resort to the use of company-specific data. Accordingly, we find that the Indian price quote that Xiping Opeck put on the record after the publication of the *Preliminary Results* constitutes the best available information, in accordance with section 773(c) of the Act, with which to value cold storage in these reviews because, primarily, it reflects the only information on the record from the primary surrogate country.

Valuation of Live Crawfish

Comment 3: Xiping Opeck, Shanghai Ocean Flavor, China Kingdom, and Nanjing Gemsen (hereinafter, Xiping Opeck, *et al.*) argue that the Department should select the best available SV for live crawfish, an input used in the production of freshwater crawfish tail meat. Referring to certain limited factual information that Xiping Opeck, *et al.*, provided in their July 6, 2010, submission, these respondents argue that the Department's use of Spanish imports of live crawfish from Portugal to value live crawfish consumed by the respondents in their production of freshwater crawfish tail meat is not appropriate because Spanish imports of live crawfish from Portugal were processed, sold, and consumed as whole processed crawfish, a product different from the processed crawfish tail meat under review.

These respondents argue that, notwithstanding the Department's consistent treatment of whole processed crawfish as merchandise comparable to crawfish tail meat in these reviews and prior segments of the proceeding, their July 6, 2010, factual submission indicates that the circumstances have changed in the past decade and Spain is now processing substantial quantities of crawfish tail meat. Xiping Opeck, *et al.*, argue that the Department's reliance on section 773(c)(2) of the Act in its selection of Spanish imports of live crawfish from Portugal as

[20] We have found India's processed seafood to be comparable merchandise for purposes of valuing the processing aspects of production. See the Surrogate-Country Memo. Similarly, we find frozen seafood to be comparable to frozen crawfish tail meat for purposes of valuing cold storage.

an SV for whole live crawfish used in the production of subject merchandise is inappropriate because section 773(c)(1) of the Act prevails under these circumstances.

The petitioner asserts that the Department should disregard the respondents' arguments because they are not based on record evidence and are incomplete and incoherent. The petitioner alleges that it is not permitted to respond to the respondents' arguments because they are based on untimely factual information which the Department has stricken from the record.[21]

Nevertheless, the petitioner asserts that there is no factual support for the respondents' claim that the imported live crawfish was processed, sold, and consumed as whole crawfish. With respect to the respondents' argument that the Department relied improperly on section 773(c)(2) of the Act in its selection of an SV based on whole crawfish, the petitioner asserts that it cannot respond to this argument because it is impossible to ascertain what it means because respondents make no attempt to tie their argument to any specific perceived defect in the Spanish SV the Department used in the *Preliminary Results* and do not propose any alternative.

Department's Position: Based upon our examination of the limited factual information that Xiping Opeck, *et al.*, provided in the July 6, 2010, submission, we find that the respondents appear to argue that, in valuing the live crawfish consumed in the production of freshwater crawfish tail meat, it is more appropriate to use the prices paid to local fisherman for live crawfish caught in Spain instead of the Spanish import prices reflecting purchases of live crawfish caught in Portugal. Relying on the July 6, 2010, submission of new factual information, Xiping Opeck, *et al.*, appear to assert that imports of live crawfish from Portugal were consumed in Spain in the production of whole processed crawfish while the live crawfish caught in Spain were consumed in Spain exclusively in the production of freshwater crawfish tail meat. Specifically, in the July 6, 2010, submission, Xiping Opeck, *et al.*, provided an e-mail communication with Mr. Felix Aranda, who the respondents claim is "a crawfish expert with decades of experience in seafood and crawfish business." Mr. Aranda indicated that,

> "In {the} cold months (November-December-January-February) the crayfish is fished in Portugal and in the Spanish region of Extremadura (border with Portugal) and is solely sold out alive in wooden cases of 3 and 5 kilos. Therefore this crayfish is **NEVER** peeled. Once the good weather appears, there are two different crawfish seasons in the Iberian Peninsula (Portugal-Spain): the spring season…from the month of March to the month of June-July: this crayfish is mainly caught in the lakes…These crawfish will **NEVER be peeled to make fat-on**, {but} sold alive…, cooked for the national market…, and cooked and frozen in dill brine for the markets of Sweden and Finland…" The summer season which last{s} from August to October, where the crawfish is caught in the rice field of South of Spain (South of Sevilla) and {for} which price is cheaper. To have a reference, the price paid in the season 2009 was of 0.40€ x kilo {for} alive crawfish, far away of the average prices of 1.83€/kilo paid for the Portuguese crawfish…This crawfish will be normally peeled…"

[21] We find that the petitioner is inaccurate in stating that the factual information on which the respondents rely in their arguments was stricken from the record. The July 6, 2010, submission of publicly available factual information to value FOPs was submitted timely and, therefore, we did not reject the submission pursuant to 19 CFR 351.302(d).

(Emphasis in original.) As can be seen from Mr. Aranda's e-mail communication, there are no direct statements indicating that Portuguese-caught live crawfish were consumed in Spain exclusively in the production of whole crawfish while Spanish-caught crawfish were consumed in Spain exclusively in the production of crawfish tail meat. All that we can glean from Mr. Aranda's statement is the inference he makes, from his knowledge that Portuguese- and Spanish-origin crawfish are sold alive in the harvesting months of November to July, that the live crawfish must not have been peeled. Although Mr. Aranda does not offer any insights or evidence as to how and why he makes this connection, it is clear that, similar to Portuguese-caught live crawfish, the Spanish-origin live crawfish, caught in months of November to July, also do not appear to be destined for peeling in order to make freshwater crawfish tail meat. As such, the e-mail communication from Mr. Aranda neither proves nor disproves conclusively that Spanish- and Portuguese-origin live crawfish are not used interchangeably in the processing of whole crawfish or crawfish tail meat.

Further, contrary to the respondents' assertion, nowhere in the e-mail communication from Mr. Aranda is it mentioned that Spain processes substantial quantities of crawfish tail meat. There is also no information on the record of these reviews which supports the respondents' assertion. On the contrary, as we indicated in the Surrogate-Country Memo, the data indicate that Spain is a significant producer of whole crawfish, a product we found to be comparable to crawfish tail meat.

While we have considered the factual information in the form of an e-mail communication from Mr. Aranda, we do not afford it considerable credence. The respondents do not provide any information concerning Mr. Aranda's professional qualifications that render him an expert in the crawfish industry. Further, the statements made by Mr. Aranda or the pricing information he provides were not supported by any record evidence or corroborated with the information from third parties. For example, while Mr. Aranda quotes certain pricing information for Spanish-origin live crawfish harvested in the months of August to October, there is no documentation that supports how he arrived at this estimate or from what sources the information was obtained. Further, Mr. Aranda does not provide a price for the Spanish-origin live crawfish harvested in the months of November to July. Without this information, it is not possible to compare the Spanish import prices for live crawfish which originated in Portugal with the prices for live crawfish which originated in Spain. Of further importance, the July 6, 2010, submission of factual information containing an e-mail communication from Mr. Aranda did not contain a certification by Mr. Aranda, pursuant to 19 CFR 351.303(g)(1), of the completeness and accuracy of the information he provided. In light of the above considerations, we find that the July 6, 2010, submission by Xiping Opeck, *et al.*, of new factual information does not constitute credible information with which to value live crawfish during the POR. Thus, there are no credible alternate prices for live crawfish on the record of these reviews.

Section 773(c)(1) of the Act states that "the administering authority shall determine the normal value of the subject merchandise on the basis of the value of the factors of production utilized in producing the merchandise…. Except as provided in paragraph (2), the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority." Section 773(c)(4) of the Act states that "{t}he administering authority, in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the

prices or costs of factors of production in one or more market economy countries…." The plain language of the statute simply directs the Department to value a factor actually used in the production of subject merchandise using the best available information concerning the prices or costs of a factor in a market economy.

In these reviews, live crawfish is the main factor used in the production of the subject merchandise. In the Surrogate-Country Memo we indicated that, "consistent with past practice and the record evidence in these reviews, we find that Spain is the appropriate surrogate country in which to value whole crawfish." See Surrogate-Country Memo at 4. Accordingly, in the *Preliminary Results*, we valued live crawfish using Spanish import prices because these data constituted the best available information as to the value of live crawfish in a market-economy country. See *Preliminary Results*, 75 FR at 34102.

Import prices typically satisfy our preference for SVs that are publicly available, broad-market averages, contemporaneous with the POR, specific to the input, and exclusive of taxes. Section 773(c) of the Act does not direct us to invalidate values such as import prices of live crawfish in Spain merely because imported live crawfish were consumed in the production of whole processed crawfish (and not in the production of crawfish tail meat) in Spain; as a result, the statute does not require the use of domestic prices of live crawfish in Spain on the grounds that only locally caught (and not imported) live crawfish were consumed in the production of crawfish tail meat in Spain. In other words, the relevant statute does not require us to evaluate the criteria surrounding the actual consumption of a factor in a chosen market-economy country, any differences in the prices of a factor dictated by the downstream products that consume the factor, or any difference in the prices between locally produced versus imported inputs. This rationale is analogous with the logic in *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (CAFC 1999), where, in upholding the Department's finding that Indian import prices constituted the best available information, the court stated,

> {section 773(c) of the Act does not mandate} that Commerce use a surrogate country's domestic price if the NME country procures the valued material domestically. The statute is more flexible: it mandates that Commerce value the factors of production on the basis of "the *best available information regarding the values* of such factors in a market economy country." The "best available information" concerning the valuation of a particular factor of production may constitute information from the surrogate country that is directly analogous to the production experience of the NME producer…or it may not.

(Emphasis in original, citation omitted.) In this case, the Spanish import prices may or may not, arguably, constitute information that is directly representative of the production experience of the respondents in these reviews. Nevertheless, because there are no credible alternate prices for live crawfish on the record of these reviews and because the Spanish import data are publicly available, represent broad-market averages, are contemporaneous with the POR, are specific to the input, and are exclusive of taxes, we find that the Spanish import data constitute the best available information with which to value the FOP concerning live crawfish for the final results of these reviews.

Filing of New Factual Information

Comment 4: Xiping Opeck, *et al.*, argue that the Department's denial of the respondents' request for an extension of time to file additional new factual information with respect to the valuation of live crawfish was unfair and arbitrary. Xiping Opeck, *et al.*, argue that, in the July 6, 2010, submission of new factual information in which respondents also asked for an extension, the respondents made it clear that they were able to obtain the critical information only in the past weeks and that they were working diligently on obtaining more accurate and specific information to supplement the information submitted.

The petitioner argues that there is no basis for the respondent's claim that the Department acted improperly in denying the respondents' request for an extension to place additional factual information on the record. The petitioner contends that the courts have consistently upheld the Department's interest in enforcing the clearly defined regulations establishing the deadlines for the submission of factual information. The petitioner asserts that the respondents cited no authority for the proposition that the Department was required to provide an extension. The petitioner asserts that this is a simple case of respondents missing a deadline for the voluntary submission of information they deem favorable to the outcome of these reviews.

Department's Position: On April 12, 2010, in response to the respondents' request, we extended the deadline, by two weeks, for submitting comments on the selection of SVs for consideration in the preliminary results of these reviews. As we explained in our July 12, 2010, letter to counsel for Xiping Opeck, *et al.*, because 19 CFR 351.301(c)(3)(ii) allows parties to submit publicly available information to value the FOPs up to 20 days after the date of publication of the preliminary results, the respondents had a total of 253 days from the date we published the initiation of the administrative review in the *Federal Register* (74 FR 54956, October 26, 2009) to provide this information. Because of the length of time that the respondents had to submit new factual information to value the FOPs, which amounts to a significant portion of the time in which we are required by law to complete an administrative review, we did not grant the respondents' request for another extension. As discussed above, during this period late in the reviews, we were analyzing and considering information regarding the wage-rate calculation following *Dorbest IV* as well as considering the issues raised in the parties' case briefs. Further, we did not find persuasive the reasons the respondents provided in their latest extension request as warranting an extension. See the respondents' letters dated April 9, 2010, and July 6, 2010, with respect to the reasons the respondents cited for requiring additional time to collect publicly available factual information to value live crawfish.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of

these reviews and the final dumping margins for all companies in the *Federal Register*.

Agree _____ Disagree _____

_____
Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

_____
(Date)